

[The following summarized minutes were conducted in public session. There were no portions of the minutes that were in Executive Session.]

A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order on the 28th day of January 2020 at 1:51 p.m. [The Work Session that was scheduled to be held prior to the board meeting at 1:00 p.m. was cancelled.]

Board Members Present Included:

Jason Lehman, Fire Trustee, Chair Pro Tempore
Catherine MacLeod, Citizen Trustee
Brian Hunzeker, Police Trustee

Board Members Absent were:

Josh Harwood, Mayor's Designee
Elizabeth Fouts, Citizen Trustee

Also present were:

Samuel Hutchison, FPDR Director
Kimberly Mitchell, FPDR Claims Manager
Stacy Jones, FPDR Finance Manager
Rob Hutchens, FPDR Fire Liaison
Crystal Viuhkola, FPDR Police Liaison
Lorne Dauenhauer, FPDR Outside Legal Counsel
Franco Lucchin, Sr. Deputy City Attorney
Nelson Hall, Attorney
Del Stevens, Fire Retiree
Ty Walthers, Fire Retiree
Kristin Johnson, Office of Commissioner Hardesty

Trustee MacLeod made a motion that was seconded by Trustee Hunzeker and unanimously passed to approve the November 19, 2019 minutes.

<i>Aye</i>	<i>Trustee Lehman, Trustee MacLeod, Trustee Hunzeker,</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Trustee Harwood, Trustee Fouts</i>

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Introductions of those present at the meeting were then made.

Chair Pro Tempore Jason Lehman (Chair Lehman) explained that the work session scheduled prior to the board meeting at 1:00 p.m. was cancelled due to board member conflicts and stated that the board wanted all members present for the work session. Retired Fire Member, Del Stevens, asked whether the board was going to establish a work committee to look at FPDR pension benefits as compared to PERS pension benefits. Chair Lehman stated that the work session will be rescheduled and after the board gets more information from their legal counsel, they will decide how they would like to proceed.

General Public Comments:

Retired Fire Member Del Stevens (Del) addressed the board. Del first wanted to establish some credibility and passed out a certificate received after serving on the Pension Board and Task Force from 1987-1990. Del then stated that there was a law passed in 1973 called ETOB which determined that all public employees had to have pensions that were equal to or better than those provided by PERS that applied to active and retired people. Del explained how the District 10 Fire Department wanted a better system and became PERS members. At that time, Del realized that Portland had a system that even though was in place, was outdated, hadn't kept pace and was not equal in benefits. Del went on to explain that a Task Force was established by City Council and the Mayor to look at FPDR benefits and Del looked into the possibility of moving their membership into PERS. At that time, Del met with the Director of PERS who said that PERS provides good benefits and 80 percent of PERS' retirement benefits were paid out of investment earnings and that the City of Portland did not have that. Del told the Task Force about it but they did not want to hear what Del had to say they and did not want to go into PERS. Del never felt that FPDR benefits were the same or equal to PERS and stated that in 1990, when the new FPDR pension plan went into effect, an ETOB study was done and Portland failed. Del added that it failed the same year it went into effect so some of those defects were still right there in the new pension plan and it has been that way ever since. Del would like to see the board commit itself to looking at the differences between FPDR pension and PERS pension and looking at how modifications can be made to make the FPDR pension better. Del stated in PERS you can will the portion that is in your employee account to anyone you want so you can cover a sick family member, but in FPDR you cannot and Del has a daughter that is wheelchair bound who would be unable to receive the benefit. Del also stated that the process is transparent enough that no one would object to letting somebody take a portion of their final pension and direct it to a family member. Del also talked about Joe as an example of somebody that has an extreme disability and Joe's disability status was

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taken away because FPDR has now decided that they do not have a disability retirement system and that is required by state law so they are not legal right now.

Chair Lehman reiterated to Del that the board will be having a work session. Director Hutchison clarified that the work session would be a public meeting but was between the trustees and legal counsel without public comment or testimony. The intent of the work session would be to give the board information to decide how to move forward.

Action Item No. 1 – Adopt 2020-2021 Budget

Finance Manager Stacy Jones (Stacy) explained the budget process and stated that FPDR is the only bureau in the City where City Council has no budgetary authority and the FPDR board has exclusive authority to approve the budget. However, the board cannot levy the tax. City Council levies the tax so FPDR has to present it to the City. Stacy added that there can be changes made to the budget after the board adopts it, but it is limited to certain areas.

Stacy went over the forecast summary and stated that average annual growth is 6.5 percent which is similar growth for their recent experience and exactly what they would expect. Stacy added that it seems high but those are the consequences of prefunding a generation of new employees and closing out the pay as you go pension plan.

Stacy stated that property tax revenue is growing at 6 percent but the FPDR 1 & 2 pension requirements (6.2%) and the FPDR 3 PERS contribution requirements (16.81%) growth rate is higher so property taxes are not growing as quickly as expenses. Stacy explained that the reason for that is because their beginning fund balance is larger for the current fiscal year, so they do not need to go out and levy much in taxes next year.

Stacy explained that one of the things different this year was that there were no sworn labor contracts in place for the budget year. In the absence of knowing what the parameters of the contracts will be, staff has just budgeted for COLA to wages using the City's CPI index and they have included retro pension COLA's for PFFA since their contract expired on June 30 last year.

Trustee MacLeod asked what the index percentage is to which Stacy replied 2.9 percent. Trustee MacLeod also asked if accommodations are made for vacancies and Stacy explained how vacancies are factored into the budget. Trustee Hunzeker asked if the 2.9 percent was projected or actual. Stacy stated that it is actual and that they got the data from the Bureau of Labor Statistics.

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Chair Lehman asked how retros would affect the pension. Stacy stated that retros affect almost everyone and explained that for FPDR One their pensions are a percent of firefighter pay so on July 1 they would get a 3.9 percent increase. For FPDR Two, everyone who retired between July 1, 2019 and whenever that goes into effect, would have had a higher final pay if that COLA had been in place. The Charter requires FPDR to recalculate their pay, even if the City never pays them, so staff is going to pretend that they did and increase those FPDR Two pensions. And, everyone who is on disability after that date, they would have had a higher replacement pay so staff would go back and calculate retros for everyone on disability whether long term or short term. Also, because the City will pay out a big retro, PERS contributions will come out of that and FPDR will have to pay their share.

Stacy stated that another thing different this year that does not really impact the budget directly but does impact the tax rate is slower RMV growth in Portland. Last year RMV only grew 2 percent which is significantly below normal. However, on the flip side assessed value (which is what taxpayers actually pay property taxes on) grew 4 ½ percent which was more than expected. Stacy explained that Measures 5 and 50 limited assessed value growth on existing properties to 3 percent so that means a lot of new properties have been added to the tax rolls in Portland and the nice thing about that is it is spreading their tax bill among more taxpayers so that is putting less pressure on the tax rate.

Stacy then went over expenses and stated that almost all of their money is spent on pensions and almost all of their money is from property taxes. Stacy explained that FPDR One and Two pension benefits are about 75 percent of the budget. FPDR One benefits are declining due to mortality rates but FPDR Two benefits continue to increase by about 7.7 percent.

Stacy explained that the second largest part of the budget was the PERS contribution (13 percent of the total budget). It is the fastest growing part of the budget and forecasting that next year will be the tipping point where just a slight majority of the sworn workforce are PERS members. PERS rate for next year is 29.16 percent and it is projected to go up. However, Stacy added that the projection does not include the cost savings reform that the 2019 Oregon Legislature enacted and does not include the 2019 investment returns that PERS had because Citywide the guidance from the budget office is not to include that due to the litigation on PERS reforms.

Trustee MacLeod asked if Stacy had a sense of what the funded percent or unfunded liability is for PERS Tier 3 and whether projections for funding are stable enough or is unfunded liability being created that at some point might require some additional contributions over what is being

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forecasted? Stacy did not know what the liability for PERS Tier 3 or OPSRP was but thought that they were funded in the 70 or 80 percent range overall. Stacy added that a concern is that one of the reforms enacted in 2019 was to lengthen the amortization period for the unfunded liability so PERS contributions will be higher for some years. Stacy went on to say that the way PERS set contribution rates is interesting in that they do have a rate collaring policy and explained the rate collaring policy.

Trustee MacLeod asked if the contribution rates set by PERS are based on the overall funded status. Stacy believed so but was not certain. Stacy added that there are employer pools and there is a contribution rate specific to FPDR and the City of Portland and that every employer has a different contribution rate because the liability is calculated per employer. Stacy stated that they issued pension obligation bonds some time ago and bought down their contributions. Stacy went on to say that this is one area of the budget where there is an upside risk, meaning a good risk that they will be in the wrong but in the right direction; the right direction being towards lower costs because if those PERS reforms are upheld, if the 2019 investment returns are able to hold down contribution rate growth in the future, there is a chance that the projected rates will be lower than the projected 34 percent.

Stacy also stated that FPDR Three is a young population and just now starting to spread through the ranks and a large number of them are not topped out as police officers and firefighters so in addition to having cost of living adjustments this means more wage growth, and wage increases hit this part of the budget harder and faster than anywhere else.

As it becomes an increasing part of the budget, Trustee MacLeod wanted to make sure staff was monitoring, to the extent actuarial assumptions are softened to help keep contribution rates palatable for other agencies (as is happening to pension systems around the country), because what can happen is that the contribution levels can be understated in the short term and developed as they then refine their assumptions in the future and then you end up with losses or increases in the unfunded liability that have to be made up in future contributions. Trustee MacLeod also asked whether additional contributions could be made and earmarked specifically for FPDR. Stacy explained that the State set up an employer incentive fund and if employers want to buy down their liability at a faster rate, the State will match the employer's additional contribution by 25 percent. However, there were a lot of rules and employers with bigger unfunded liabilities got to be first in line. The City's unfunded liability was not big enough so did not qualify in the first round, but there may be additional rounds. Stacy stated that one of the things under discussion at the City is that they would probably want to be a part of that in a future round and FPDR would have to pay

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a share of that because FPDR pays their share of the City's overall PERS contributions. In that case, they are talking about making an additional contribution as part of the City. However, whether FPDR can do it individually, separately from the City is still not known. Trustee MacLeod was reassured to know that Stacy was keeping an eye on that opportunity and what those rates and future rates may be.

Stacy then went on to disability benefits which are 4 percent of the budget and went over projected spending and budgeted spending. Stacy pointed out that medical payments were growing by 4 percent each year and were the most volatile and growing the fastest on the disability side.

Stacy moved on to administration which was less than 2 percent of the budget. Administrative spending is going up about 2.65 percent next year which is close to inflation. Stacy added that there is not a lot that is discretionary given the number of positions and the job classifications in personnel. Stacy also stated that the Mayor had recently issued revised guidance to all bureaus to submit budgets with lower raises for non-represented employees. The Mayor's proposal is to limit the 2.9 percent COLA to people making more than \$100,000 a year to just \$100,000, and to cap any merit raises that non-represented employees might be eligible for at 2 percent instead of the usual cap which is 4.1. Stacy stated that the budget complies with that. Stacy also stated that external materials and services are essentially growing with inflation and internal materials and services were going up 3.2 percent.

Stacy explained that the FPDR was not a general fund bureau and pointed out three things they must do:

- 1) Maintain fund contingency because the general fund is not going to bail them out if something comes up and they do not have enough money, there is an unanticipated expense or they under collect revenues;
- 2) Manage their own cash flow which since the vast majority of their revenue comes from property taxes means they are issuing tax anticipation notes every year. However, they do get interest income and they get to keep their interest income which more than offsets the tax anticipation notes every year; and
- 3) Pay general fund overhead which is where all the other funds in the City pay for citywide costs that live in the general fund like City Council offices, Citywide Emergency Management, Human Resources, etc.

Stacy stated that contingency has been in the 6 to 7 percent range and they plan to keep it in that range but as expenses go up that is a bigger and bigger number. Stacy also stated that they do

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contingency based on the risks they face every year and explained the risks. \$11.5 million dollars is proposed for the budget in contingency this year. Stacy also went over the major assumptions that go into building the expenditure budget and how they impact the budget.

In terms of revenue, Stacy explained that almost all of it is from property taxes. Stacy also explained that next year they are projected to have about \$17 million in beginning fund balance. Stacy then went over property taxes needed and stated that they are estimating a net \$166 million for fiscal year 2021. Stacy also explained that if the board sees a higher number at some point it is because Council needs to levy more than that because FPDR is going to lose about 9 percent on compression, delinquencies and discounts so would be levying something more like \$180 million.

Stacy also went over major assumptions regarding revenue and the risks to revenue. Stacy added that the risk is on the property tax side. Property tax compression is notoriously difficult to predict, and delinquencies move around a lot.

Stacy summarized that the main take aways for the budget are that:

- 1) They are continuing to see pension costs grow exactly as they predicted. FPDR Two pension costs are going up and PERS contribution costs are getting much bigger as the number of people in PERS and wages grows.
- 2) Most other costs are stable.
- 3) More uncertainty than usual. Mostly because of the uncertainty regarding labor contracts but the future of PERS contribution rates is also adding uncertainty because they do not know what is going to happen with the Oregon Supreme Court. There is also uncertainty around Police Bureau hiring rates.

In conclusion, Stacy provided a preview of what is going to come up in the future, i.e., resolution of PERS reform, new labor contracts, new experience study from Milliman, continuation of the trends they have been talking about. Stacy also explained that the board will need to adopt the budget with the understanding that staff may have to make minor technical changes. However, if any significant changes are made, Stacy will bring the budget back to the board.

Trustee MacLeod made a motion that was seconded by Trustee Hunzeker and unanimously passed to adopt the budget as presented to the board.

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<i>Aye</i>	<i>Trustee Lehman, Trustee MacLeod, Trustee Hunzeker,</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Trustee Harwood, Trustee Fouts</i>

Action Item No. 1 – Resolution No. 527 (Managed Health Northwest Contract) and Action Item No. 2 - Resolution No. 528 (Kaiser Foundation Health Plan of the Northwest Contract)

Director Hutchison provided some background on the MHN and Kaiser contracts and explained the City procurement process. Director Hutchison explained that the MHN contract was extended twice for what was believed to be two five-year periods or a total of ten years. However, Director Hutchison stated that the approved extensions inadvertently added up to eleven years and the City only allows maximum extensions up to ten years. Director Hutchison explained that staff discovered the same issue with the Kaiser contract. Therefore, as of December 31, 2019, both contracts are expired. However, Procurement will work with staff to draft a contract with MHN and Kaiser with the same scope for two years to 2021. Director Hutchison added that six months before the contract expires staff will begin then an RFP process. Director Hutchison asked the board to allow him to negotiate and approve the two-year contracts with MHN and Kaiser.

Trustee MacLeod made a motion to allow the Director to negotiate and approve the contracts with MHN and Kaiser. The motion was seconded by Trustee Hunzeker and unanimously passed to adopt Resolution No. 527 and Resolution 528.

<i>Aye</i>	<i>Trustee Lehman, Trustee MacLeod, Trustee Hunzeker,</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Trustee Harwood, Trustee Fouts</i>

Information Item No. 1 – FPDR Summary of Expenditures

Stacy went over the expenditure summary and pointed out that they have started to get property taxes and are sitting on some actual cash and payments have been made out to Police and Fire for PERS contributions. Stacy explained that Police and Fire make those contributions in the payroll system and FPDR reimburses them.

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Information Item No. 2 – Legislative Updates

Director Hutchison provided a legislative update and stated that this was a short session year and the bills were formally made public yesterday. Director Hutchison stated:

- No significant PERS bills
- Only one workers' comp bill (HB 4062)
- Some initiatives that FPDR will be watching to come up in the November election.

Director Hutchison went over HB 4062 and explained that subsection (4)(a) of the bill is part of the state workers' compensation statute and the drafters of the bill want it to now apply to FPDR. Subsection (4)(b) of the bill does this. Director Hutchison went over the comparison chart between Chapter 5 of the City Charter and workers' compensation. Director Hutchison stated that HB 4062 only covers firefighters and explained that the FPDR presumption covers both firefighters and police officers. The new legislation would not replace Charter Section 5-306.

Attorney Lucchin explained that the bill has not yet become law but what they were talking about was a presumption. Attorney Lucchin wanted to be clear that a presumption is not a benefit, it is not something for which you are provided coverage, but a presumption is basically an inference drawn from certain facts and a rebuttal presumption may be overcome by the introduction of contrary evidence. Attorney Lucchin went over what the bill would mean for FPDR and explained that in any given case, there is going to be one party who has the burden of proof and what the presumptions do is shift that to FPDR and define what the standard of proof is. In HB 4062, the standard of proof is clear and convincing evidence. Under the Section 5-306(d) presumptions, that burden is FPDR's as well, but it is a preponderance of the evidence. Attorney Lucchin also stated that they would not have two different standards applying on the same claim.

Trustee MacLeod clarified that the existing Charter section would not be changed and so if HB 4062 passed, it would overlay on top of it. However, if it were a police officer's claim, just the Charter provision would apply. Also, because there is no corresponding state statute, if there was a firefighter with a hernia or AIDs or Hepatitis B (which is not on the list of presumptions under HB 4062), the Charter standard would apply. However, if there was something that fell under the expanded definition as stated in HB 4062, i.e., hypertension, cardiovascular-renal disease, the HB 4062 presumptions would apply. Director Hutchison stated yes.

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Public Comment:

Attorney Nelson Hall addressed the board and explained that the bill was sponsored by the National Council of the Oregon Firefighters Counsel and Attorney Hall was before the board on behalf of the National Council. Attorney Hall also wanted to make a quick point that the presumption being presented by statute and that part of the statute has been on the books since 1961. It has been amended a few times and Attorney Hall refers to it as the firefighter heart and lung presumption. Attorney Hall also stated that the next point was that there is a certain simplicity to the proposal of the statute because the language is the same as in the cancer and PTSD presumptions and there should not be any real difficulty in integrating it. Attorney Hall added that ORS 656.027 defines who are subject workers and because this presumption has been around for a while, the terms and words including definitions have all been vetted and litigated and defined by the courts. Attorney Hall is lobbying for the bill and would urge the board along with the City to join and add their voice.

Trustee Hunzeker agreed with Attorney Hall and stated that the board should have a positive stance on the bill. Director Hutchison stated that bills, especially the ones that impacts FPDR are monitored very carefully and suggested that the board wait until they know what direction the bill is going in. Trustee Lehman asked that any updates be forwarded to the board.

Information Item No. 3 – FPDR Updates

Director Hutchison provided an update on the office lease and explained that the lease was extended in 2017. However, because there was talk about moving FPDR into the Portland Building, the lease was only extended for a three-year period until October 2020 with three six-month options to extend. The first of the three six-month options to extend is coming up and FPDR will be exercising the option to extend the lease. Director Hutchison explained that in 2017 the Board approved the lease extension and the options. However, City Council only approved the three-year extension so FPDR will be going back to City Council to have them approve the options. Facilities will be assisting FPDR with this. Six to seven months before the expiration of the lease in 2022 after the last option to extend, Director Hutchison will be meeting with a real estate broker regarding office space and will discuss that with the board when that time comes.

Information Item No. 7 – Future Meeting Agenda Items

- Benefit adjustment in March
- Legislative update


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There being no further business, Trustee MacLeod made a motion which was seconded by Trustee Hunzeker to adjourn the meeting.

The meeting was adjourned at 4:15 p.m.



Samuel Hutchison
Director

/kk