

**CITY OF PORTLAND  
BUREAU OF FIRE & POLICE  
DISABILITY & RETIREMENT**

**BOARD MEETING**



**January 23, 2024**

# **FPDR BOARD OF TRUSTEES MATERIALS**

**January 23, 2024**

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**Note:** There are no handouts for Information Item 6 of the agenda

**This meeting will be held virtually**

**City of Portland Bureau of Fire and Police Disability and Retirement  
Agenda for Regular Meeting – Board of Trustees  
Tuesday, January 23, 2024 – 1:00 p.m.**

**Please note, The Fire and Police Disability and Retirement Board of Trustees are holding this public meeting VIRTUALLY. Meetings going forward will be hybrid which provides for both virtual and limited in-person attendance. Members of the board will elect to attend remotely by video and teleconference, or in-person. FPDR has made several avenues available for the public to listen to the audio broadcast of this meeting, including the City's e-GovPDX YouTube Channel, Channel 30, and [www.portlandoregon.gov/video](http://www.portlandoregon.gov/video)**

#### **ADMINISTRATION**

*The following consent item(s) are considered to be routine and will be acted upon by the Board in one motion, without discussion, unless a Board member, staff member or the public requests an item be held for discussion.*

- |   |   |
|---|---|
| 1 | Approval of Minutes – November 14, 2023 Meeting |
| 2 | Approval of Minutes – December 19, 2023 Meeting |

#### **INTRODUCTION OF VISITORS**

#### **PUBLIC COMMENT PERIOD VIA ELECTRONIC COMMUNICATION**

**Public comments will be heard by electronic communication (internet connection or telephone), or in-person. If you wish to sign up for public comment by electronic communication, please register at the following link:**

**[https://us06web.zoom.us/webinar/register/WN\\_8jMTkWYORQacGn1lIQ05lA](https://us06web.zoom.us/webinar/register/WN_8jMTkWYORQacGn1lIQ05lA)**

**You will be asked to provide your name, phone number, email address, agenda item number(s) you wish to provide comment on and zip code. After registering, you will receive a confirmation email containing information about joining the electronic/virtual meeting. Individuals will have three minutes to provide public comment unless otherwise stated at the meeting. The deadline to sign up for the January 23, 2024 hybrid board meeting is Monday, January 22, 2024 at 3:00 p.m. Individuals can also provide written testimony to the Board by emailing the FPDR Director Sam Hutchison at [sam.hutchison@portlandoregon.gov](mailto:sam.hutchison@portlandoregon.gov) by January 20, 2024.**

#### **ACTION ITEMS**

- |   |  |
|---|--|
| 1 | Adopt 2024-2025 Budget <ul style="list-style-type: none"><li>Issue: Review FY 2024-2025 Recommended Budget and Five-Year Forecast for FYE 2025-2029</li><li>Expected Outcome: Board passes motion to adopt Recommended Budget as FPDR Requested Budget</li></ul> |
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#### **INFORMATION ITEMS**

*The following information items do not require action by the Board and are solely for informational purposes unless a Board member, staff member or the public requests an item be held for discussion.*

- |     |   |
|-----|---|
| 1   | Actuarial Standard of Practice (ASOP) No. 4 presentation by Lorne Dauenhauer, FPDR outside counsel                              |
| 2   | Disability Pension benefits review (comparison of FPDR and PERS Disability Benefits)  |
| 2.5 | Overview and Discussion of FPDR Disability/Disability Retirement Benefit presentation by Lorne Dauenhauer, FPDR outside counsel |
| 3   | Overview of the FPDR Administrative Rule amendment process  |
| 4   | Legislative Update  |
| 5   | FPDR Summary of Expenditures  |
| 6   | FPDR Updates  |
| 7   | Future Meeting Agenda Items   |

Copies of materials supplied to the Board before the meeting, except confidential items and those referred to Executive Session, are available for review by the public on the FPDR website at [www.portlandoregon.gov/fpdr](http://www.portlandoregon.gov/fpdr) or at the FPDR offices located at: 1800 SW First Avenue, Suite 250, Portland, Oregon 97201. **NOTE:** If you have a disability that requires any special materials services or assistance call (503) 823-6823 at least 48 hours before the meeting.



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Board of Trustee Meeting Minutes

November 14, 2023



<b>FIRE AND POLICE DISABILITY AND RETIREMENT BOARD OF TRUSTEES MEETING</b>	<b>MINUTES</b>
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This meeting was held remotely via a Zoom webinar platform.

**Date and Time:** November 14, 2023, at 1:00 p.m.; Meeting adjourned at 3:20 p.m.

**Board Members Present:**

Catherine MacLeod (Board Chair); Kyle MacLowry (Fire Trustee); Tom Kramer (Citizen Trustee)

**Also Present:**

Sam Hutchison (FPDR Director); Stacy Jones (FPDR Deputy Director/Finance Manager); Kimberly Mitchell (FPDR Claims Manager); Julie Crisp (FPDR Business Systems Analyst); Julie Hall (FPDR Legal Assistant); Franco A. Lucchin (Sr. Deputy City Attorney); Lorne Dauenhauer (Outside Legal Counsel); Keith Simovic (Moss Adams); Alise Horsley (Moss Adams); Minh Dan Vuong (City of Portland Auditor); Don Porth (President, Retired Firefighters and Widows Association); OpenSignal PDX

**Motions Made and Approved:**

- Motion by Trustee MacLowry that was seconded by Trustee Kramer and unanimously passed (3-0) to approve the September 26, 2023 minutes.

A text file produced through the closed captioning process for the live broadcast of this board meeting is attached and should be considered a verbatim transcript.

Fire and Police Disability and Retirement

By \_\_\_\_\_

Sam Hutchison  
FPDR Director

CLOSED CAPTIONING FILE

[Captioner on standby]

**Chair MacLeod:** And good afternoon, everybody. Welcome to our November 14, 2023, meeting of the Board of Trustees for the Fire and Police Disability and Retirement Fund. I think we start off by approval of minutes. The last meeting was September 26th. Were there any comments about the prior minutes? All right then, hearing none, does someone want to make a motion to approve those minutes?

**Trustee MacLowry:** I'll make a motion to approve.

**Trustee Kramer:** Second.

**Chair MacLeod:** All right. All in favor say aye. Aye.

**Trustee MacLowry:** Aye.

**Trustee Kramer:** Aye

**Chair MacLeod:** All right. Opposed? All right, prior minutes have been approved. Thank you very much. Should we take a minute to introduce any visitors online here? Julie or Sam, do you know of anybody here?

**Julie Hall:** Yes, definitely. Today we're going to have Keith Simovic and I think Alise Horsley is also going to be here from Moss Adams talking about the annual audit.

**Stacy Jones:** But I can introduce them as part of that item as well.

**Chair MacLeod:** Perfect. Thank you very much. Then let's proceed to our action items, which are brief, being none. So, let's go on to the information items, and I think the first one is the annual audit property from Moss Adams. Stacy, I'll turn it over to you.

**INFORMATION ITEM NO. ONE – AUDITOR'S ANNUAL REPORT PRESENTED BY MOSS ADAMS**

**Stacy Jones:** Thank you, Chair MacLeod. Am I the first person to call you that? Well, maybe not ever, but in this context. Congratulations. So, I, for the record, am Stacy Jones. I'm the Deputy Director and also the Finance and Pension Manager, and I'm here today to introduce our external financial auditors who are going to present to the Board as our governing body their findings on our annual financial audit. So, I want to introduce or reintroduce for those of who have met him before, Keith Simovic, who's waving at you right now, he's the lead partner at Moss Adams for our audit engagement, and Keith has been involved in FPDR's annual audit for many years - first as a manager, then as senior manager, and now he is the engagement partner. So, we're really lucky to have that kind of continuity at the leadership level, I don't think that's common in a financial auditor. And I'd also like to introduce Alise Horsley who is here with us as well. Alise is an Audit Manager with Moss Adams and part of the FPDR audit team for a couple years now as well. Anyway, they come every year to the Board. For Trustee Kramer, since this is your first time, they have audited our financial statements for the year beginning July 1, 2022, and ending June 30, 2023, and we have now published our statements with their audit opinion, and they have come to present their opinion and findings to the board. I'll turn it over to you, Keith.

**Keith Simovic:** Perfect, thanks for that introduction, Stacy. Thank you, Chair MacLeod and other fellow trustees for being here and having us here today to present the results of the June 30, 2023 financial statement audit for FPDR. I'm going to go ahead and share my screen, if I can. We've got a presentation that we're going to walk through with you, although it looks like I cannot share my screen.

**Julie Hall:** One moment.

**Keith Simovic:** Okay, while we're working through that, overall, I guess good news overall that you always want to hear that the audit is complete at this point. So, everything is kind of on time and kind of in line with the initial time frame that we had laid out in the planning process. And I really appreciated the team at FPDR for hosting us on-site again this year. It seems almost a little bit rare these days now that we're coming out of the pandemic that we get to say that, as some of our clients are still just having us be remote. A lot of them, though, are kind of ending up in this hybrid format where we're able to spend some time on-site face-to-face kind of like in the good old days prior to the world getting turned upside down. Really appreciated the whole team there, Sam, Stacy, Asha that we worked with very closely in this process as well, hosting us on-site and being able to spend a few of those days right there face-to-face working through our audit procedures, which we think is very, very valuable in this process. We appreciate that. Looks like I should be able to share my screen at this point. Let me see if I can pull this up. All right, is this popping up for everyone?

**Julie Hall:** Yes.

**Keith Simovic:** Perfect. Okay. I'll go ahead and move forward here. Just a quick recap, this is kind of the core group of our team, not everyone. We had other staff involved as well, but this is the core group of our team. You heard the introduction for me, thank you, Stacy. And then of Alise as well who you'll get a chance to hear from a little bit, and one update there, she is now an audit senior manager, so a promotion since last year. Very excited to be working with her and in that capacity and here it still says audit manager, so I wanted to throw that out there. Lori Tish as you see on here, she's our concurring reviewer. That's a quality control review. It's a very important piece of our audit process that is not required by professional standards but something that our firm definitely requires and values, just having kind of that outside, what we consider kind of a cold reviewer, someone that's not really involved with the engagement, they're not on-site with the team, with the client at all. They're not working with, you know, Stacy or Sam, or anyone over at FPDR. They're really intended to come in and making sure that we're doing our risk assessment appropriately, that we're following through on all of our procedures that we stated we were going to do in the planning process, that we're following all of our professional standards and of course they're reviewing those final deliverables, that set of financial statements and our audit reports, making sure those are appropriate and in line with the governmental accounting standards and that our audit reports reflect the results that we had in our audit file as well, so a very key position. Lori is a partner as well and she actually leads our firm's government services practice. So, a very, very experienced partner that we're excited to have back serving in that role again this year. Then Allen Soutavong, a returning person on the engagement. He was on staff last year and now he's an audit senior, so he got promoted as well and got to be more of an in-charge-type role leading the rest of our staff during our field work. Excited to have him back and a familiar face this year. That's the core group of our team.

A quick recap of what you can expect to receive out of this process when you hire an independent auditor to come in and do an annual financial statement audit, what can you expect to receive in this case. So, a couple of items to note there, one being we issue the independent auditor's report on the fairness and accuracy of FPDR's financial statements. And so that's probably the report you're most

familiar with, and that involves us going through, doing our initial risk assessment, looking at the ending activities and balances that are reported, the disclosures, and doing our detail testing back to any contracts, agreements, all the participant information, census file information, actuarial reports, all the substantive documentation to ensure at the end of the day that those financial statements that we have our audit report attached to is a fair and accurate representation of the books and records of the organization of those retirement funds at the end of the year. There's all that detail testing that we have to go through to get to a point where we can offer that opinion on the financial statements. And then Box 2 is kind of related to that service as well, it's not an additional deliverable, but we also have to go through and look at that final document and make sure it's in the right presentation and format and has all of the various disclosures that are required by the governmental accounting standards that FPDR has to follow. So, there's that technical review, just making sure everything in there, should be in there and that you included all the various disclosures that would be required by the GASB. Another important reason for that as well, that information all gets included in the City of Portland's financial report as well. So, their annual comprehensive financial report that they submit to a third party, the GFOA, Government Finance Officers Association, to be able to receive an award for excellence in finance reporting, so there's a number of things they have to follow through on, and of course having all the accurate information and disclosures from FPDR is a big piece of that. So that technical review is really important in that process too.

Box 3, additional reports on internal control over the finance reporting compliance in accordance with government auditing standards. We have to follow government auditing standards whenever we're doing an audit of a governmental entity, and so that report is included as well. And then finally our communication to those charged with governance, it's an additional letter that we issue as part of every audit that we do, that gives you as the governing body additional information and insights as to how did the audit go. You get that audit report that's attached to your financial statement. It tells you at the end of the day did we give a clean audit report or not, but it doesn't give you the insights into well, what did you encounter along the way? Did you have any difficulties performing the audit? Were there any errors that were noted and corrected in this final set of financial statements that were material? Do you have any recommendations in terms of internal control deficiencies that were identified, if there were? Do you have any material weaknesses in internal controls? Were there new accounting standards that were adopted that would impact the look and feel of your financial statements this year? All of those things are kind of the items covered in that additional communication which we'll go through those here briefly. All right.

High level in terms of the items that we noted within our final reports, this is the important thing that you want to hear out of this process, right. Going through this audit process, you know, any third party that takes a look at this set of financial statements, they want to know, one, did the organization have a financial statement audit performed by an independent auditor, and what was the overall opinion? Did you receive a clean opinion, which is very, very important, right? Gives you more credibility into the accuracy and the fairness of the presentation of your financial statements and the books and records of the organization, right. So, at the end of the day, you'll see in our audit report that we give a clean or unmodified, in our audit speak, opinion on the financial statements and that we didn't have any significant deficiencies or material weaknesses noted. We also want to bring that up and highlight it. Those are the red flag types of items or language that we could use in our audit reports that really brings your attention or highlights more significant issues that could be encountered during this process. We always want to let you know up front, were there any items that kind of rose to the level of what we would call a significant deficiency or a material weakness in internal controls, and we did not in the current year. So, reviewing the internal controls are a big piece of this process. We want to understand the underlying processes, who's involved, what are the checks and balances in place and

potentially where could something go wrong. We want to be sitting with your staff and asking the questions of what if someone wanted to do it this way, could that happen? Would that flag you in the system or would someone take a look at that in your current review process. It's a big piece of what we're doing, and if there's anything kind of missing along the way in that process in terms of how the financial statements are put together, and the books and records overall, those are the items that potentially could rise to this level. But we didn't have anything to that degree. Very, very good news there. I would imagine you'd come to expect that over the years with a good system of internal controls and we continue to look at those each and every year.

All right, I'm going to turn it over to Alise, you get to hear from her for a little bit here. She's going to go through our required communications. I mentioned that communication to those charged with governance. This is kind of the highlights of those items that we want to always kind of bring forward. I don't think we can hear you, Alise. I don't think I can hear you. Well, while she's work through that, I can kind of kick things off here.

**Keith Simovic:** Oh, yeah, you're good now.

**Stacy Jones:** Yep, we can hear you now.

**Alise Horsley:** Okay. Now I can't hear you all.

**Stacy Jones:** Oh, no, well we can hear you loud and clear, but you can't hear us.

**Alise Horsley:** There we go, now I can hear you. Can you hear me still?

**Stacy Jones:** Yes.

**Alise Horsley:** Oh, love technology for all the good things. Sorry about that. So, like Keith said, I'm going to go over the required communications, some of the things that we have to communicate to you. Some of them are explicit and some of them are just extra notes. So, the first one, like he said, our planned scope for the audit and our timing for the audit, it's what we'd set forth in our engagement letter, what we plan do and what the timing on that was. If there were any changes to that, we would mention that here, but there were none. We did all the work that we needed to do in the timing that we planned. Like Keith said, you have a very good team, you guys are very prepared and great to work with. No changes in timing, it kind of matches with the bottom of this worksheet. No disagreements with management and no difficulties in performing the audit. Even though we didn't have any difficulties or disagreements, we have to explicitly say, that's the required communication, if we had any difficulties performing the audit or disagreements with management. We did not have any.

And then I just kind of want to bring to attention, we had a new GASB 96 accounting standard to implement this year, it was subscription-based IT arrangements. I don't know if you remember last year, we had GASB 87, which is the lease standard. It's similar to that but it has to do more with the subscription-based IT arrangements. So, if the organization had any leases in that sort of way, they would have an asset and a liability in their books. But as noted, there's no impact to the organization this year. And then another required communication, if we had any audit adjustments, and we did not have any. And then any audit observations or recommendations that we had, like Keith said on the previous slide, no material weaknesses noted, no audit recommendations, so like I said, great team. Great controls. So, nothing to note there.

**Keith Simovic:** Thanks, Alise. I was going to add a couple things on top of that. One, just on the no difficulties in performing the audit. I think it's always important to note kind of sitting as kind of an oversight body, you know, everything that we requested during the audit we received. Our team was

able to get all the different pieces of documentation, and there's a lot of things that we request. I know Stacy and her team can attest to that definitely. But there's a lot that we request, and all of it has a reason based on our professional standards and our audit approach and everything. And it's really important that we're able to get all of our questions answered and all of those items provided so that we don't have any limitation on the scope of our audit procedures. We need to be able to perform our audit procedures and kind of in line with our risk assessment and our planned audit approach and what our professional standards require us to do as well. It's important to note we did get all that documentation that we asked for. We got responses to all the questions that we asked, and typically those are FPDR and staff, they have been very timely at providing those items. There were no limitations on the scope of our audit procedures, so I think that's important to note.

Going back really quick to the accounting policies, that new GASB standard. I don't want to go into too much more detail on what that standard is, but it's one that a lot of the organizations and governmental entities that we work with, spent a lot of time having to evaluate that and did have impacts from it. The City of Portland as a whole had to do this as well. This is something we know the organization spent a lot of time evaluating this saying is there any impact to the city as a whole and FPDR in this case? And there was no impact overall. This again has to do with any types of IT arrangements where you've got a contract to, basically, use the software but the city doesn't own the software. So, you're making payment over a period of time, kind of like a lease for a software that you don't actually own. That's what this one's getting at. No impact to FPDR. Of course, the city as a whole does.

And in terms of audit adjustments, not having any of that means as we're going through and doing our testing, our opinion at the end of the day says, do we believe the financial statements are free of material misstatement or not? So that term material is very important, that's what drives what could be, what we would call out as an audit adjustment or not. That's a threshold that we set each and every year, and it drives the testing that we're doing, how large our sample sizes need to be, but also what do we call out as a material audit adjustment. So, as we're going through in our testing, we didn't find any material errors where something wasn't recorded in line with the accounting standards or that was recorded in the wrong amount or in the wrong period or incorrect information that we were looking at in the census was sent off to the actuary to kind of drive the final evaluation results. Nothing from that perspective that popped out that was a material error that we noted. I think that shows you that you've got very good controls in place, and we know as we're getting this information those controls are working, right. They're vetting out any potential issues before we see the information. So, there's really kind of a system of controls in place and almost like an internal audit function going on before it's coming to us, which is very important.

**Chair MacLeod:** Hi, this is Cathy, Trustee MacLeod. I did have one question about materiality. Is that determination in the threshold for materiality, I'm glad the answer is none, but just for the threshold, is that based on FPDR liability only or are you considering also within the scope of the City of Portland as well?

**Keith Simovic:** No, yeah just because we're issuing an audit just for FPDR, we have to set our thresholds based on FPDR numbers only. So, materiality's always set off of some percentage of a driver, you know, a certain number on your financial statement. Sometimes that could be depending on the organization and whatnot, that could be the assets, the liabilities, your revenues or expenditures. So, typically we're looking at expenditures in this case and basing it off a percentage of that. That can change from year to year, we sit down as a team and we want to be looking at our risk assessment process independently each and every year making sure we're able to say hey, did the risk

change at all this year, right? Should we have that percentage that we're using of that driver be a little bit lower so that our testing thresholds and scopes are smaller, or excuse me, our thresholds are smaller but our samples are larger. So that's something we talk about each and every year, what's changed, where does the risk lie this year.

**Chair MacLeod:** Okay, thank you.

**Keith Simovic:** Very good question. Real quick, I don't want to go too in-depth with the new accounting announcements, but we always like to let governing bodies know what's going to be changing in the future years for financial recording for all of our organizations that we work with, just to give you a kind of feel for that. I think the good news here is that I think this is the first time in quite some time that I've been able to tell all the governing bodies I've been working with I think it's going to be a quiet couple next few years in terms of the governmental accounting standards that are out there. This one that we just mentioned with GASB 96 and the IT arrangements, that was a big one. Even when there isn't a material impact, it takes a lot of time to evaluate all of your different contracts and seeing if they meet any of the criteria in the standard that would trigger you to change the assets and liabilities in your financial statements and what you're currently recording and disclosing. That was a big one, the lease standard was a big one of course, back when GASB 68, the pension standard got released, that was a huge one, it definitely had an impact. I feel like it's been quite some time since we've had some quiet years from the GASB, it looks like we have that now. So real quick, GASB 100, this one is that's just clarifying when you have any changes in your accounting policies or if you found an error in a previously finalized financial statement, this tells how you to report that out. How far back do you need to adjust information in your financial reports and how do you disclose those. It's giving you an idea and making sure it's consistent across the board and the different entities out there. But gives you an idea of what needs to be disclosed in those cases and how far back do you need to go if you had an error correction. Nothing that will have any impact, unless you run into any of these things in the future. So, no impact that your staff will have to work through in the next period.

GASB 101, this one is being evaluated by the city as a whole as well. It's related to compensated absences, which have been recorded in the past, that's not a new concept of actually recording those and accruing for those on your financial statements. But what's changing with this one a little bit is kind of clarifying what types of compensated absences need to be recorded. When you think about the benefit packages that are out there for your staff, you know, other than just vacation time, sick time, if you've got parental leave, I mean, all these different things potentially that are out there that, you know, a lot of times we've been focused on paid time off or vacation and sick leave, but not some of these other things, bereavement leave, different things like that. It clarifies when those things need to be recorded and accrued for. I wouldn't expect it to have a material impact overall to FPDR, but something that will need to be evaluated going forward but shouldn't be nearly the same level of time and effort that went in the GASB 96 standard, or the GASB 87 lease standard.

**Stacy Jones:** For us, just so the Board knows, I expect our biggest impact will actually be the PERS contribution liability that we will need to book on any additional compensated absence liability for FPDR 3 police and fire members. I hope that's not too convoluted for everyone. You know, for our own employees it shouldn't be significant, it will be more significant for sort of that ripple down effect for future PERS contributions on compensated absences for those folks.

**Keith Simovic:** Thank you, Stacy.

**Trustee Kramer:** This is Tom Kramer. May I ask you a question?

**Keith Simovic:** Of course.

**Trustee Kramer:** And I'm sorry if you covered this already. In the effective dates for these new standards, forgive my ignorance, but for example GASB 100, is that effective for the fiscal year beginning in 2024 or ending in 2024?

**Keith Simovic:** Ending, great question.

**Trustee Kramer:** So next year?

**Keith Simovic:** Next year for that first one, but again I don't expect that first one to really have any impact whatsoever. It's really just if you're changing the accounting principles you're using in any case, and a lot of times that's only driven by when there's a new accounting standard adopted, right. So, there's not really anything I think that's coming out or that would have a big impact there. I don't anticipate any error corrections, but this shouldn't have an impact for anything for next year. Great question, though, definitely. We'll have to change that for next year to say at the end of the fiscal year.

Okay, I think that's everything in terms of the new accounting standards. Didn't want to spend too much time on that, just to give you a little heads-up and let you know, you really shouldn't see a whole lot of big changes. Other than that, just again, thank you for everything in this process. I think we've kind of already went through a lot of these items and made comments to this degree. But just that last item, though, tone at the top, very positive overall and we can tell that the right tone is set, that starts from the top on down and filters down into your internal controls. That's a very big piece of kind of our analysis and risk assessment and everything is, what is that tone of the organization and is there that focus on ethics and doing the right thing and having a good set of internal controls. And one way we kind of can evaluate this too is whenever we've had recommendations in the past, and we've had them from time to time, you know, when we've had recommendations, are those addressed or are those hanging out there for multiple years and potentially growing to a bigger issue, right. And our experience has been FPDR staff have typically taken those to heart, made updates as necessary, and we're not finding any of our recommendations that are repeating year after year or growing into bigger issues, right? They're being addressed up front, which is very good news and what you'd come to expect, and that helps in terms of your internal control environment and tone at the top. So definitely nice to see that. Appreciate all the efforts that everyone put into this. Any other questions that we can help answer at this point? All right.

**Chair MacLeod:** It sounds like, I will add my appreciation for the report. It was very easy to follow. I appreciated the discussion up front about the highlights and the analysis of what happened, particularly because this went from a year where it wasn't a roll forward actuarial report and the new one on which this was based was based on a new valuation, so I appreciated the time spent to explain why those differences were maybe more pronounced than in the prior year. So that's helpful. Any other comments about the report?

**Stacy Jones:** Chair McLeod, I do just want to send one more thank you to Keith and Alise and the whole team at Moss Adams, for their partnership and guidance, not just in auditing our financial statements which is when you hear from them, but also for the ongoing relationship we have with them throughout the year when questions and concerns come up. It's a relationship of oversight and investigation on their part, as it needs to be, but they have guidance and expertise that we can rely on throughout the year and I value that as a financial manager. Having been in a central oversight role in the past, I think it's so critical to have that independent outside look, and I appreciate that Keith has been willing to engage with us on the tricky stuff and that hopefully that openness also, you know, feeds their understanding that we are being open with everything. And the last thing is that I just want to thank Asha Bellduboset who is our lead financial analyst that the Board doesn't get to see very much



because she really leads this entire audit process, and also Svetlana and all the staff who end up being involved in this one way or another. And also, Sam and Chair McLeod who get drug in for fraud interviews and that sort of thing. So, thank you very much to everybody.

**Chair McLeod:** Thank you, yeah. A lot of time and effort clearly put in to pulling this together. So, thank you very much.

**Trustee Kramer:** Chair McLeod, may I ask a basic question about the audit report?

**Chair McLeod:** Absolutely.

**Trustee Kramer:** The section, I think it begins with management's discussion and analysis. I have a question and a comment. The question is just basic, and that is, is that written by management and edited by the external auditors?

**Stacy Jones:** It is written by me and reviewed by Asha and reviewed by central accounting over at the Office of Management and Finance, and then also reviewed by Moss Adams, although Keith you might want to speak to the level of review that goes into the MD&A.

**Keith Simovic:** Yeah, sure. So yes, those always, you know, with any of the clients that we work with, that MD&A section is required by governmental accounting standards. So, management has to put that together and give you extra context as to why did this balance on the balance sheet go up or down or what's causing this, you know, just that underlying context to some of the numbers. And so for us, our audit report, you'll see there's a section that talks about required supplementary information, the MD&A's considered required supplementary information because GASB requires it, but our audit report doesn't cover it. We have to read through it and make sure the different numbers in there tie back to the main financial statements, but just the commentary and things like that, our opinion doesn't cover that. But that's data, that's not unique to FPDR's financial statements, that's what our audit standards require that we can't give an opinion over the MD&A. But we definitely read through it, proofread it, make sure everything kind of jives with what we learned during the audit and if all the numbers kind of tie back to the actual balance sheet income statement that we're looking at.

**Trustee Kramer:** All right. My comment is especially for me as a new trustee. I thought it was very helpful, thorough, and very well written. I was very glad to have it.

**Stacy Jones:** Thank you. I'm excited to hear that people read it, let alone that they find it helpful. I used to say to Keith, I'm worried you're the only one who reads - Or no, no one reads it. And Keith said, I read it. And I said, but I pay you to read it, it's not the same thing.

**Chair MacLeod:** Thank you for that clarification on that, Keith. Appreciate that. Any other questions or comments about the audit report? All right. We don't have to take any action about it, so I'll just add my thanks to Stacy's.

**Keith Simovic:** Thank you, everyone. Appreciate your time.

**Chair MacLeod:** All right. Take care.

**Director Hutchison:** Take care.

## **INFORMATION ITEM NO. 2 – EQUAL TO OR BETTER THAN (ETOB) TEST FOLLOW-UP DISCUSSION**

**Chair MacLeod:** Okay, next up is a discussion, a follow-up discussion from our May meeting on the equal to or better than, the ETOB test, performed by the actuary in accordance with the prescribed

requirements. This is, I'm assuming, going to involve quite a bit of discussion. I'm not certain where I want to start on this. Trustee MacLowry, you had reached out to a couple of the experts on this and communicated back and forth and shared with us questions and answers from Jake Winship at PERS, and I think Aeron, I don't know how to pronounce this last name, Riordon at Independent Actuaries.

**Trustee MacLowry:** Correct.

**Chair MacLeod:** And this provided some additional background about the number of safety employers, public employers not in PERS that were subject to this test that included safety employees. So, I was able to verify with Sam recently that only those with safety employees were involved in this analysis. So, we don't need to concern ourselves with any other employers that don't have any safety employers, employees. Maybe I'll turn it over to you, Trustee MacLowry, to speak first and we can perhaps get some perspective from Sam on this and just open it up for discussion.

**Trustee MacLowry:** Sure, thank you for the introduction. I think I'd like to start with just that background, just in the email that I sent recently, just for everyone listening, that refers back to the May meeting, which was a quote from Jake Winship from PERS. He said towards the end of the meeting "if board members or the board as a whole feels it's appropriate to amend the procedures and the rules governing the ETOB process, I would recommend submitting a letter to that effect with any proposals to the PERS board and our staff will forward and incorporate that into the regular procedures of our board alterations. If there are concerns expressed by the board, I perceive that it would receive some due weight and PERS would direct agency staff to make appropriate amendments to reflect these concerns". He follows up a little bit later, on the next page, talking that "there are currently nine police and fire plans that are exempt from PERS participation. So obviously, that is a small universe and Portland FPDR is the largest of those plans. Certainly concerns, especially as a board, that would be identified and addressed to the PERS board and/or the Secretary of State would be taken seriously and considered but I have no guarantee they would be adopted. But they would certainly be reviewed and given appropriate consideration". So, I sort of felt like that was his way of opening the door to us to consider some other options. And as I sort of ruminated on that for a while, I had some follow-up questions that I sent to him, and he brought Aeron, Mr. Riordon, into the conversation.

But basically, I asked him three questions. The first was, there are nine Oregon public employers that qualify for exemption from PERS. Of those nine, five did not pass the first stage of the ETOB test. Are you able to offer any general information that explains what led to the failure of these agencies? So, his answer to that was that five of the nine public employers did not satisfy the first round. And I would not necessarily categorize this as failing the first round, rather the plan characteristics did not facilitate a side-by-side comparison. It still required more detailed analysis for determination. Four of the five plans did not use defined benefit structure that can be directly compared with PERS. Three of them are defined contribution, City of The Dalles, Union County and Wheeler County, while City of Springfield uses cash balance design. None of these were assessed for the first-round comparison as the method is not applicable for designs other than defined benefit. The fifth plan, City of Seaside, was assessed using this method, but since the percentage of participants compensation, which is considered in the calculation of the benefit is less than that for PERS, a full assessment is required, so they had to go to the second stage. So, the other two real quick. I asked him, of the other eight agencies, how many are enrolled with social security? The answer is, they are confirmed six of the eight are enrolled with Social Security and the other two they're just not sure. And the last question was, can you tell me how many of the other eight agencies also provided a defined contribution element to their employees' pension benefit. And so, all of them to do. The following entities, I take that back, except for the city of

Springfield, the following entities make employer contributions as specified. City of Forest Grove is 6 % to 7%. Springfield is none and they're the one that do the cash balance system, which I'm not as familiar with, I sort of looked it up a little bit, I understand it's a sort of combination of a defined contribution and a defined benefit structure. The city of The Dalles, which only does a defined contribution, is at 16.6%, Selma county 6% to 7%, Union County, 10.8% or 15.1%, plus additional 6% deemed employer pickup, so that's a 16% or 21% pickup employer benefit, Luther County is 20%, and that was the third one that is also just a defined contribution method, Morrow County 6% and the City of Seaside is 7%.

That's essentially the first interaction I had. I did follow up with him about what do they do when they're doing this test? And when for instance the city just has a defined contribution plan and essentially for those plans, this is Mr. Riordon, if I'm pronouncing that correctly, response. The plan does not allow a side-by-side comparison but for a plan with a side-by-side comparison is inconclusive, we perform an actuarial evaluation of the plan features required to be considered. The results are compared to a similar actuarial evaluation of Oregon PERS. All this is to say to give background that if we're just doing, and I made some mention of this at the May meeting, if we're just comparing the defined benefit portions, this test is useless. There's no reason to do the test. It's a 2.8 multiplier for FPDR, a 2% multiplier for PERS. As we know, you've heard analogies of a single leg stool versus a three-legged stool. Many of the agencies around that are involved in Social Security, they have the Social Security, they have their IAP or their defined contribution as well as the defined benefit. So, they have the three-legged stool. It's my feeling, and I would like to discuss it with more with people with more experience and expertise in this, that if there is perhaps a door open to us to petition, whether it's the Secretary of State or the PERS board, to include the Tier 2 IAP into the valuation, that would be a much more appropriate valuation for an equal to or better test. That is a significant part of the PERS Tier 2 benefit, pension benefit. So, if you want to compare these two, that's sort of where my point of view is at this point.

That's kind of what I really wanted to open this discussion. I hope that all makes sense. I know I sort of ran through a bunch of numbers quickly there. I can revisit anything as needed, but I do believe Sam probably has something to add to how this would be achieved through the city structure. But at least conceptually, I'm curious if other trustees are of the same mind that this may be an opportunity to, perhaps, increase the scope of the ETOB test. And it's a very important test, from my point of view, and probably the last time it's going to be very significant as the number of Tier 2 members fall off. That's where I'll leave my initial foray.

**Director Hutchison:** The next test is scheduled for 2034, so we're looking at about 11 more years from now to make this change happen. Is that what you're doing, or would you be proposing that this test be rerun, change the rules to include this and then have the tests rerun before the 12 years? What's the sequence? So, what are you looking to do? What's the sequence of events that you would like to see happen?

**Trustee MacLowry:** I would like to see the example, the letter being written that is petitioning a change and having the test rerun, not waiting 12 years.

**Director Hutchison:** So, you're going to ask for - if you're going to have the test rerun, you have to change the rules as to how the test is done. You have to change the actual evaluation process as described in the administrative rules. You also want them to change the administrative rule to run these tests before then. The thing that, PERS has not run an out of cycle evaluation for quite a while, and they are not prone to run out of cycle valuations unless they can show there's a big issue with the plan that has changed since then that would force, be beneficial to redo. So, part of it is, if you're trying

to do this specifically for FPDR and have special rules just for FPDR, or you're changing and want to look at the rules for all the groups, and then you have to convince the other groups yeah, we want to be reevaluated on a different one. I think if they've gone through and passed, are they really going to want to have an interim one before 2034 to evaluate it? I'm looking at what your plan is to do. Are you asking for a special new evaluation just for FPDR using rules just for FPDR, or do you want all the rules changed?

**Trustee MacLowry:** As I understand it, the rules that are currently governing are part statute, and are part administrative rules for PERS, it would be adjusting those to the specifications that we are talking about. I'm not interested in retesting for other jurisdictions. I mean, my fiduciary duty of loyalty is to the members and the beneficiaries of FPDR. Whether that would require at this state for them to do all nine jurisdictions, I don't know. My interest is specifically for FPDR. I have through local 43 gotten a list of the other local leaders, union leaders for those agencies to reach out to them to get their thoughts on this. I have not made contact yet.

**Director Hutchison:** Can you keep that last thought of reaching out to other people, because that's something we'll probably need to talk about here in a little bit, just so there's a process for that.

**Trustee MacLowry:** Sure.

**Director Hutchison:** But the idea is if you're looking to change the administrative rules, those rules will apply to all groups.

**Trustee MacLowry:** Correct.

**Director Hutchison:** They, you know, if you say we're going to, if we want to run it every six years and so in six years it's going to apply to all groups. I don't know, you could try to request and say hey, we'd like you to rerun it for FPDR under these new conditions, but then again, would that carry any weight because if they don't match the rules. So, I'm looking at you'd have to, because I don't think, because I've talked to them before. They are not interested in running out of cycle testing unless there's really a need to a significant plan design change that would prompt it. They don't want to do special requests for special groups. This is for PERS in general across all of PERS and includes ETOB. What I try and present here is if you wanted them to rerun the test for FPDR, they have to change the rules and it would probably force a rerun of the test for everybody else. I don't see how you can convince them to change the rules just for FPDR and leave the other out. I'm not certain. You can ask them to do that, but I don't think it's realistic for that to happen.

**Chair MacLeod:** Sam, thank you for that perspective. Trustee MacLowry, can we, let's maybe step back and think about what's driving this. It strikes me that there's, you know, concern that in reality, FPDR benefits are not comparable to, you know, for Tier 2, are not greater than or equal to, I mean, which is the purpose of this test, in your mind or in members' minds. So, if the goal is maybe to address that perceived, you know, or that perspective, could we not pursue this a little bit farther without at this point worrying about performing an actual test that might affect everybody, etc.? What could we talk about or get out on the table that would enable us to draw some conclusions that we think might be a more fair or equitable conclusion? And then if it seems warranted, pursue a test change itself. Do you understand what I'm getting at?

**Trustee MacLowry:** I think I do. And to your first question, I think you asked what the motivation is or what the perceived problem is. I think that the problem is that we don't know what the valuation of PERS would be in relation to FPDR 2 without including the full benefit of the PERS Tier 2 benefit. I'm not saying there's a perceived feeling in the membership that the test is wrong or that it's not being

valued correctly. The problem is, we don't know. And I think that it is felt among the people in the membership that are paying attention that the test is fairly worthless in its current state. I can say that, that it's not, that we specifically think that it is, the FPDR benefit is less, but using the test which is supposed to be gauging equal to or better, it's not giving us an adequate representation. So, what I'm looking for is to get a more accurate, appropriate representation of the two benefits.

**Chair MacLeod:** I appreciate that. One of the challenges, I know for me personally, is that not being an Oregon public employee I don't know the PERS safety plan, you know, off the top of my head. I don't know the provisions. I don't know, are they covered by Social Security? I don't, I mean, I know what their basic formula is 2% of pay. I don't know the final average compensation period. I don't know the maximum number of years of service. I don't know what defined contribution amounts would be provided, etc. I don't know those things off the top of my head. I'm reasonably familiar with, grateful of course, with regular reminders from staff, about what the FPDR various tier benefits are. But because the extent of our involvement with PERS Tier 3 right now is that the plan is making the required contributions to that, I haven't had to become familiar with the actual details of the PERS 3 FPDR Tier 3, and likewise, there's no day-to-day reason for me to be familiar with the Tier 2 PERS Tier 2 benefits. So, for myself I feel unequipped right now to even have a high-level sense of whether or not things are you know, the test itself is adequate, whether just from a high level looking down benefits sure seem like they ought to be comparable. I just don't have enough of a sense about it. Sam, I believe that in our January agenda we've got some comparison of disability benefits coming up, is that correct?

**Director Hutchison:** Yes, I'll do a high-level comparison of PERS disability and FPDR for people so you can get an idea how the plans are applied to each other and some of the changes there, and how they compare.

**Chair MacLeod:** Okay. But that is focused on disability, correct?

**Director Hutchison:** Correct.

**Chair MacLeod:** Okay. And Trustee Kramer, new to our board but I know you've got strong benefits background. Do you have a familiarity enough with the PERS Tier 2 benefits that you feel we could have some meaningful discussion on it? Or would it be more helpful to have, even if it's a working session, to say let's sit down and help us understand or get something from staff summarizing nuances about what the various benefits are? Or maybe this is all on the ETOB test and it's been six months and I've forgotten and we need to go back and look at those results. So, Trustee Kramer, your thought right now.

**Trustee Kramer:** Thank you for asking. And no, it is all too new to me and I am too ignorant to have a useful point of view and would want to be guided by more of what the other trustees have to say and certainly what the lawyers and actuaries have to say. I saw Lorne put his hand up and I'd be always interested in what he has to say.

**Director Hutchison:** Just real quick, can I step in quick. Stacy, can you set up time with Tom just to give him a quick tutorial on ETOB and try to bring him up with what the basics are on this?

**Stacy Jones:** Yeah, I can chime in here too at the end, but I see that Lorne has had his hand up for a while, and I wonder if, Chair MacLeod -

**Chair MacLeod:** Yes, absolutely.

**Lorne Dauenhauer:** I think the bigger question is, what's the Trustee's job. If we look at the charter, it says the board of trustees acts as the administrator of the plan. The board of trustees does not have

what we call settlor authority over the plan. You're not the body that gets to decide are benefits high enough. Your job is just to administer the plan and to make sure that the plan is being administered in accordance with the terms of the charter. I can appreciate that there may be a perceived or perception that the way PERS is applying the test may be missing the mark, but that's candidly not this body's role. If somebody was to petition PERS and say, we think you need to change the test and they were successful in doing that, and PERS reran the test according to a different set of metrics, and if PERS concluded that we were not equal to or better than, then some significant decisions would have to be made as to what do, because we would be out of compliance with state law at that point. At that juncture, I believe the City Council would have to weigh in as to what we, how we would change the plan to meet up with the State's requirements. Even if ETOB failed, this body wouldn't be the one to decide how to fix it. So, I think, you know, to the extent that there are parties that believe the ETOB test is flawed, I think the best approach is that this body remain neutral because, again, you're not the settlors, your job isn't to say whether these benefits aren't good enough. Your job is to say, are we administering the plan according to its terms? We're required to do an ETOB test. Did we do the ETOB test, yes or no? We did it, looks like we're good. If somebody feels that the ETOB test is flawed, I think they should certainly reach out to PERS, explain why they think it's flawed, and you know, do their level best to change the rules. But I don't think it's the job of this body to do that.

**Chair MacLeod:** Thank you, those are really helpful comments. It's difficult, we're kind in this odd no man's land sometimes when it comes to these kinds of questions about the plan. Your point about where our role does come into play is to be certain that the ETOB test was run, that we are comfortable that in accordance with the current existing requirements of the plan, by statute or PERS administrative procedure, whichever, that we feel confident that it was conducted appropriately and that we accept the results as being correct in accordance with those procedures and statutes. And based on the information that was presented to us I think it was last November. Sam, do you remember?

**Director Hutchison:** Yes.

**Chair MacLeod:** I think that was last November's meeting, at the time I don't recall, we did accept the results of that test as a board, and I recall that our questions were more along the line that Trustee MacLowry has raised today which are, gosh, does this seem like a valid way for the test to be conducted? But as you've indicated here, Lorne, is it our role at all to even question the way in which the way the test is conducted. Or more is our role limited to was it done in accordance with current procedures and requirements, do we have confidence that it was conducted that way and accepting it or not. Go ahead.

**Stacy Jones:** Trustee McLeod, I really have to jump in here and just say that the board does not have a role to accept the ETOB test, at all.

**Chair MacLeod:** Okay.

**Stacy Jones:** But the FPDR board has no role whatsoever with respect to the ETOB test, at all. They came and did that presentation as a courtesy because Sam asked them to because you guys had asked for additional information. We had to pay them for that. They, yeah, no plan, that is something that is done at the direction of the legislature. Obviously if plans fail that test, you know, then you have to put your employees in PERS or you have to change your plan to meet it. So, I just want to a little bit echo what Lorne said, and he said it much more eloquently than I could have. When I was talking to my PERS contact, I could not make her understand that our board might possibly ask to make the test rules more stringent so that our own plan might fail. She kept saying, but which union are you with? Like she

was so bewildered by that. I think it's a very appropriate role for a labor union to take up who is looking for additional benefits for their employees. But for a plan to take on that role to seek to fail, in any event, it is certainly a strange position.

**Chair MacLeod:** It does seem funny when you put it that way. Why would we be taking that position?

**Stacy Jones:** Yeah, I think I just could not make her understand that. Anyway, that's sort of to the side. But I did just want to jump in and make sure that the board understands that you don't have a role with respect to the ETOB test at all.

**Lorne Dauenhauer:** I think others have challenged ETOB. Franco, didn't Del Stevens challenge the ETOB test?

**Franco Lucchin:** There was never, so a challenge to the ETOB test is governed by those PERS administrative rules, right?

**Lorne Dauenhauer:** Right.

**Franco Lucchin:** I'm just going off the top of my head, but I think there's about 180-day opportunity or 90 or 180 days to make that appeal. So that's never happened, but the courts with Mr. Stevens present, because I was there, the Multnomah County Circuit Court, for example, has said in a case that, and you know, it was a case where they were suing the city, they were suing PERS, the state via PERS and the judge there said, no, if you wanted to challenge the ETOB test, the way to do it would be through this appeal procedure that the PERS administrative rules set out, not trying to say go to the office of administrative hearings which was also attempted separately. So, this issue that's been coming back to the board about, I don't know if this is pertaining to the, quote unquote, disability retirement.

**Lorne Dauenhauer:** That one was, but I think the principle is the same.

**Franco Lucchin:** Yeah. So that's what those cases were about. There was one at the OAH and then there was a separate one with the same Plaintiff, and Mr. Stevens was there setting up poster boards and things, and the judge made it pretty clear that that was a motion to dismiss we were there on. The court dismissed the lawsuit on the narrower issue, but I think it did implicate the ETOB test. And yeah, so I mean, I don't know that there's been a challenge. But there was an opportunity under the administrative rules to challenge, and that has to be done timely. So, if there were somebody who wanted to make that challenge, they'll have however many days from the next ETOB test do so.

**Stacy Jones:** And Franco, does that challenge have to be made by someone who's been harmed?

**Franco Lucchin:** I'd have to look at it more closely, we're about 11 years off from that.

**Director Hutchison:** It has to be done through either an employer or a member of the plan.

**Franco Lucchin:** Yeah.

**Director Hutchison:** Really the two basic ones to go for.

**Franco Lucchin:** Thank you, Sam. Yeah. It does have that employer language in there, now that I think about it.

**Stacy Jones:** So that would be the case where an employer had failed and was appealing their failure, presumably.

**Franco Lucchin:** Yes, yes.

**Lorne Dauenhauer:** Or the employee felt like the test wasn't stringent enough.

**Stacy Jones:** And the employee wanted more benefits, yes.

**Lorne Dauenhauer:** I think Trustee MacLowry has his hand up.

**Chair MacLeod:** Yes, please.

**Trustee MacLowry:** A lot of information to respond to there. I understand what you're saying in terms of the role of the board, and one of the things, Mr. Dauenhauer you said was should the plan fail, FPDR fail, that is not my intent to see if we can make FPDR fail. My intent is to get an accurate representation, and I'd like to know what the actual valuation is with full benefits. With that being said, should that force significant decisions, as you say, to City Council, that to me is not a deterrent. If in fact it were to fail, then it would need to be dealt with because it failed. Then you would have the full knowledge. I would say, though, I think it's in the interest of the participants, and I'm a participant, I'm an FPDR 2 member, but it's in the interest of the participant to know what the full valuation of the PERS Tier 2 is against FPDR 2. And I would restate I have it as a member of this board and Trustee that I had the duty of loyalty, the fiduciary duty of loyalty to the members and to, I'm reading it out of my handbook here, to respect the plan solely in the interest of the participants and the beneficiaries. I'd push back a little bit that there's an interest to move forward and learn this and understand this better and get a more appropriate evaluation. That being said, I see what you and Stacy are saying, why would the plan want to challenge this. So, I'm walking a little bit of a thin line, my feet are on both sides of this. However, I feel that there's value in knowing what actually the full benefit is, not just comparing the defined benefit to defined benefit. If you do that, if that's just what the test is going to be, just no reason to do it. That is pretty clear.

**Chair MacLeod:** Trustee MacLowry, thank you for your perspective. I do certainly see the, first of all, as trustees we're obligated to serve the members of the plan, but that's within the scope of the plan as currently defined and is operating, not how it might be changed, etc. And while it seems tempting for us to go there, and certainly there seem like there are very practical limitations, I won't say flaws, but certainly limitations with this ETOB test, if nothing else, the fact that it's only performed every ten years alone is something that is kind of a surprise to me. But again, if we need to operate in the scope of our responsibility here, and that doesn't include challenging the test or proposing changes to plan benefits, etc., we certainly as a group can support doing so. But I'm, I'm hearing, and I think I understand, that that's not our role to do that. I would absolutely support and I can understand why participants and their representatives would see that these plans maybe don't seem comparable and the test itself doesn't seem like it might be doing an adequate job of comparing the benefits for PERS 2 compared to FPDR 2. But other than us, you know, supporting whatever, you know, investigation analysis those members want to do, I'm at a loss seeing what the role of our board is to take any action, including writing a letter requesting changes to the test. But this is my perspective, I'm interested in your comments back to that and Trustee Kramer, your thoughts back.

**Director Hutchison:** Well let me jump in here real quick. I'm going to defer to the board in what action you want to take, and we'll support you as necessary to help you do that. I'm not going to, that's a discussion between yourselves. I want to make sure that we understand what the ETOB test is. It's more of a pass/fail test. There isn't a full analysis of, gee, if this benefit would add this much to the valuation, this benefit, so if you fail the test, PERS has told me directly they will not provide you with any input into how to pass the test, because it's a full actuarial analysis of the plan. And so, when they do the test, you know, they don't look at feature to feature, they look at the actuarial evaluation of the



plan. If they come in and change how it's evaluated, it's going to pass/fail. If you fail, you're going to get zero guidance as to what you need to do to make it pass. They will not give it any of that. And how they analyze it may not really help you understand fully why it failed. So, it's not that it's like a school report card that you get from somebody, hey, you could improve this by doing this, this, and this. You're not going to get that from PERS. So, if you get a more detailed test going and you pass it, it's hard to make the assumption why you passed it. If you failed it, they're not going to tell you why you failed or what part of your plan needs to be done. That's your challenge when you fail, we have to do our own analysis to understand where we failed. We can probably get some guidance from PERS, but officially they're not going to do that, is what they told me. And then, you know, why do we have to change the plan. How do we change the plan? If we change the plan, do we need voter approval? That brings in City Council to do it and going from there. And I've read the statute, it's pretty light, it says if you don't do it, you've got rectify the problem. It doesn't give a timeline and it doesn't tell you how to rectify it. It doesn't tell you how to value how you rectify it. So, the plan isn't going to tell you, yes, you need this additional benefit or yes, you need something to equal to the IAP, which is what you're looking at, Kyle. So, I'm not certain that passing or failing a test gives you any guidance. Really what you need to do to improve your plan. Long story short.

**Trustee MacLowry:** Just to respond to that, I'm not looking for something similar to the IAP. I think I understand how on the 10,000th level how things are evaluated. And just adding in the IAP through evaluation to what is currently being done with the defined benefit portion of PERS, that's what, I want to put that on the other side of the scale. That's all. And I understand, I'm not talking about Social Security at all. That's a whole other different can of worms. I get that's not where we want to go.

**Director Hutchison:** I understand, but it's going to be hard. If they change the rules and we pass or we fail, we're not going to be told why we pass or fail except that we either met the actuarial criteria or we didn't meet the actuarial criteria. If we fail, we have to try to understand why and solve the problem. And I'm not certain it's going to give you this thing that you can go back out to members and say here's what the valuation of PERS is, here's what the valuation of FPDR is. That's not the intent of the test is to say we're going to compare A to B and are you equal to or better than A. Fine, you're done. They're not going to give you this data line by line, this is going for worth X number of dollars for you, or this is the kind of pension you get. I think you're looking for information that, and Stacy, correct me if I'm wrong or if you have anything to add, you're not going to get the informing that's going to really tell you what your valuation is.

**Stacy Jones:** Well just again, even if, you know, and perhaps knowing a bit more than other folks about the structure of PERS and the structure of FPDR, you know, I think it's very unlikely that, you know, even when you added, Trustee MacLowry, I can't give you definitive proof of this without doing it, I'm not an actuary and all those other things, I think it's very unlikely it would fail anyway once you add that on because, you know, just knowing a little bit about how these things work and what they have to do to handle the risk shift on the defined contribution portion, the 6% IAP, you know, that doesn't get to get dropped in at full value because the employee bears the whole risk of investment returns, and they have a method of adjusting for that, whereas in our plan, all of the risk is on us, blah, blah, blah. So, I know enough about it to speculate, but it's unlikely that we would ever fail. But I just want to say if we were to fail, also I mean, City Council would have to then come in and say do we redesign the plan? I mean, I'm sure they would put people in PERS for the remainder of their time. Even now I'm sure that's what they would do. We only have right now 600 and some members, so I think they'd just pick them up and move them into PERS for the remainder of their career. You wouldn't spend a bunch of time redesigning a plan that's closed and only has 600 entrants, I wouldn't imagine. But none of that would be up to the board, it would be up to council. I just want to keep saying that. Council does plan

design, not the board. The board could maybe give input, perhaps, if council wanted it. I think the unions would have significant input into that process rather than the board.

**Chair MacLeod:** Thank you. So, kind of recapping where we were, I mean, this started with Trustee MacLowry's suggestion that we, as a board, pursue writing a letter requesting a change to the ETOB analysis, how it is conducted, presumably what's included and not included. Lorne, I'd like to circle back to you. From the comments you made earlier, do you see our role as even extending to that point? Or is that something that's more City of Portland? I want to make sure we're not, you know, if it's something within the realm of reason we would do.

**Lorne Dauenhauer:** That's a good question. And Trustee MacLowry is right, as has been echoed in here, your job to act in the exclusive interest of the plan and the plan's participants. That's absolutely correct. But it's act in the exclusive benefit of the plan and the plan's participants when you are acting in your capacity as trustees, which is limited to administration of the plan. Your job is to make sure the plan is being administered in accordance with its terms, and one of its terms is to make sure you get the ETOB test done. You've done that and maybe you've got issues with how the test is performed, but nevertheless it did pass. It's sort of like, I'm trying to think of analogies, none of them are perfect. But since you just went through the audit process, what if you thought the AICPA procedures for testing for fraud were deficient, right? I mean, would it be in your role to write a letter to the AICPA board of governors to encourage them to strengthen the fraud requirements? I mean, it's certainly not something you have to do. Your job is to get an audit and make sure that the audit is done in accordance with the rules of the body that governs the accounting profession, and you do that. Kind of the same thing when you hire an actuary, and when you've hired Milliman to do the actuarial work, you're relying on them to do that work in accordance with their own rules. Here we have a statute that says we need have this evaluated for ETOB, and the body that the state has tasked with that is the PERS board. So again, one can take issue with, you know, how it's being done, one can take issue with the actuarial standards of practice. One can take issue with the AICPA rules, one could take issue with the Oregon State Bar rules. But your job is to make sure that we're jumping through the hoops we're supposed to. Now, if, for example, the union was to write a letter to PERS encouraging them to strengthen the test or use a different standard because the one they're using is outdated or isn't doing the job and, you know, would I say it's the is it this trust body to object to it if you didn't think the, I mean, let's say we all agree that if we test it according to a different standard we'd fail, which I don't know that would be the case, as Trustee MacLowry pointed out, we just don't know. But what if we did know it would fail if we used that metric? And there's a party out there that's encouraging PERS to change its metric to something we know would fail. I think it would be totally outside of the scope of your roles as trustees even to write a letter to PERS objecting to that. You're really kind of impartial in terms of what the rules are, but your job is to make sure that the rules are followed. I guess that's where I'm trying to go with that. I guess if you really believe the rules were not being followed, then I'd have to think about that a bit more.

**Stacy Jones:** Well, and even that -

**Lorne Dauenhauer:** If the rules aren't being followed.

**Stacy Jones:** And even that, Lorne, the responsibility for the ETOB test is not something the FPDR board is charged with. It's not part of the FPDR plan administration. So, I feel like, you know, the legislature has charged the PERS board with testing these. I think that the better analogy, like you were

saying, the state fire rules or something. You may have an interest in them, but we have not been charged with implementing them or ensuring their fairness.

**Lorne Dauenhauer:** Because if you're looking at, your job is to in all instances, you know, make sure that the plan, all decisions that you make are in the sole interest of the plan and the plan's participants, you can carry that too far, right? We should interpret every rule or change the rules to increase benefits because that would be the interest of the participant. Well, yeah, that would, but it's not your job, right? I mean, you are wearing different hats, and I get that you're an advocate on the one hand, but you're on the other hand you're an advocate for making sure the plan is run fairly.

**Chair MacLeod:** Lorne, I really appreciate your comments. For me that clarifies it that it's just not our place to be submitting comments in favor of or promoting changes or anything -

**Lorne Dauenhauer:** Like I said, even if somebody was saying you want a change, and you as a body, we don't want that, I wouldn't say that it's your role to challenge it. Your role is to sit back and follow what -

**Chair MacLeod:** Exactly.

**Chair MacLeod:** We're neutral operators to make sure the plan is operating in accordance with its current terms. So, my perspective on it is that this is not an action item that the board ought to take. That's my thought on it, but Trustee Kramer or Trustee MacLowry, if you want to make any other comments about what you've heard.

**Trustee MacLowry:** Well, I think there's definitely food for thought. I will say, my perspective, Mr. Winship who is a PERS employee, he's the expert, opened the door, invited us in and I walked through. That's how this has played out, and it may be how we've gotten to where we are today. And it's in large part what has informed my decision to continue this discussion. I don't have much else to say without repeating myself. I think you probably understand my perspective and point of view. I don't think I've changed my mind. But I certainly understand where you're coming from, at least from the perceived roles of this board, and what may or may not be under our purview.

**Chair MacLeod:** Okay, thank you very much. So, I think it was an important discussion and I hope that you're successful in pursuing that, you know, through other means as well with members. Should we move on to the next item, information number three. I'm sorry, I misplaced my agenda during that discussion. I think this is definition of spouse follow-up discussion from the January meeting.

### **INFORMATION ITEM NO. 3 – DEFINITION OF “SPOUSE” FOLLOW-UP DISCUSSION**

**Julie Hall:** Sam, you're muted. Do you want me to share my screen?

**Director Hutchison:** Yeah, if you could share the definition of spouse document.

**Julie Hall:** Got it. I can't see what you're seeing. Can you see it?

**Director Hutchison:** Yes.

**Julie Hall:** Great. Thank you.

**Director Hutchison:** This is in your board materials, the definition of spouse. So, this discussion is a follow-up to an issue brought to the board by Lisa Knight, a firefighter, during our January 23, 2023 board meeting. Knight was concerned that the Supreme Court could reverse its prior decision to

recognize same-sex marriage. The court case is, if I can say this correctly, Obergefell versus Hodges, which means if that's overturned, could mean that the member same-sex spouse or this is what Lisa Knight was concerned about, could mean that her same-sex spouse would not receive her pension benefits should she die. She had brought this up with State representative Graber who recommended that the FPDR board change the FPDR definition of spouse to include wording contained in the PERS statute. We talked about this for a little while and your directive to me was to speak with the city attorney for further guidance to see if we can make the language and charter more consistent with the statute and what would we need to consider before making the change in their charter. For reference, I have the definition of the FPDR plan, the spouse, definition of spouse in the FPDR plan, and our administrative rules showing you on that document that Julie Hall is sharing with you. So, I've asked Franco, our attorney, to discuss, you know, the definition of spouse in the FPDR plan and lead the discussion. Franco, you want to take it away.

**Franco Lucchin:** Thank you, Sam. Good afternoon, board. You know, I understand the concern. But ultimately, we don't know what the Supreme Court might do if presented with a case or controversy that implicates the decision. They obviously couldn't just make a ruling without having, they're limited by the constitution to have an actual case that they would have to grant review of. And then the concern is that there would be a ruling that there's no constitutional right, no federal constitutional right to same-sex marriage.

**Director Hutchison:** Your screen changed.

**Franco Lucchin:** I think one other thing to add to the discussion, and again, I'm not, I mean, we're talking what might happen someday and how to preemptively address it. The other thing to consider, there's currently a federal constitutional right and Congress also passed the respect for marriage act in late 2022, I believe. So, there's a federal, there's a legal right under federal law as well as the constitutional right that the Supreme Court has identified. There would have to be a case that invalidated rights under the federal legislation and the constitutional right that the Supreme Court has already decided exists. So, there would have to be a number of things occurring in order for this to come to pass. And so, I mean, the ultimate recommendation is that the rules we have are sufficient. And I guess the unknown part is what happens if the constitutional right went away, the federal statutory right went away, what would the IRS do? Because you know, this is obviously a tax qualified plan under the Internal Revenue Code. I didn't think there was anything to do other than I'm glad the concern has been brought up and I looked at the, I think the spousal definition that was being asked about came from ORS 656 actually, the Workers' Comp statute, and I thought, I'm just looking back at my advice that the current definitions in the administrative rules are, you know, they're different than what the Workers' Comp law says, but they're consistent with what the charter says in terms of what a surviving spouse is, without regard to any sort of limitation as to the genders of the spouses.

**Director Hutchison:** And the charter definition matches the federal and state definitions. So, it's not unique, a lot of this is copied out of state law and mirrors some of the stuff out of federal law.

**Franco Lucchin:** Yeah, they're not worded exactly the same, but they're consistent. So, I guess what I would say, in sum, is that we've looked at it, those rights currently exist, and there's nothing that this board could do to protect against what might happen at the federal level currently.

**Lorne Dauenhauer:** I think that's right, Franco. And a lot of this language is pulled out, this is a qualified plan, right, and so it's governed by the Internal Revenue Code. So, a lot of this language, these references to Rev. Rul. 2013-17 and Notice 2014-19, that's all driven by the IRS because we're trying to make sure the plan remains tax qualified. Even before the two cases that were relevant here were

Obergefell and before that Windsor, even before that under Oregon we had Tanner. And Tanner, I believe, said that if somebody couldn't get married that there was a constitutional right in Oregon that somebody could kind of be treated like the surviving spouse for Oregon rules, right? So, if that were to come to pass, if we kind of go back to pre-Windsor and now we're living under Tanner, I think the plan would still have to offer some sort of surviving spouse benefit, even to somebody that's not under federal law considered a spouse. Now that benefit might have different tax consequences that we really couldn't do anything about. But it's not like they wouldn't have protection or that we still wouldn't have a spousal definition that wouldn't necessarily be the one that the Feds used, again, in the I think unlikely event that the Supreme Court were to reverse itself in Obergefell and Windsor. So, it is a good question and it's worth pondering and making sure our participants going to be protected here if the worst, I don't want to make a judgment. If the court were to make that decision. But I do think that in Oregon at least, there is a level of protection that would still exist. Trustee Kramer.

**Trustee Kramer:** Thank you. I appreciate what the lawyers have said and it's very helpful and very interesting, I think anyway. I have a simple-minded question, and that is about the ordinance that's showing on our screen. Is the ordinance a rule adopted by City Council? It's not of this Board's making.

**Franco Lucchin:** Yes, it is a rule adopted by City Council that amends the plan.

**Lorne Dauenhauer:** It's adopted by City Council in response to the tax code changes. One of the, that particular ordinance that that was approved under gives the City Council the ability to amend the plan as necessary to comply with federal and income tax changes, tax code changes. So, this ordinance was specifically adopted in the wake of Windsor.

**Trustee Kramer:** And so procedurally, following up on what you've told us, both of you Franco and Lorne, what I'm thinking but please correct me if I'm wrong, is if the Supreme Court were to take some action, and I take Franco's point about that's a down the road issue, that could affect the meaning of the ordinance if the Rev. Rul. and the notice cited were no longer valid. And procedurally that could mean that the City Council would have to decide what, if any, action to take. And whatever action we might take with regard to the administrative rule would be subordinate to that action taken by or not taken by the City Council. But is that a fair summary in procedural terms?

**Lorne Dauenhauer:** I would agree with that, yes.

**Director Hutchison:** There's one more procedure here. Yes, the council's the one that would make the decision if they could do an ordinance or would necessarily need to do an ordinance. But we here at FPDR would be the ones to help write the ordinance and would coach the council and provide them the legal assistance on that. This isn't one we throw to them and say take care of. We would do all the work up front and provide it to them, and they could then run with it as they see fit.

**Lorne Dauenhauer:** Right, that's right. And for example, when we've had other tax code changes, which happen from time to time, that require the charter to be revised to comply with those new code requirements, and I work with Sam, and we draft a proposed ordinance for City Council because City Council doesn't know the ins and outs of code Section 401(a). So, we do kind of take the lead and shepherd the City Council to put in place what we need to make sure that the plan remains tax qualified.

**Director Hutchison:** And the administrative Rule 5.4.04 that you have part of it listed here on this page, because we're going to go over the spouse administrator rules in a future meeting. 5.4.04 was copied pretty much from the ordinance. The one issue that we had, we defined surviving spouse and spouse in

four or five different sections of the administrative rules, and unfortunately, all those definitions were not updated at the same time. So, we need to go through and clean up something that should have been done probably ten years ago and get all of the definition of spouse to be one definition. We'll talk about that in January and March, that's just a cleanup trying to get this to comply with that.

So, were there any questions? I think part of it is, the important thing is we feel that this is a solid definition of spouse. It complies with all the state and federal laws that are out there. It's very robust. There is no chance really of any same-sex spouse not getting a spousal benefit under this definition. So, it's very pro same-sex spouse. Nothing we can do to improve it at this point, we just have to wait and see what's going to happen with the Supreme Court. As I said, there's no way the Supreme Court proof this rule. We'll have to come back in and evaluate this ordinance and the rules when the Supreme Court comes through. So, you know, going back to what Lisa knight's concern is, the surviving spouses of same-sex couples are well protected under the plan and will receive a spousal benefit given both this ordinance and the administrative rules, and there's really no need to try to put any of the state statute wording into this, because it would not beef up this definition.

**Chair MacLeod:** Thank you, I think that makes sense and appreciate the discussion and explanations of it. Any further questions on that? Okay, well let's move along to information item four, which is 2023 legislative update.

#### **INFORMATION ITEM NO. 4 – 2023 LEGISLATIVE UPDATE**

**Director Hutchison:** So, Julie, can you put that document up? So, one of my responsibilities is to monitor all state legislation. I've talked about this is going forward of monitoring it and I actually testify, and I'll go over a little bit more in one of the bills here providing for FPDR. So, there are four bills that passed this year that I think will impact FPDR. The first two bills on this page here impact you as a board, so we'll go through them.

In the past, there's been some discussion, because you know if we have three of you in a room, it creates a quorum and is that considered a meeting that has to be considered a public record. So, this helps clarify some of that. What they had was a couple situations throughout the state with some other boards, is they didn't want to get the quorum together, but they wanted to find a way to deliberate without doing it in public. So, some of the tricks they use is what they call serial electronic communication, which means Tom could send an email to Catherine and they could talk back and forth, and Catherine then sends an email to Kyle, and they talk back and forth, and each email only has two people. But the second the subject is now crossed to a third person, they're considering that a serial electronic written communication and it is subject to public meeting law, and therefore it needs to be shared or those deliberations should have been conducted openly, not through email and trying to bypass the quorum requirement. The intermediaries are the same thing but not using email. It's like to have me go over and talk to Tom and Catherine and then go out of the room and talk to Kyle and Christopher and so I'm an intermediary running it back and forth and that's deliberating and considering that a quorum. So, people are trying to use alternate means to get around the requirement in a public meeting.

The next one is very helpful. This clarifies when a quorum is there when it's not a public meeting. This was not specified before and we had to keep our fingers crossed that somebody wouldn't complain about this. So, if you all attend an educational session, you know, Stacy gives you one and all three of

you or four of you are part of it, since it's an educational session, it is not subject to public meeting. It's not considered a meeting, and we don't have to do any sort of side stepping or other issues on that. talking to any other matter that is not related to the governing board or they won't see it in the future. If all of you want to get together and talk about the Portland public school strike, you can do that because that's not ever something you'll deliberate on, it doesn't have any impact on FPDR, and some stuff that are non-substantial in nature. It may be something you mentioned at FPDR, I didn't get the meeting minutes, or I don't agree with that meeting minutes, that could be non-substantive there. It's nice to have that there. I will remind you all as I've had to remind people in the past, when you step off the dais and the meeting is over, you cannot go in the hallway and re-discuss what you just discussed in the board meeting. I had to break up a couple discussions with that. You also have to be aware of if you have somebody who's providing you testimony during the meeting and you want more information, that if three of you go and start talking with this person, that could be considered deliberation. Either you only have two people talk with the person or you have to ask the person to come back to where those discussions and deliberations can be done publicly.

Additional things that are new to it, go back up a page, Julie, the third bullet point, there's going to be the Oregon government ethics commission that will take on oversight of this statute. And they will provide training, which will be good, you don't have to trust what I'm saying here, so we should see in the next six or seven months some training coming from the state explaining the meeting laws in more depth for you.

The next bullet point says if you're a large enough government body with a large enough budget, which we have a \$280 million budget, we'll definitely have to be required go through this training. It also gives this commission the opportunity to investigate complaints of compliance with any of the public meeting laws, and also gives them the authority to or any person can file a complaint and the commission can set penalties for it. This was not done in the past, any complaints had to go through the court system. So, you've got a couple things to clarify, one of them being what you can't do, one of them being what you can do, and then the state's going to do it from there. Any questions on that one? I think it's pretty straightforward. You'll get more training. If you have questions, you can ask me and I can help you out and we'll get some of the training from the state by the end sometime mid next year, I'm hoping.

The next one, HB 2806, this expands an executive order list. Executive meetings, excuse me. If you have an executive session of your meeting, you can move all the public out, the meeting is not recorded and press can be there, but they can't report on it. So, there's a series of things. Most common one, there's a lot of stuff in this law, it's got about 15 different reasons for doing it, only about two of them apply to you all with the exception of those new ones, the exception of the ones coming under this thing. Most common one we've used in the past is any litigation. When I came here, we had three big litigations going on I inherited, and so we had to work through those, and we had several executive session board meetings on those. There could be a time that if anywhere we have to get in and discuss a claim, which would be extremely rare to almost never, those would be done by executive session because of the privacy of the information there and stuff that isn't releasable. And if there's any reason we want to talk about each other's performance or there's an issue that comes up with any of my staff performance, that would be an executive session. But this one adds, you can go to executive session for anything relating to security of the governing body or public body, so that's you all, of the body itself, the board, and the board's staff and any volunteers. Anything having to deal with

security. It can be security of the meeting, security of the data, security of anything like that. And the reason why that can be done executive, you don't want to share all your secrets of how you're securing data, the building, that type of thing. I don't think we've ever had discussions on those topics, but that's covered. Next page, Julie.

The next one, retiree confidentiality. I've been pushing on this for seven to eight years and it finally took this last year. There's a reason why, we piggybacked on another issue. The part I liked about it and that I testified about three or four times in front of the Senate and Senate committees and House committees, is this exempts public disclosure of personal information of employees and retirees maintained by a retirement system operated by local government. This wording used to say, maintained by PERS. So, if we were asked to provide a retiree's name, address, telephone number, email address, name of their kids, date of birth, all that stuff, we would have had to have released it prior to this bill being passed. Fortunately, we've had people request information and we said no, we'll give you this, not the other part because we think it's confidential. Nobody challenged us on it, but every so often, you'll see it in the paper, they'll do wide sweeps, give me all the data for the benefits you pay and who's receiving them. We get that occasionally for pension. And if I said I'm not going to give you this and they said I need to, I would have lost and we would have had to release it. So, fortunately this is now in state statute, this information's protected, I can give their name, their benefit amount and when they've received it, but none of the personal stuff.

The second bullet point is really what sort of where we got a lot of oomph behind my thought or bullet point above, was to clarify personal information of employees and volunteers, which information is maintained. This used to say maintained by Human Resources. A lot of bureaus in the City of Portland and elsewhere in the state, we maintain a separate set of employee records in our stuff, we do it because if we have a disaster, we need to have access to some information about our employees that we may not be able to get from the HR databases. Those they found by one court decision are not covered, and so if you knew where the record was you could ask and get names, addresses, everything from us. So, this was to plug that loophole and so we managed to convince them that let's put the pensioners on this bill. So that was, I think, a very positive one for our members with it going forward. I will let you know in the 2025 legislature. I'm going to relook and try to get the same thing for Workers' Comp. It says Workers' Comp records are excluded from disclosure, but the way it's described it's Workers' Comp under the State Workers' Compensation system. I need to get some wording to say it's worker' comp operated by local government, see if I can get that put in there.

So, the next one is HB 2283, it's PERS. I'm going to turn it over to Stacy, but I'll make a comment, there's a lot of PERS bills come out every year. Almost always one PERS bill is omnibus. It has a million little itty-bitty things in here they want to look at. You have to spend time looking through, because occasionally there's a little nugget of some importance of things. So, I'll ask Stacy to go through this one for you.

**Stacy Jones:** Sure. This is, I guess, kind of this year's PERS omnibus bill. It was actually a PERS requested bill, so the administration at PERS requested it. So, there was a lot of housekeeping sort of things in here, particularly items, they're doing some technology and database upgrades and things that needed done to clean things up before they did that. But of course, you know, you turn a PERS bill loose on the legislature and some other things were added. I just gave some examples of the small changes that you can see on Sam's list there that relate to public safety retirement, because I thought that might be more interesting to the board. But probably those are not very interesting, a little bit obscure. There is one significant change, and we are still, you know, sort of verifying how this will all ripple through for the City of Portland. The bill requires that the mandatory employee contribution to the IAP program,



which we were just talking about in relation to ETOB testing, the mandatory contribution is 6%. That's the defined contribution piece of the PERS pension plan, and you know, the employer must contribute 6% and the employee must contribute 6%. Some employers choose, as a benefit, to pick up that 6% for their employees. And the City of Portland does do that, they pick that up 6%. And that 6% that the city was picking up was not being included in the final average salary in the full formula calculation for employers who were picking it up, including the City of Portland. I actually don't know how PERS felt about this. I can see where for them it's kind of you wind up treating folks differently in terms of calculating their final average salary. For example, state employees, the way this was handled for state employees is that the state increased everyone's salaries by enough to cover the 6%, and then have the employees contribute the 6%. So now that is part of their final average salary, but it is not part of the final average salary for City of Portland employees because the city just pays it separately. So, I can see where from a PERS point of view you wind up in a different place. But you know, you don't get anything for free, so that will increase the final average salary for City of Portland PERS employees, not just public safety employees, but all City of Portland employees. Of course, the ones we care about are the public safety employees who are hired after 2007, and that the cost for those, that all things being equal, that would, you know, result in higher benefits for folks, and then all things being equal, that would result in higher contribution amounts for us as City of Portland. Now, lots of things play into that, contribution amounts, all kinds of things. Investment returns are the big thing, but lots of things. But if everything, if nothing else changed, when Milliman goes and calculates the new contribution rates for the City of Portland, and I won't bore you with the complications because we're also part of a rate group and there's rate collaring and other things like that. But all things being equal, that would increase the contribution rates for the City of Portland. So, we will bear the cost of those increased contributions for sworn employees hired 2007 and later. Now, will some of those be offset by other changes in contribution rates, or will some of that be softened by rate collaring and things like that? We don't know. But all things being equal, if you're going to give people a higher pension benefit, you're going to get charged more for it, you know, that's how a pre-funded pension plan works.

**Trustee MacLowry:** Stacy, are you calling the contribution rate the same as the employer rate, is that correct?

**Stacy Jones:** So, there's two pieces, the 6%, and I know it's 9% for public employees.

**Trustee MacLowry:** That's the IAP, I'm talking about the defined benefit.

**Stacy Jones:** No, that has nothing to do, right. But the defined benefit portion, because that's going to be included in the salary, so this is where it comes into the defined benefit, it gets a little crazy. So maybe it's good to give like a concrete example. So, let's say that you make \$100,000 a year, and the city puts \$12,000 into your IAP, and on top of that, that's their 6%, the city's 6% contribution and your 6% contribution that the city is picking up as an employee benefit. And then on top of that they're making contributions into your defined benefit plan, right, separately. And that's like 23% or 30% or whatever it is. But that's unrelated as you mentioned.

**Trustee MacLowry:** It's 30, yeah.

**Stacy Jones:** But they are also paying in 12%, you know, that \$12,000, they're putting that into your IAP. So, what's changed is when you go to retire in the defined benefit portion of the formula, the defined benefit portion we're living in now, and they calculate your final average salary, under the old way they would say your salary was \$100,000. Now they will say your salary was \$106,000 because they will include the portion of the contribution that was the employee contribution in your salary. And

it's not as simple as that because the PERS calculation, they do a final average over three years, anyway. But for simplicity, that's how it impacts your defined benefit pension, is it changes what your final salary is for the full formula method for calculating defined benefit. And not everybody goes out with full formula in PERS, there are other calculation methods, but mostly people go out with full formula nowadays. Back in the old days people went out more with money match. But does that make sense, trustee MacLowry, what I'm saying?

**Trustee MacLowry:** Yep.

**Stacy Jones:** So, I'm not sure how aware folks were of the impacts this would have, because there are other employers that picked this up. And you know, other employers who won't be impacted at all, like the State of Oregon who just increased people's salaries and then had employees do it, you know, they have already absorbed that impact, or Metro that does not pick up its employees 6%, the employees really do have to pay it out of their salary, and they didn't increase salaries to compensate. It just impacts employers differently. So it just means all things being equal, higher cost for the FPDR fund in the future.

**Director Hutchison:** Thank you, Stacy. Any questions about any of these bills at this point? If you have some later, go ahead and email me or Stacy and we'll answer them for you. We are going to start another legislative session in January, it's a short session. The odds of anything from PERS or Workers' Comp being included is very low. We'll keep an eye on it, I'll be digging through all the bills, but this is going to be based on some bigger issues with the state, housing, safety, that type of stuff. And that's usually what's done in the short session. Julie, you want to move to the next slide.

#### **INFORMATION ITEM NO. 5 – BOARD PROPOSED MEETING SCHEDULE**

Okay, there we go. Down to the public meeting, there we go. So, the next topic we have is the proposed meeting schedule for 2024 for the Board. So, in preparation for the new form of government, with its 12 Council Members, the city will have to remodel the City Council chambers. It's going to start in January, and so the City Council and all groups using the council chambers will meet in room 2500 of the 1900 building. We have the address noted on this document. We're meeting here virtually today because the electronics are being pulled out of the council chambers through November and December and they're going to be installed into the 1900 room, the 1900 building, the 2500 room of the 1900 building, get that straight. And that's supposed to be completed about five days before our January 23rd meeting, or a few days before that. And so, you'll see on January 23rd we are going to go virtual for a couple reasons. If there's a hiccup in the installation, we can't meet there and also, I don't want to be the guinea pig for the new electronics going in. We're going to let City Council do that. City Council will probably have four or five IT and other people trying to make sure it works. We only get one and you've seen a couple times how things can hurt us in a well-established system. So, unless you have concerns, we'll do the January meeting virtually, same time, location, you know, 1:00 p.m. on that date.

The March 26th, May 28th, and July 23rd meetings will all be held at 1:00 on that Tuesday in that 1900 building room, 2500. The September 24th meeting, here's one the challenges that we had is that the 2500 room had a series of people, council had a series, or chamber had a series, and we tried to mesh all the schedules together. We were very successful keeping our fourth Tuesday of the month. September, we kept the fourth Tuesday but there's an evening meeting coming in after us, so since September's the State of FPDR, which is our longer meeting, we're recommending that we're going to start at noon instead of 1:00. So, we have enough time to complete our work without getting forced

out before the end of our meeting. And then on November 19th, again this is moved up a week because of Thanksgiving, location and time is to be determined. Again, they're hoping that sometime between September and October they will have the new council chambers available, and we'll see if they are and we'll either move it there or we may keep it. It may be tough to do because, again, the meshing of all the schedules, the third Tuesday may be hard to do. So, we will talk about that as we get closer to November where we're going to be meeting for that. So are there any questions or concerns with this, because I'm going to make the assumption that you all agree with it unless I hear otherwise for you and then we can publish it. We did include the addresses of the parking, two different parking structures next to the 1900 building. And Julie will send you an email telling you where to park and what elevators to use to get to the right floor before that. That will come out just before the March meeting. Any questions or concerns about that? Okay, good.

**Chair MacLeod:** Thank you.

**Director Hutchison:** I think we have summary of expenses next, Julie and Stacy.

#### **INFORMATION ITEM NO. 6 – FPDR SUMMARY OF EXPENDITURES**

**Stacy Jones:** Yes. I have to go back to that PERS bill, because I don't know why I was saying there was a matching. It's just 6%. I was like, wait, why am I saying this? I'm thinking of a different pension plan, I've just been looking at it. It's just the 6%, there's no matching from the employer, it's just the 6%. Sometimes the employer picks it up, sometimes they don't. It's just the 6%.

**Trustee MacLowry:** Currently for fire and police, it's 6% per employee picked up by the city and additional 3% in the employer bucket, and that bucket can go up to 6% max, but it's currently 3% and moves with maturity.

**Stacy Jones:** Right. Yes. So just for the public safety employees, yes?

**Trustee MacLowry:** Yes.

**Stacy Jones:** Just for sworn employees it's 9% all paid by the FPDR fund, but all paid by the city into your IAP. Now, if we just think about, so that's the additional 3%. But for everybody, but the mandatory portion is just the 6% and so that's why I believe, but we'll see how PERS implements this, it's just the 6% that will be included in the final average salary for the FPDR 3 PERS covered folks at fire and police.

**Trustee MacLowry:** They're in separate buckets as far as PERS is concerned.

**Stacy Jones:** Yeah. So, I think, exactly, because the 6% is the mandatory piece and the language in the bill says mandatory. So that 3% is extra, so I don't think that portion will get added to their final average salary, but it will still increase their pension, yeah, in the future. Sorry, I just realized that I was – like what in the world was I saying – it's just 6%. I was making it sound like 12% and I didn't want to –

**Trustee MacLowry:** I'm glad you went back because I was going to have to try to get back to that anyways.

**Stacy Jones:** I was like, wait a minute, that's not right. I have to correct that. Expenditures, everything looks very much as it usually does at the end of the first quarter. The only thing I'll say, just because folks sometimes have questions about it, is why do we have negative revenues? You look over, you can

even see them in the year-to-date total, you can see them in some months - there in taxes and miscellaneous sources, and that is an accounting thing. That is because of the accrual, you know, we have to do accrual-based accounting, so that's where revenue that we collected in the current fiscal year or expenses that we paid in the current fiscal year have to be shifted back to the prior year to comply with accounting standards. And that's just in the case where a revenue was a receivable in the prior year or in the case of an expense because the expense was incurred but not paid in the prior year. I can give you guys examples, but you probably will be bored to tears. It's just an accounting thing and sometimes we have to get kind of deeper in the year before the current year activity is enough to move those balances out of negative territory. So, if you have more questions about that, I can answer them but don't be alarmed when you see negative revenues. That's just the impact of the accounting accrual. And otherwise, everything looks essentially as it normally does at the end of this first quarter. You'll see down under internal materials and services we haven't paid any FPDR 3 PERS pension contributions or return to work light duty yet because we will usually pay those in October, because we pay those on a quarterly basis, as long as we get our billings on time, which we did this year so that was great. Any questions? Yes, Trustee Kramer.

**Trustee Kramer:** It may just be a small data issue, but on personnel expenses, we're sort of slightly over, if we're running evenly. Is there something we should think there? Are we needing more folks? Are we having to pay more for folks either for more people or more time that would cause us to exceed budget?

**Stacy Jones:** No. Let me take a look. We're not, we pay biweekly, and there's an accrual in there as well, and the timing, I suspect I don't have it. That's a really sharp question, Trustee Kramer, that I don't have at the tip of my fingertips. I'd have to pop into our personnel thing and look at it. And I will look at that for next time. But I suspect that it's just a timing issue the way that our pay dates have landed and related to the accrual. Because, no, things have gone essentially as expected. We had a high cost of living adjustment, but we expected that and budgeted for it. Yeah, we haven't had any surprises on the personnel side. But I will take a look at that. It's a good question.

**Chair MacLeod:** Okay. And just to clarify too, the FPDR, it was both return to work and FPDR 3 contributions are both quarterly?

**Stacy Jones:** Yes, those are both quarterly and it used to be the police and fire bureau, it's now the Community Safety Division and OMF sends us over a billing for them quarterly, which sounds crazy. The city controller and I are making yet another attempt to see if we can get the SAP programming folks to direct charge us for those things. I don't know why with all this technology we have to, like, go through billings, but we do.

#### **INFORMATION ITEM NO. 7 – FPDR UPDATES**

**Director Hutchison:** All right, so we're done with that. So, I have FPDR updates here. The first one is the status our managed care organization search. Kim, do you want to give an update on that?

**Kim Mitchell:** Sure, thanks, Sam. So, as you know, MHN Caremark Comp is closing their doors as of December 1st so what we've been working on is trying to find a replacement, managed care organization with a panel who can take over and treat our members. We've been talking to Majoris, I just received a rough estimate of an enrollment fee. What we have to do from there is define the

scope of services that they're going to be providing for us on our active and post-retirement cases and really establish an enrollment fee. Some of that will be determined by the services that they provide. And from there, I can set at least an estimate of contract cost, if we're going to go with them, and then get information to you. We would work to determine their FPDR Majoris technology needs. We'd certainly have to get procurement involved. There's a lot of things that would have to align. But what I'd like to do, if possible, is to hold a meeting, a board meeting on December 19th to just say, we have enough information together, we have cost estimates, would you approve us proceeding with finalizing a contract with Majoris for MCO services? Everything would have to align, and what I would estimate is if we don't have key information by December 7th, we wouldn't meet at all because I don't want to waste your time. But what I'm trying to do, and they're working with me on that, is to just establish what services they will provide, get an enrollment fee, and there's a lot that's going to have to go into making those things happen.

So that's where we are. I am on the other side working with Providence to do some advisories, and this is just a backup in case we're not able to have our members enrolled with Majoris by the time MHN closes their doors, and that's pretty much what's going to happen. I'm looking at getting some advisory services so we can continue with necessary pre-certifications and things needed for our members who are currently enrolled with MHN. So, I've got help on the back end and I'm trying to wrap that up in case so that we can work to get things done and contract with Majoris if everything works out.

**Director Hutchison:** And just so let you know, there are only three MCO providers in the greater Portland area. One is Kaiser and the other is Providence, both which we have contracts with, and Majoris is the third. MHN, the one we were using, was the fourth and they're closing their doors so we're trying to work with Majoris. Kim has done an excellent job of going back and forth with Majoris, educating them of how our plan is different with Workers' Comp and what we need. We're getting close but I didn't feel comfortable enough that we were close to draft a contract that you all could look at. There are some things we need to get answered from them and if we can do a timely, we could have that drafted contract ready for you on December 19th. But you'll hear more about us, it will be a virtual one-topic meeting where we just can present you the contract, you can ask us some questions. I think it could be done in less than 30 minutes, unless you had a lot of information you needed with that. So that's what we're doing. Thanks to Kim for all the work on this. This is quite unexpected for us and not only was she working with Majoris, but again she's working with Providence to help back up and fill in some of the gaps and have them step forward. There will be some additional cost with Providence, but I don't think it will exceed enough that we have to amend the contract. We might, but we'll work on that. So, if that comes through, we'll have to share that with you. So, any questions on that?

**Chair MacLeod:** No. Thank you, Kim.

**Director Hutchison:** I want to give you an update on the new form of city government for Portland. If you've been paying attention to the news, City Council a couple weeks ago approved the recommended organizational structure that I shared with you. There were some changes, nothing significant from FPDR's viewpoint on it. So, the next set of work will be trying to take them to the next level, well, actually the next step of work is to budget how to fund this new city government. That's going to be quite an eventful budget season because their latest estimate is \$13 million over the original estimate. So, there's a lot of pushback on where to eliminate or reduce that \$13 million

overestimate. I will be looking at how to implement the service areas where we go through there. Starting July 1, FPDR will officially become part of the Budget and Finance service area. All that impacts is who I report up to, it doesn't impact the team at all, it doesn't impact anything we do. I finally may somebody that's going to try to micromanage me and that will be fun, but we'll go for it from there. We'll keep you up to date as we move through that process.

The search for the new citizen trustee. Let's see, we're vacant. We're reaching out to various networks asking for them to identify people. We're hoping to get three or four people are interested. That is a challenge to do, but once we get a few candidates, we'll start evaluating them and then we'll present options to the mayor because the mayor is the one that makes the final decision, and then the mayor will refer to council for that person to council for approval. I'll keep you updated as we move forward with that.

The board handbooks, that version that you'll have out there is dated August of 2019, four years old pre-pandemic, so we've updated it with information to include some of the new statutes and just get modern language put into it. We can review it in a future board meeting, publish it and probably send it out to you December or January. And then after that, if you all want to make any bigger changes we can, it's a dynamic document that we can change, but I just thought first of all let's get it updated to include some of the new information.

Kyle, you had asked a while ago I think during some of the interviews for the strategic plan, for more information about the 2007 charter change. I've asked Julie Hall to do a lot of research on that to get you all the information that went into the 2007 charter change. Be forewarned, we will see over 30 documents with over 100 to 200 pages of materials. That's how big this went in. We will roll it out and we're not going to send it all to you because my next topic is how we'll do it. That was quite a bit, I learned a lot more about this whole process. The City Council just to let you know, had two citizen committees pour through the FPDR plan to make recommendations for changes. And then they were boiled down and presented with that, and the 2007 reform was partially headed up by a city commissioner, that effort, not necessarily the board.

So, what we're going to do, I've got these big documents I've got to send out to you, we're creating a secure folder that I will post documents in that are for you and you will have the password into that folder. And that's about, and we will keep those documents in that folder, so that will be where we will put them for you, and you can retain them there and have access to them. We'll roll that out to you probably December to January. We'll give you a password. There's been a few other things I've sent to you that have been big collections in the email, we'll post those in there. This was designed to share information with you, and you don't necessarily have to print out all this material, you can go into it and review it as you see fit. And there's some rules on how to use that, but we'll share those with you. Any questions? We're moving pretty fast toward the end. Any questions about the last few items?

**Chair MacLeod:** I guess one thought, on the very last thing you mentioned with the portal where we can gather information. Will that have a time limit on it, or will it remain available to us indefinitely?

**Director Hutchison:** No time limit. It will be just where we put important documents for you to look at.

**Chair MacLeod:** Okay.

**Director Hutchison:** You know, we'll have to evaluate them and see if there's still value with it, but they will not automatically go away. There is no sunseting.

**Chair MacLeod:** Okay.

**Director Hutchison:** Intentional on that.

**Chair MacLeod:** Great. Thank you.

#### **INFORMATION ITEM NO. 8 – FUTURE MEETING AGENDA ITEMS**

**Director Hutchison:** Okay. Julie, the scroll down to the next document. After the updates, there we go. So, this is I think the last thing we've got on the agenda is future board meeting topics. I'm presenting to you this and we can update and change this right now, and like I do follow-up with an email to you in the next week or two with this. So, in January the action item is 2024/2025 budget. This is an interesting year because half the budget will go to the old form of government, half the budget will go into the new form of government. As far as FPDR's concerned, that's a nonevent, but the whole budgeting process, Stacy's having to relearn what they're going to be doing and we have to follow in on that.

We've also talked I think before of having Lorne represent on the ASOP number 4 presentation. Mr. Machiz brought it up and says we should be doing something. We'll just have Lorne come in and interpret that provision that Mr. Machiz had brought up. I will also do a review of the disability pension; it will be a comparison between FPDR and PERS. It will not be anything else other than that, and it will be probably, take a pretty simplistic example so you can see how the two work side by side and what kind of benefits are calculated with that. I think some of you wanted to better understand what some of the issues that are being brought up about PERS disability and how we don't have one, but I'll show you what we have if somebody's permanently disabled.

FPDR's strategic plan review, this one we can move if you want, but at some point, we'll review that with you. I do definitely want to give you an overview of the FPDR administrative rule amendment process. We were going to do this I think in September, but we pulled it because of the MCO issue because some of the rules were going to require Kim's time just to help explain and finish up. And so, we'll talk you over the process and give you a sneak peek of the rules or a real high preview of the rules. And then we don't have May down, but the intent was in the May meeting they'd be formally presented to you for approval and adoption.

So, what we had here left on the list is discussion of forming a committee to review the FPDR 2 pension plan, discussion of soliciting a study to compare FPDR disability program to Oregon Workers' Comp, the board handbook review, the impact of unionization, and it's also here, as I said before, we'll have the administrative rules approved. So, if March is pretty thin one, I don't know if you want to move any of these future meeting topics up into March to address, or so. I think January's pretty locked in unless you want to pull something else in. But March is open and May we have not officially scheduled anything except for the Workers' Comp, or not the Workers' Comp, but the rule changes. Any thoughts on what you want to do at the March meeting at this point? Kim just let me know in January we may add the MCO contract approval if we don't have the interim one in December, so I'll add that one. So, it's up to you to let know what you'd like to add to the March meeting. You don't have to add anything

now if you don't, we'll have the four meeting topics plus down below if you wanted to address any of those then or anything else, or if you want to leave that open here and reset it in. Tom Kramer.

**Trustee Kramer:** I'm sorry, didn't mean to interrupt you, Sam.

**Director Hutchison:** Go for it.

**Trustee Kramer:** I want to come back to the possible December interim meeting, and I'm sorry if you already said this, virtual meeting if held and 1:00 if held.

**Director Hutchison:** We'll have to target the time. We'll get back to you with more detail. It will be virtual, it's a simple one because you'll have a copy of the contract ahead of time, you can take a look at it. Usually contract approvals take 15, I think I rarely had any of them go to 30 minutes. This one might because I will give you a hint, the prices may be a little bit more expensive, and we're sort of stuck between a rock and hard spot and if we want a third MCO we may have to pay higher prices than in the past, but those are issues we can talk about. I would plan for a half hour on the 19th, and we'll get back to you with the time.

**Trustee Kramer:** Thank you.

**Director Hutchison:** And we'll have that confirmed, I think as Kim was saying, by December 7th we'll confirm whether or not we hold that meeting. So, you just want me to leave the March meeting as it stands here for now or you want to add to it later or would you want to add any other points to that one?

**Chair MacLeod:** Well, I'm content to wait for now. If others want to make any suggestions or something that you're really wanting to make sure we tackle in March, speak up or send an email around, I guess, afterwards.

**Director Hutchison:** Yeah, we have time. The only thing for scheduling in advance that may give us time if we need extra time to prep, but we'll make it work if you have a topic that you want to put in there in January.

**Chair MacLeod:** Yeah, and I'm assuming that the topics for future meetings, topics one and two, would be the ones that would require probably the most prep time. So, I'll defer to others on priorities for that, but I'm assuming those would take more time to prepare for. So again, if others have clearer thoughts about it, please email Sam and let him know.

**Director Hutchison:** Yeah.

**Chair MacLeod:** And otherwise, we've got January locked up and potential short meeting in December.

**Director Hutchison:** Yeah, so in January we'll add MCO contract approval, if needed. I'll add that to the list, and I'll move the strategic plan review to the bottom so if you run out of time or if there's a preference, we can move that. So, I'll reorder it and add the MCO and get this out to you in a couple days.

**Chair MacLeod:** Okay. It may be that if we end up pushing it, the strategic plan review in March would be a reasonable time to do that.

**Director Hutchison:** Yes.



**Chair MacLeod:** Okay. I think with that, it's been a good long meeting, lots of good discussion and information. So, any final thoughts, Sam, before we wrap her up?

**Director Hutchison:** No, I think we're doing good discussions today. I appreciate your input on getting scheduled items ahead of time. It allows us to better prepare, and I think gives you some information that you want with it as we go forward, because that's something that's been lacking in the past. But other than that, no. Good meeting, I hope everybody has some nice holidays coming up and we'll see you all virtually in January. Again, as usual, if you have questions about anything in this meeting or anything with FPDR, contact me, Stacy, or Kim, we'd be glad to answer those and give you the information that you need, and also Julie's there to contact for information. The four of us are here for you.

**Chair MacLeod:** Perfect. Thank you very much, everyone. Appreciate it. Happy holidays coming up.

**Director Hutchison:** Let me get my hand in the picture, there you go.

**Stacy Jones:** Bye, everybody.



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Board of Trustee Meeting Minutes

December 19, 2023

<b>FIRE AND POLICE DISABILITY AND RETIREMENT BOARD OF TRUSTEES MEETING</b>	<b>MINUTES</b>
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This meeting was held remotely via a Zoom webinar platform.

<b>Date and Time:</b> December 19, 2023, at 1:00 p.m.; Meeting adjourned at 1:35 p.m.
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<b>Board Members Present:</b>
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Catherine MacLeod (Board Chair); Christopher Kulp (Police Trustees); Kyle MacLowry (Fire Trustee); Tom Kramer (Citizen Trustee)

<b>Also Present:</b>
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Sam Hutchison (FPDR Director); Stacy Jones (FPDR Deputy Director/Finance Manager); Kimberly Mitchell (FPDR Claims Manager); Julie Hall (FPDR Legal Assistant); Franco A. Lucchin (Sr. Deputy City Attorney); OpenSignal PDX

<b>Motions Made and Approved:</b>
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- Motion by Trustee Kulp that was seconded by Trustee MacLowry and unanimously passed (4-0) Resolution 551 authorizing Director Hutchison to negotiate and enter into a contract with Majoris Health Systems in an amount not to exceed \$450,000 for a five-year period. (Action Item No. 1)

A text file produced through the closed captioning process for the live broadcast of this board meeting is attached and should be considered a verbatim transcript.
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Fire and Police Disability and Retirement

By \_\_\_\_\_

Sam Hutchison  
FPDR Director

**CLOSED CAPTIONING FILE**

[Captioner on standby]

**Director Hutchison:** Today's meeting covers only one topic, the Majoris MCO contract. You will not approve the November board meeting minutes. This will be done in the January meeting. There's no general introduction, and we didn't open it up for visitor input. They can, but nobody, I think, has signed up for the actual item itself. So, it's just strictly we're looking over it, and I'll turn it over to Kim in a minute and we'll go through the resolution and then just a quick discussion of future board meetings. So Catherine, it's up to you. Go for it.

**Chair MacLeod:** Ok, we'll officially now convene the December 19<sup>th</sup> meeting of the Board of Trustees for the Portland Fire and Police Disability and Retirement Fund. You already commented about visitors, unless there is somebody that surprises us at the last minute, let me know, and I'll assume there's nobody to introduce. Okay, let's go on to the action item then. Sam, I assume you and Kim will take this item.

**ACTION ITEM NO. ONE – MAJORIS HEALTH SYSTEMS CONTRACT AUTHORIZATION**

**Director Hutchison:** Yes, I'll defer to Kim and add some color to her comments occasionally.

**Kim Mitchell:** Thanks Sam. I appreciate that and thank you all for joining us today for this very brief but special board meeting. Our objective today is to have you adopt Resolution 551, which will permit FPDR to enter into negotiations within a contract with Majoris MCO to provide occupational healthcare services to our plan members. We shared with you at the prior board meeting that Managed Healthcare Northwest closed their doors December 1st. That left a big hole in the providers who our members would have access to, to treat their injuries and illness, occupational disability claims. So what we'd like to do is replace it. We do have an existing MCO with Providence and Kaiser, but the purpose of adding a third MCO is to provide a broader pool of providers for our members to select and use following injury. So that's what we want to do today, and what we provided in the board materials was just a little bit of information. And I'm just going to skip around just quickly and start with the Exhibit B, which is a statement of work, because this is a foundation of what we want our managed care organizations to do for us. When we're looking at Majoris MCO, what we want them to do is first provide us access to a contracted panel of medical providers to provide treatment, occupational healthcare services treatment, to our plan members. That incorporates a lot of work on their end, and so what they're doing with that panel of providers, and there are 2,000 providers throughout Oregon. The majority of their providers are in the Portland metropolitan area, but different than MHN, they do have providers from coast to coast, from the upper North corners of Oregon to the Southeast corners, and so for those few members that we have who are outside that Portland metro area, access to treatments is going to be greater with the Majoris MCO.

So what we want them to do is provide utilization and quality management services. That means they're going to oversee the providers who are on their panel and make sure that as they're treating our members, they're using industry best practices for treatment, that they are working to make sure that the treatment moves along. That they are also championing recovery and return to work following an injury. So that's kind of the basic of it. But what the MCO also does provide for us is a physician advisory council and clinical case managers. And they're just a panel of providers who we will go to if

there are any concerns about the treatment a provider has given to a member, or even if a member has concerns, either way. If there's a concern with treatment or how things are going with recovery, we will look to those physician advisories and clinical case management nurses and services to help resolve that, and sometimes they help us deal with newer treatment, more experimental treatment to give us guidance on what that will like for our members. They also validate the appropriateness of a care plan, and they do effective management of disability duration. Again, our goal with any injured member is to see that they get back to work as soon as possible. So we want our physicians and panel to align with that goal, and make sure that treatment is heading that way. We don't want to rush it; we want full recovery. These folks have heavy jobs as firefighters and police officers. So it's not a matter of rushing that treatment but just making sure the treatment is moving along to promote recovery and return to work. We want them to support our light-duty program and most of our MCOs see light duty as treatment, in a way, because it does get the members up and out and moving on through their disability. So, we want dedicated case managers so that they work with our staff, become very familiar with our plan and how we work, and we want them to meet with us regularly or when we need that. And again, I mentioned this, assist us with facilitating early return to work, a really important part of that. And the other thing is we want them to adhere to the Oregon fee schedule. This is where we get our biggest discount in treatment cost, is by applying the Oregon fee schedule and we want those providers to be aware of that and utilize that.

So, the one through seven above is kind of the broader picture. On a claim-by-claim basis they do disability prevention consultations, and these are for cases where members' treatment has stalled for some reason. You know, they reached a point where we're just not seeing things move along. That's when a panel of physicians will come together and talk about the case, go over it with the doctor. The doctor who will, in turn, go over that with the member and say, what can we do to get this moving? So those services are something that we like to use. Dispute resolution services doesn't happen often, but there are times when we have concerns, or maybe even the member has concerns about a treatment that's being proposed. We want to make sure there's a way to address that within the MCO so we can move that treatment along. The downside of not having an MCO is that any treatment disputes or concerns have to be addressed through the legal system, and that's just not a best practice way to address a treatment issue. Often the judges and people involved in those processes aren't thinking about best treatment practices. So, we want to make sure that any disputes that we have are resolved by people who are training the physicians who are trained in treatment of occupational injuries and illnesses and can address the necessity and appropriateness of care.

So, another service that's important to our members is a credentialing or certification of non-MCO providers. Occasionally, a member will treat with somebody or will have had a relationship with a provider who has started care and they want to continue that care with that provider. Now we do require that members transition to the MCO upon claim approval, but there are times where that continuity of care, we don't want to break that. So, the credentialing process that the MCO will allow is for that doctor to carry through. We see this typically in our catastrophic injury cases or where a member is severely injured, and the doctors who has provided that care up to claim approval, we want them to stay on as doctors just to continue the continuity of that care.

So then we have precertification of medical services. This is something kind of where we live and breathe on the daily basis, and that's precertification of imaging, or durable medical equipment, surgeries, injections. Anything that is not your standard, everyday care, they will precertify that to

make sure it's reasonable and necessary, make sure it's intended to promote recovery. So we use those services quite a bit, and we do like the concurrent in-patient hospital service reviews. If we have a member who has had that catastrophic injury, we want our MCO to be on it, to look at it and to give best practice guidelines, to work with the doctors who are treating and make sure that, you know, we're containing costs, but cost is always second to making sure that we give the members the best care possible. Let's see. We've got item G, which is perspective, concurrent. Under that, they're just looking at our claims and treatment from all angles. What's happening in the future? What's happening right now? Are we using just the best practices to promote the members recovery and ultimately, their return to work.

And then finally, with all that they are doing, we also want them to adhere to our rules. They're there for a reason, and we want them to follow those rules and use the forms and things that both we use internally for administering the claim and with the bureaus. So the work status report is a report that our members give to the attending physician, or to their doctor when they are first injured, and that report is completed to tell us about their condition. Can they work light duty? What is the projected duration of time off for the injury? So that form is helpful, not only for us in guiding payment of benefits for the claim, but also the bureaus. They use that for staffing and transitional duty assignments, so we want them to use our forms for that purpose.

So, the MCOs provide a breadth of services for us, and this statement of work is the basics we want them to provide as we enter into contract negotiations with Majoris. They may have some additional services that we think would be helpful and we would want to look at that as well, but this is the basic services they would provide in a benefit to us contracting with them. Any questions on the statement of work?

**Chair MacLeod:** Trustee Kramer, you had initially submitted a question. Do you want to ask that now?

**Trustee Kramer:** A comment about the statement of work, and the comment about that specifically was I thought that was really well written. I thought it was thorough, clear, and detailed and well done. I had a couple of questions about Majoris generally, but not specifically, about the statement of work.

**Chair MacLeod:** Do you want to go ahead with that? Is this a good time for that, Kim?

**Kim Mitchell:** Sure, absolutely.

**Trustee Kramer:** Kim, I have two questions for you. One you know, and that is, we think that Majoris will be heavily used according to the materials you circulated. I want to know what you think about that. I'll hold my other question if you want to address that one.

**Kim Mitchell:** Sure. So, Managed Healthcare Northwest was the most used MCO. We have Providence and Kaiser, typically our members will select the panel that aligns with their personal healthcare plan. The majority of our members went with the Legacy MHN Caremark plan, and so we assume that majority is going to continue. That's really it, we think most of them will sign on. They have a broader panel of providers, and the other two MCOs don't have some of the providers that our members like to go to. So, we already know that Majoris has some of the providers that our members prefer to treat with, so that's an add. We won't have to move many of them away from the MCO. Well, MHN is

closed, but they will be able to continue care with the providers they currently selected. Does that help you?

**Chair MacLeod:** I'm going to piggyback on that question. I think you answered mine, which was, someone doesn't have to be enrolled in Kaiser for their personal healthcare to choose a Kaiser physician for their occupational disability? They could choose that, but you're saying it tends to be more common that whatever system of provider you're using on your personal side, you tend to want to go with?

**Kim Mitchell:** Correct.

**Chair MacLeod:** Okay.

**Kim Mitchell:** Correct. And they do occasionally select outside of their PPO, but generally they follow that pattern.

**Chair MacLeod:** Okay, thank you. Tom, I'm going to jump in, Trustee Kramer, I'm going to jump in with another question, not knowing what yours was. I'm curious, it sounds like Majoris is a larger organization than MHN was, do you have a sense of where, at least in Oregon, where FPDR fits in, in terms of size of client? Are we on the larger end of their clients, or smaller? Just to get a sense of the priority service they'll be giving to our members.

**Kim Mitchell:** I think we're smaller because they have SAIF, which is a major insurance carrier here in Oregon. They've got SAIF and some of the other larger insured and self-insured plans. But they've got a good reputation for attention to detail with each of their clients and so we expect that level of service, even though we're small. And we were small relative to their other clients, and we were with all the MCOs.

**Chair MacLeod:** Okay.

**Kim Mitchell:** That holds true with MHN, Providence and Kaiser.

**Chair MacLeod:** And because you mentioned SAIF as a client, my follow up question was their experience in working with safety employees, police and fire. It sounds like if they're working with SAIF, they undoubtedly have many industrial clients.

**Kim Mitchell:** Yes.

**Chair MacLeod:** Okay. All right.

**Director Hutchison:** A quick follow-up to who their customers are. The City of Portland Risk Management handles workers comp for all the non-fire and police employees. They're finishing up their contract with Majoris. We chose to go our own route because we're a different plan with different expectations. And we didn't want to get lost in the city's contract and wanted our own.

**Chair MacLeod:** Okay, so from that sense, City of Portland and FPDR, we get to ride the coattails of the

larger employer city of Portland with Majoris. Obviously, they'll want to make sure they give excellent service to FPDR if for no other reason than to make sure they're seen in a good light by the city of Portland, I presume.

**Kim Mitchell:** Absolutely, and I would dare say we're probably going to use them more even than the city.

**Chair MacLeod:** Okay.

**Kim Mitchell:** More broadly, just by nature of the types of injuries, and the demands of our firefighters and police officers.

**Chair MacLeod:** Trustee Kramer, you had another question and I stole your time there.

**Trustee Kramer:** No. I think it's actually tangentially related to what you were all just talking about. In the negotiations with Majoris, Kim and Sam, were there issues on which we were not successful or were there concessions that we did get that would be helpful for us, as trustees, to know about?

**Kim Mitchell:** You know, we haven't actually entered into contract negotiations formally yet. We wanted this resolution and permission to do so first. But what we expect, because I have been in communication with them for months now, and what we expect is that I don't think there will be any real surprises in terms of what we want and the services they're going to provide. These are pretty universally known services for managed occupational healthcare. I don't expect any surprises, but we'll see.

**Director Hutchison:** I don't want to downplay all the prework that Kim has done. We decided, even though we haven't formally done the negotiations, we've probably done 90% of the work for the negotiations. So, we're moving into it. So the statement of work is not a surprise with them and then you'll go to appendix A for the fees, they're not a surprise for us. There may be some fine points as we go through. Usually what happens with negotiations, too, there's a lot of boiler plate wording that gets put into it.

**Kim Mitchell:** Yes.

**Director Hutchison:** And that, we like to hold a little bit toward the end, so we get the major statement of work and costs agreed to. Then the attorneys on both sides go back and forth on the boiler plate issue and our procurement department helps us with those negotiations, and there may be a few decisions to make. They usually aren't material, but sometimes they can draw out the process. But we've got them pretty much accepting the statement of work and the fees at this point. Again, negotiations will firm that up and then get the boiler plate wording to them and have the attorneys dig through it from both sides to get that resolved.

**Kim Mitchell:** Thanks for adding that Sam. Next, we'll look at Exhibit A, which is our cost projections for the five-year terms that we usually have with our managed care providers. And this is just based on a few assumptions because we never really know until they've entered into the, until they've enrolled, and we've got a couple of years' experience. Our calculations for fees with Majoris is more closely



aligned to that of Providence and Kaiser in that they charge a per member enrollment fee and that's how they charge for services. MHN had a percent of savings that they had negotiated with their doctors, so it was a very one-off, unique way of doing things. This one brings us more in line with, again, a per enrollment type charge. So what we did here, and with the help of Stacy, I want to shout out to her with that, our numbers are very close, which is very good. What we did was used a projected number of claims for fiscal year 2023 and then for the half year 2028-2029 because we're already through part of the fiscal year. We used the average number of annual claims in the five years preceding the pandemic. The pandemic years were this one-off and the majority of claims during that time didn't require medical services, so we didn't want to use that in our numbers. But what we did with getting the average, which we have here at 344 claims, is then we made an assumption about usage. How many of our members will enroll in the Majoris MCO? 70% is our best assumption based on prior enrollment with MHN. And then we assume that the enrollment fees will increase by CPI each year. This is from their price sheet, they had put that it would increase so those are safe assumptions. And then we rounded up, just to allow for a higher claim volume, higher Majoris enrollment or higher inflation, any of those factors that can change these numbers. These are best estimates for now. We probably will need a year or two to really tell what our costs will be. In years past, we've had to adjust the contracts a little upward, because higher utilization means we're going to have more cost. And that's not a bad thing, it just means that our members are getting the services they need following an injury. So, this is what we have at \$450 million would be our NTE for this contract. Any questions on that?

**Director Hutchison:** Just to clarify, the NTE is not to exceed.

**Kim Mitchell:** Yes.

**Director Hutchison:** This will be written into the contract for five years coverage, this will be the max amount that we can pay. We won't pay it, it's only based on usage. This isn't going to be we're going to throw \$450 million at them. We're going to use this formula here that Kim has shown and after a couple of years, we'll evaluate, see if there's more usage or some other assumptions that are incorrect. We have with MHN, a couple of times, come back to the board asking for an addition to the not to exceed. I think we'll need to have two or three years under our belt before we'll want to come back and discuss this pricing with the board. At that point, we'll only do that if we expect the five years to exceed \$450 million. But we won't know, like Kim said, for a couple of years, two or three years, if we're off on our estimates at this point or the usage changed more than what we have put here on this chart.

We also have one additional thing that's happening that could put some stress on to these numbers is that both police and fire, or at least police, are going to increase the number of covered members. That's one of their goals. That could give us some numbers coming up that we haven't anticipated and we may see the same thing for fire. As number of covered employees under our plan increase, you may see an upward trend in the number of claims, which will put this here. Again, we won't see that for a couple of years but those are some of the stressors that could happen to push this up above the numbers. This is based on what we have for the assumptions now, Stacy, Kim and I have all looked at this and agree that the \$450 million is a very reasonable target for a not to exceed amount for a five-year contract.

**Kim Mitchell:** Any additional questions?

**Chair MacLeod:** It's sounding like perhaps no more questions so with that, I'll entertain a motion for us to approve Resolution No. 551 as drafted.

**Trustee Kulp:** I'll make a motion.

**Chair MacLeod:** Do we have a second?

**Trustee MacLowry:** Second.

**Chair MacLeod:** Thank you. All those in favor?

**Trustee Kulp:** Aye.

**Trustee MacLowry:** Aye.

**Trustee Kramer:** Aye.

**Chair MacLeod:** Aye. Thank you. Opposed? All right, the resolution passes.

**Kim Mitchell:** Thank you, all.

**Chair MacLeod:** Thank you very much, Kim. That was easy to follow.

**Kim Mitchell:** Great, thank you.

**Director Hutchison:** We will share a copy of the entire contract when it is signed with you so you can see that, and you should see the statement of work will be in it as well as the cost. The cost may be stated differently, but the NTE of \$450 million will be in the contract because that's what you've approved right now. So we'll make sure all the fees fit within that scale over the next five years given our present assumptions.

**Chair MacLeod:** Thank you. All right should we go to the next information items, which is just upcoming meetings?

#### **INFORMATION ITEM NO. ONE – FUTURE MEETING AGENDA ITEMS**

**Director Hutchison:** Yes, just upcoming meetings. So, in January, we have on here we're going to adopt the budget so Stacy will present the budget. She'll go over the new process for how we're doing the budget due to the organizational changes demanded by the charter and how the city is going to meet them. Action item B, we've just done that so that won't be on there. Then we will have for information items, the actuarial standard of practice memo from Lorne Dauenhauer. He's drafting the memo now and we'll send that out before the meeting, and then he can discuss it during the meeting. I will do a disability pension review and take two hypothetical employees, one a city of Portland firefighter or

police officer and then we'll take one who is a police officer in a PERS covered employer, not the city, and just compare the two how they work so you can get the feeling of how the two plans work.

We'll discuss the administrative rule amendment process because we're going to present you some rules for approval in March so we'll discuss what the process is, and we may do the FPDR strategic plan review. We'll see how much time this takes at this point. We can push that off, that's tentative at this time. There is one thing here also, in early February, the legislative session, state legislation begins. So, you will get a legislative update from me in January. I hope by that time I should have a good idea of any bills that impact PERS or workers' comp that will be presented. I'll give you an update on that. That's that time for next meeting unless you all had some changes to that. Then in March we'll do the annual adjustment review of the COLA, this will be for the FPDR 2 plan. Stacy will present this, and she'll also explain how COLA is done for FPDR 1, and then FPDR 3, we'll give you a recap of what PERS does for them.

We'll do the administrative rule changes and then we don't have any other info items other than our usual FPDR updates and expenses to go over at that time. In May, we have the follow-up, if necessary, for the COLA. Again, some years in the past we took two meetings and that's why we start this discussion in March. We'll have tax anticipation notes and then no other information items are determined at this time. And then we had, these were on your list to do, discussion of forming a committee to review the FPDR 2 pension plan, soliciting a study to compare the FPDR disability program to Oregon workers' comp. We'll do a board handbook review because we will be sending the update out here early next year, and then impact of the unionization of FPDR staff. Just a quick one on that, they are formally starting their union things on the city of Portland of professional workers and the city will start their negotiations in January so we'll only do this once that contract is approved, then we can tell you what that is. So this will be open, there's no set date except when the contract is done.

So, I don't know if you have any questions or ideas for the January meeting. Again, what you see here, 1 B we've taken out because we just did that. 1 D we may push off, that's just the plan review and we'll replace that with a legislative update for the 2024 short session.

**Chair MacLeod:** Okay. My sense is that the January meeting looks pretty full as is. So, do any of the other trustees, do you have thoughts about some of those future meeting topics? Do you have a preference for them being inserted in March or May's meeting at this point, or do you want to wait until next month's meeting to make some suggestions?

**Trustee MacLowry:** I don't have a feeling about it either way at this point.

**Chair MacLeod:** Okay. Well Sam unless you have concerns. I mean, it strikes me that your comparative examples of the disability pension benefits might be nice for us to hear before we think about, you know, then logically, discussion items one and two for future meeting topics might fit in March or May after we've kind of heard from you on that.

**Director Hutchison:** Okay.

**Chair MacLeod:** If you other trustees are comfortable with that, that would be my suggestion, okay. All right.

**Stacy Jones:** Chair MacLeod, can I just chime in a little bit on the budget just to give everyone a heads up? It's always a tight timeline to get the board, we always try to get you the official budget documents that that we'll turn in to the city budget office and city council so that should you stumble across them they won't look completely unfamiliar to you, but this year it will likely not be possible because they've pushed all the deadlines back for the city-wide budget process as we're undergoing this charter transformation and they're regrouping us into service areas, none of which is really going to impact our budget. It will just sort of impact the process, the formatting, and how things get put together. It doesn't sound like we'll even be able to be in the software systems until pretty close to the board meeting. So, what we're going to give you will be, we're going to try to mock something up that looks at least somewhat like what we've given you in the past, and my presentation to the board will look very similar to what it's looked like in the past. But I just wanted to give you a heads up that the documents won't look quite the same as they did in the past because we won't have access to them at the right time this year.

**Chair MacLeod:** Thanks for that heads up. I'm sure it's much more frustrating for you than it will be for us.

**Stacy Jones:** It's a wild time at the city, but you know. They like to change the budget process every couple of years anyway, so it's not like we haven't lived through this before. We haven't lived through this exact thing.

**Chair MacLeod:** Any other information items for today?

**Director Hutchison:** We have one thing here and thank you, Tom, for remaining. I wanted to acknowledge the passing of Del Stevens. He was quite a fixture with the FPDR bureau as well as the board, and extremely involved, as you saw. In the early 1990s, late 1980s, he was on the board of trustees, and he kept in touch with the board and contributed a lot of information and a lot of opinions and ideas he had for improving the plan. And I want to thank him for always looking out for our members, always thinking the best of the members, and making sure they got what he felt they needed and provided for them by the FPDR plan. Sometimes he and I had differences of opinion, but he was always extremely professional in how he did that. He was very professional with the staff and was always very helpful. Again, I wanted to thank him very much for his care and concern for the members and the support for the FPDR plan. He will be missed. He's been a fixture since I've been here. He and I have had many discussions as well as the staff and as well as the board with him, and I had anticipated more further discussions with him this year and in the future about his desire to add additional benefits and caring for our retirees. So, he will be missed, definitely.

**Chair MacLeod:** Absolutely, thank you, Sam. Unless there's anything further then, I'm going to adjourn our meeting. Everyone has a lovely holiday season. I look forward to seeing you all again in January.

**Director Hutchison:** See you all later.

**Kim Mitchell:** Thank you, you as well. Happy holidays.

**Stacy Jones:** Bye.



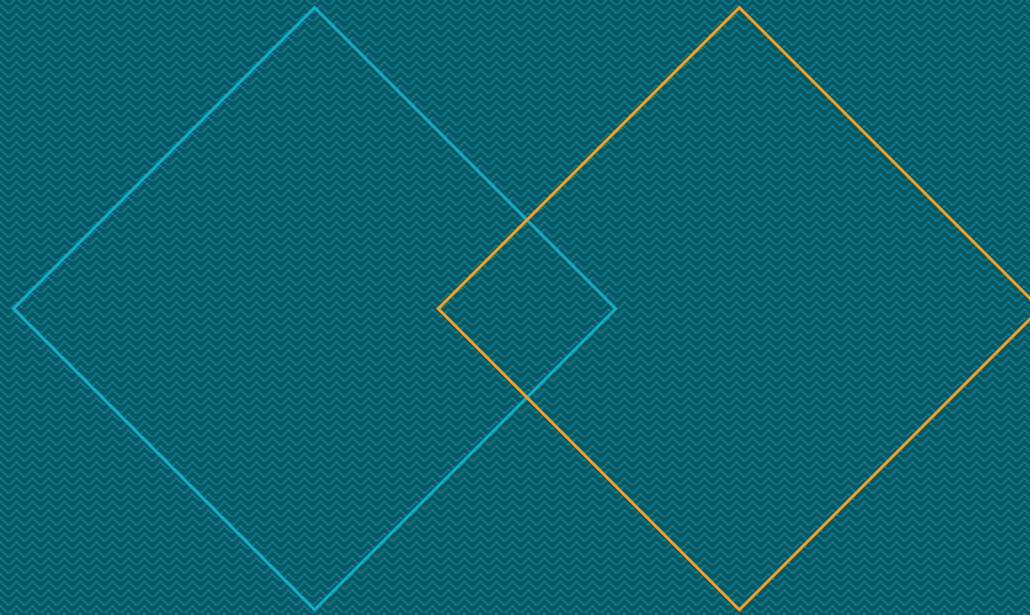
# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Action Items No. 1

Adopt 2024-2025 Budget



# FPDR Recommended Budget

**July 1, 2024 – June 30, 2025  
(FYE25)**

January 23, 2024

# FY 2024-25 Budget

## Compared to FY 2023-24 Projection & FY 2022-23 Actuals

	FYE23 Actuals	FYE24 Adopted Budget	FYE24 Projection	FYE25 Recommended Budget	Change: FYE24 Projection to FYE25
<b>Resources</b>					
Property Taxes	\$184.37	\$193.70	\$193.61	\$222.14	14.74%
Tax Anticipation Notes	-	38.00	32.57	48.00	47.39%
Miscellaneous	1.99	2.43	2.32	3.42	47.06%
Cash Transfers	-	0.75	-	0.75	
Beginning Fund Balance	29.97	24.21	26.31	16.22	-38.35%
<b>Total Resources</b>	<b>\$216.34</b>	<b>\$259.09</b>	<b>\$254.81</b>	<b>\$290.53</b>	<b>14.02%</b>

<b>Requirements</b>					
FPDR 1 & 2 Pensions	\$147.46	\$152.24	\$151.63	\$161.93	6.79%
FPDR 3 PERS Contributions	30.90	40.73	41.47	50.56	21.92%
Disability & Death Benefits	6.32	7.53	7.33	7.80	6.51%
Administration & Delivery	4.61	4.73	4.90	5.46	11.35%
Fund-Level Requirements	45.61	53.86	33.26	64.78	94.77%
Ending Fund Balance	(18.55)	-	16.22	(0.00)	-100.00%
<b>Total Requirements</b>	<b>216.34</b>	<b>259.09</b>	<b>254.81</b>	<b>290.53</b>	<b>14.02%</b>
Total Net of TANs	\$216.34	\$221.09	\$ 222.25	\$ 242.53	9.13%
<b>Operating Expenses</b>	<b>\$189.28</b>	<b>\$205.23</b>	<b>\$205.33</b>	<b>\$225.75</b>	<b>9.94%</b>

# Forecast Summary Resources

## Five-Year Forecast Summary (\$ Millions)

	FYE23 Actuals	FYE24 Adopted Budget	FYE24 Projection	FYE25 Recomm- ended Budget	FYE26 Forecast	FYE27 Forecast	FYE28 Forecast	FYE29 Forecast
<b>Resources</b>								
Property Taxes	\$184.37	\$193.70	\$193.61	\$222.14	\$246.28	\$265.46	\$288.99	\$312.56
Tax Anticipation Notes	-	38.00	32.57	48.00	53.00	58.00	64.00	70.00
Miscellaneous	1.99	2.43	2.32	3.42	4.33	4.62	5.07	5.44
Cash Transfers	-	0.75	-	0.75	0.75	0.75	0.75	0.75
Beginning Fund Balance	29.97	24.21	26.31	16.22	14.00	17.00	19.00	20.00
<b>Total Resources</b>	\$ 216.34	\$ 259.09	\$ 254.81	\$ 290.53	\$ 318.35	\$ 345.84	\$ 377.81	\$ 408.75



# Forecast Summary Requirements

Five-Year Forecast Summary (\$ Millions)								
	FYE23 Actuals	FYE24 Adopted Budget	FYE24 Projection	FYE25 Recomm- ended Budget	FYE26 Forecast	FYE27 Forecast	FYE28 Forecast	FYE29 Forecast
<b>Requirements</b>								
Retirement Benefits	\$178.36	\$192.97	\$193.10	\$212.49	\$231.23	\$250.97	\$275.13	\$297.32
Disability & Death Benefits	6.32	7.53	7.33	7.80	8.02	8.34	8.63	8.87
Administration	4.61	4.73	4.90	5.46	5.74	5.95	6.20	6.43
Fund-Level Requirements	45.61	53.86	33.26	64.78	73.36	80.58	87.85	96.12
Ending Fund Balance	(18.55)	-	16.22	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
<b>Total Requirements</b>	<b>\$ 216.34</b>	<b>\$ 259.09</b>	<b>\$ 254.81</b>	<b>\$ 290.53</b>	<b>\$ 318.35</b>	<b>\$ 345.84</b>	<b>\$ 377.81</b>	<b>\$ 408.75</b>
<b>Total Net of TANs</b>	<b>\$ 216.34</b>	<b>\$ 221.09</b>	<b>\$ 222.25</b>	<b>\$ 242.53</b>	<b>\$ 265.35</b>	<b>\$ 287.84</b>	<b>\$ 313.81</b>	<b>\$ 338.75</b>

# • Follow Up from Last Year •



## INFLATION

City economist predicted inflation of 7.9% for 2022 and 2.9% for 2023

- ✓ Actual inflation was 7.6% and 3.3% respectively
- ✓ Measure used is CPI-W for West Size Class A, Half 2 to Half 2

Projections were reasonably close

- ✓ However, under-projection in 2023 has larger impact to FPDR costs



## FUND BALANCE

Coming out of the pandemic had almost \$30 M in fund balance:

- ✓ Last year's goal was to reduce that to \$24 M by July 1, 2023
- ✓ Wound up with \$26 M in fund balance on July 1, 2023

Would still like to spend down fund balance to no more than \$22 M over next two years



## POLICE AND FIRE HIRING

Slow Police hiring was keeping PERS contribution costs low. Did it continue?

- ✓ Projected: 135 Police and 50 Fire hires 7/1/22 – 11/30/23
- ✓ Actual: 94 Police and 27 Fire hires 7/1/22 – 11/30/23

Police hiring still slower than estimated, but much improved

Fire hiring pulled back because of budget concerns

For PERS costs, much (perhaps all) of the slower hiring is being offset by higher OT costs

# Different This Year



## NO OPEN SWORN LABOR CONTRACTS

Unresolved or expiring sworn labor contracts are nearly always a major risk for the FPDR budget – not for FYE25!

- ✓ PPA contract in place until June 30, 2025
- ✓ PFFA contract in place until June 30, 2027
- ✓ PPCOA contract in place until June 30, 2027



## CONSTRAINT ENVIRONMENT & EXTENSIVE UNCERTAINTY FOR CITYWIDE BUDGET

General Fund forecast predicts revenues will not keep pace with City commitments over long term

- Mayor requiring 5% automatic “constraints” in FYE25 for all non-public safety General Fund & internal service bureaus
- ✓ Creates financial difficulties and uncertainties for some partner bureaus
  - ✓ May ultimately impact Police and Fire budgets despite initial exemption



## CITY GOVERNMENT RESTRUCTURING

New form of government will increase some FPDR costs

- ✓ Don’t yet know by how much or for what
- ✓ Budget placeholder for now

Citywide budget process pushed back two weeks

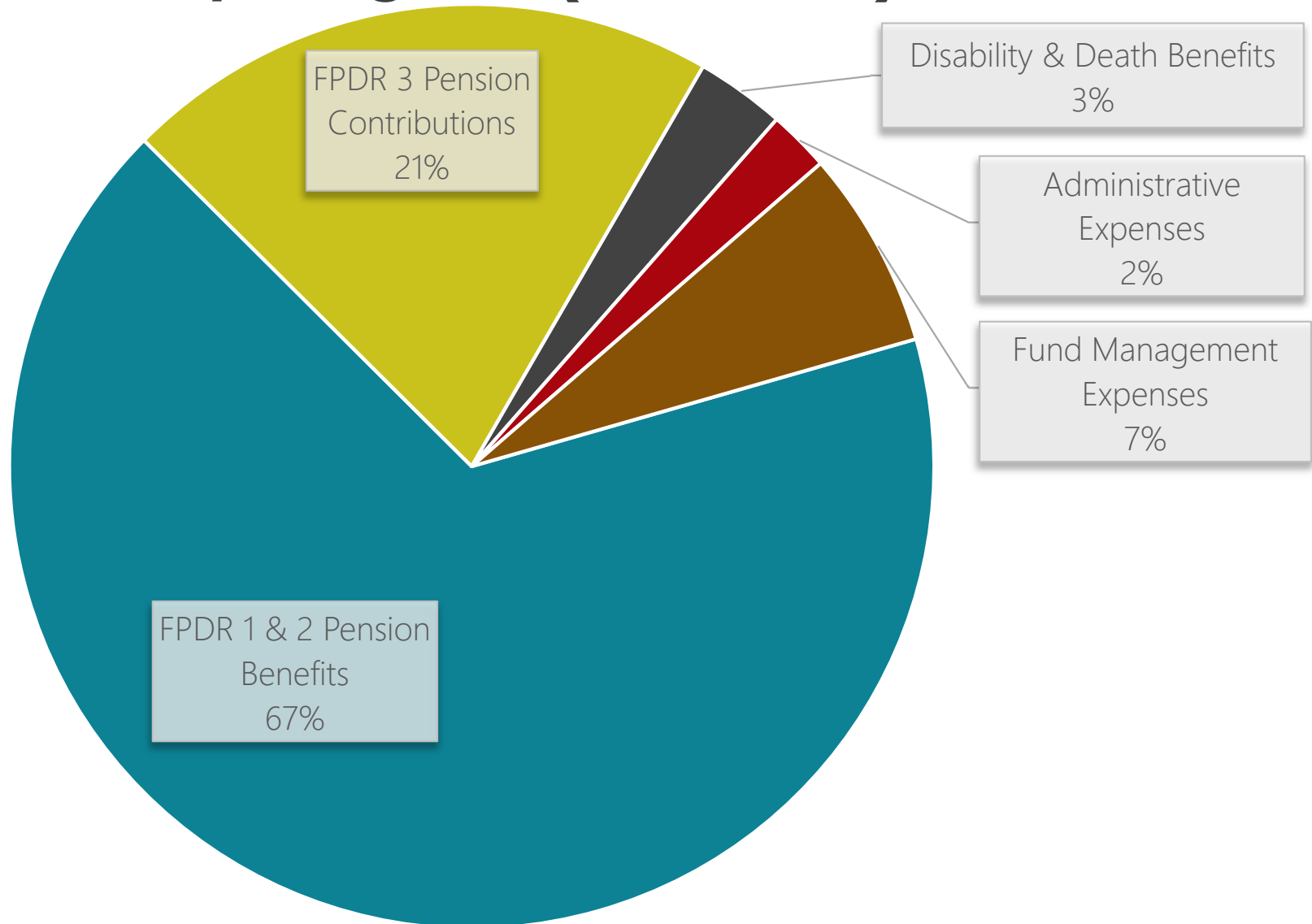
- ✓ Delays budget estimates for many services
- ✓ Police agreements still under negotiation

Some technical/procedural items critical to budget development delayed or not yet in place

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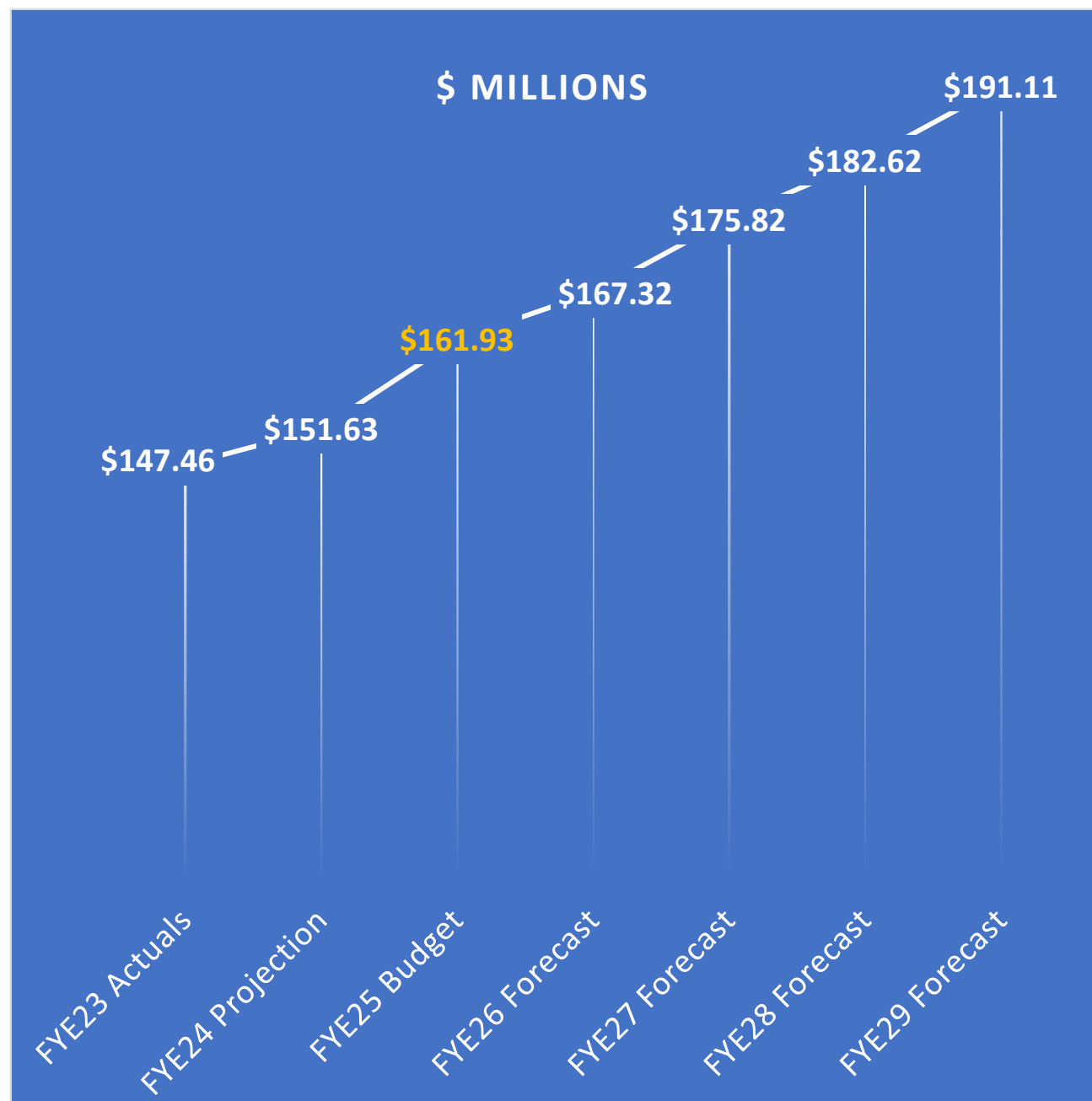
More uncertainty for FPDR Budget, but generally in small ways

# FYE25 Expense Overview By Program (\$ Millions)



■ FPDR 1 & 2 Pension Benefits    ■ FPDR 3 Pension Contributions    ■ Disability & Death Benefits  
■ Administrative Expenses    ■ Fund Management Expenses

# Benefits: FPDR One And Two Pension Payments



For FYE25:

- ↑ 7.6% for FPDR Two
  - ↓ 2.4% for FPDR One
    - FPDR One=Just \$12.1 M
- \$\$

Growth Rate Unusually High:

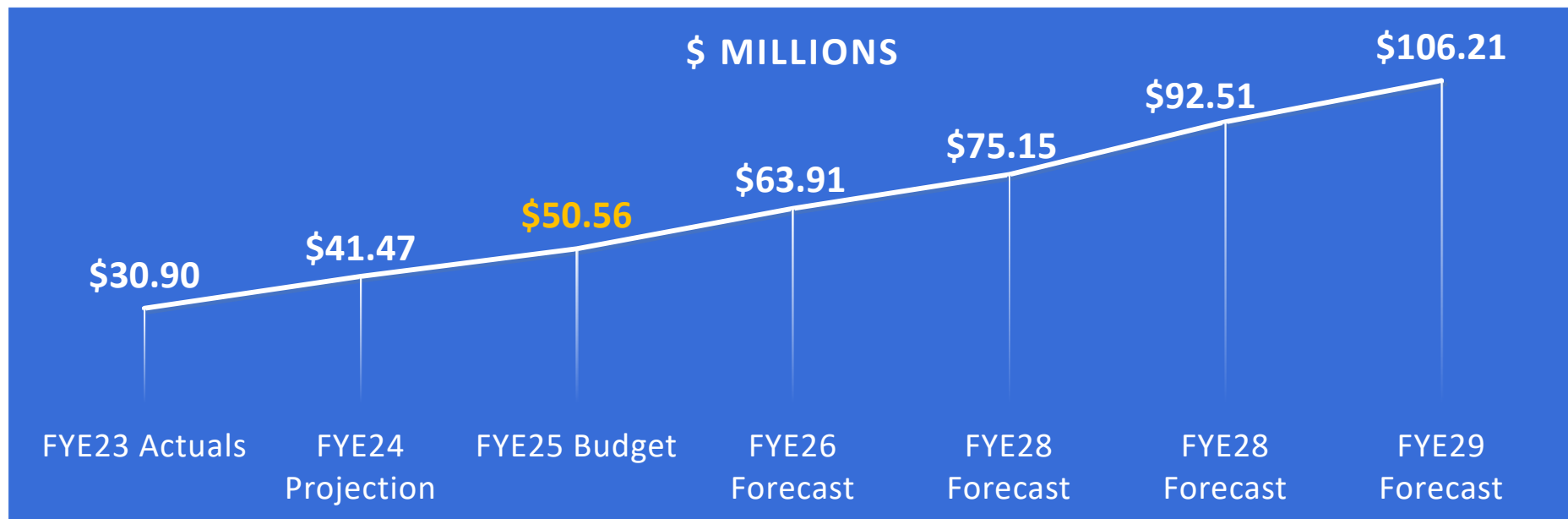
- For current FY (FYE24), project retirements (85) will far exceed deaths (60)
- Rapid final pay increases:
  - FYE24: 5.0% Police, 6.43% Fire
  - FYE25: 7.5% Police, 4.77% Fire

\$\$

New Retirements Cost More Than Deaths Save:

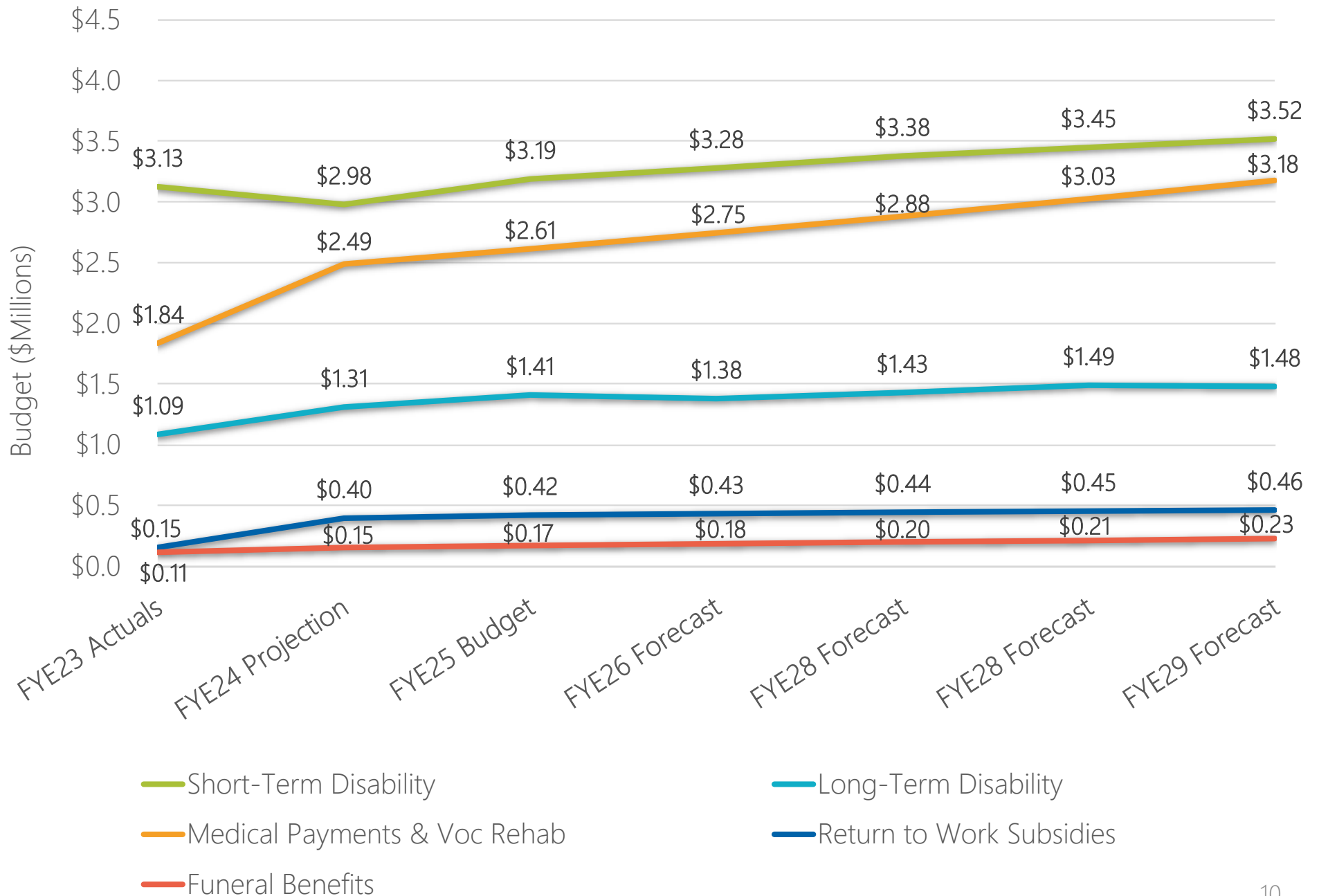
- Average current FPDR 1 benefit: \$4,051
- Median new retiree benefit, last two years: \$7,648

# Benefits: PERS Contributions



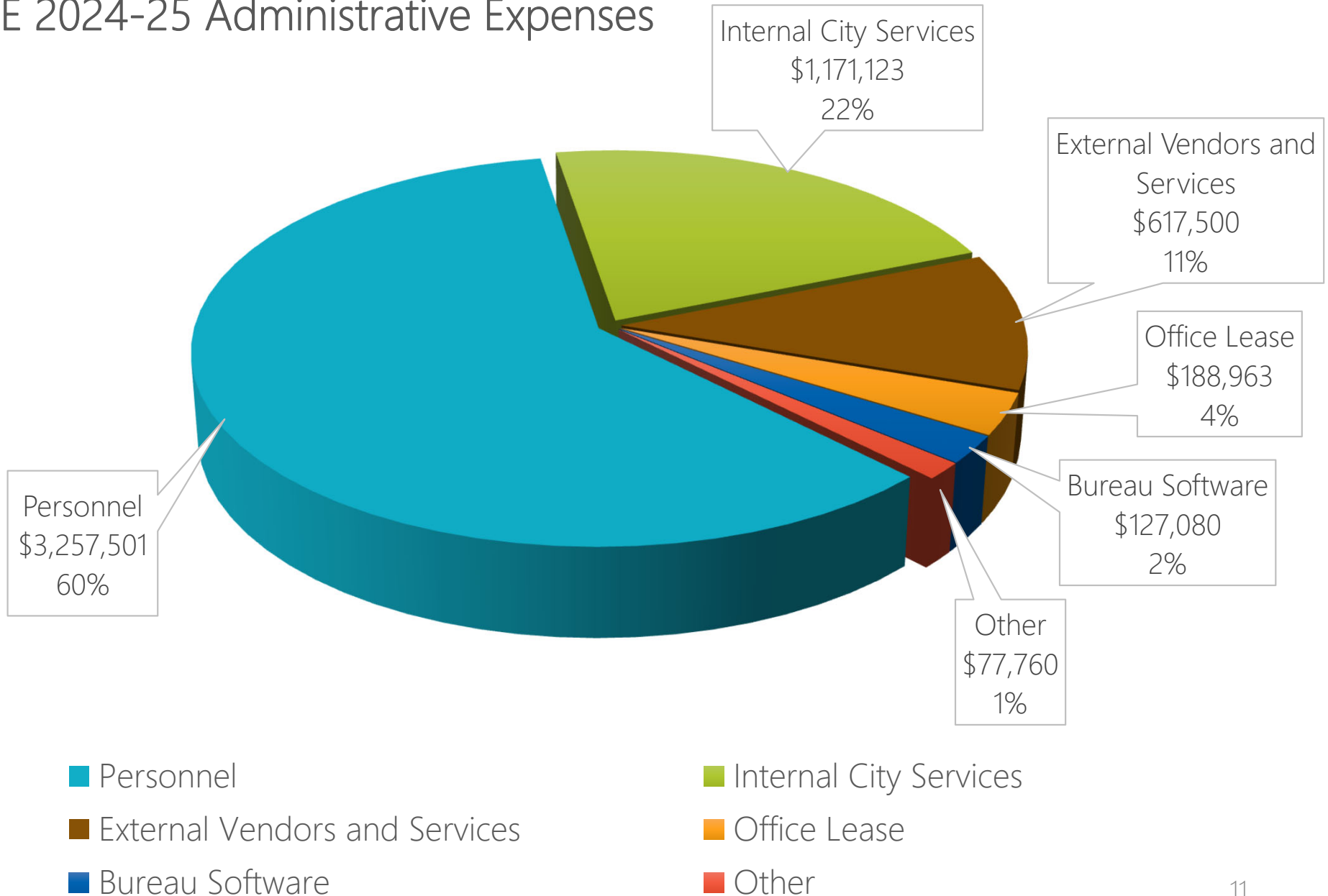
PERS Contributions Growth Factors							
	FYE23 Actuals	FYE24	FYE25	FYE26	FYE27	FYE28	FYE29
FPDR Three Members	<b>798</b>	<b>855</b>	<b>931</b>	<b>1,004</b>	<b>1,080</b>	<b>1,152</b>	<b>1,260</b>
OPSRP Public Safety Contribution Rate	22.72%	24.91%	24.91%	29.91%	29.91%	34.91%	34.91%
IAP Contribution Rate	9.00%	9.00%	9.00%	9.00%	9.00%	9.00%	9.00%
Total PERS Contribution Rate	<b>31.72%</b>	<b>33.91%</b>	<b>33.91%</b>	<b>38.91%</b>	<b>38.91%</b>	<b>43.91%</b>	<b>43.91%</b>
Wage COLAs	5.00%	5.00%	3.70%	2.50%	2.20%	2.00%	2.00%
Promotional Wage Growth	4.60%	4.60%	4.59%	4.59%	4.59%	4.59%	4.59%
Real Wage Growth	0.00%	0.70%	2.68%	0.21%	1.05%	0.00%	0.00%
Total Wage Growth	<b>9.60%</b>	<b>10.30%</b>	<b>10.97%</b>	<b>7.30%</b>	<b>7.63%</b>	<b>6.59%</b>	<b>6.59%</b>

# Benefits: Disability



# Administration: Operating the Plan

## FYE 2024-25 Administrative Expenses






# Operating the Plan: \$5.46 M for FYE25


## Personnel (60%):

- 18 positions with annual salaries ranging from \$66K - \$198K, plus benefits
- Benefit costs include health insurance (\$6K-\$27K per employee), PERS (26.12%-29.6%), FICA<sup>1</sup> (7.65%), TriMet/PLO<sup>1</sup>/WC (1.2%-1.5%), Walk/Bike Bucks
- Budgeted to increase in FYE25 for:
  - ✓ 3.7% wage COLA and 3.6% health benefit cost increase (estimated)
  - ✓ Pay increases for employees not already at top of wage scale:
    - 2% for non-represented and CPPW employees (estimated)
    - 5.15% for one DCTU employee (actual)

## Internal Materials and Service (22%):

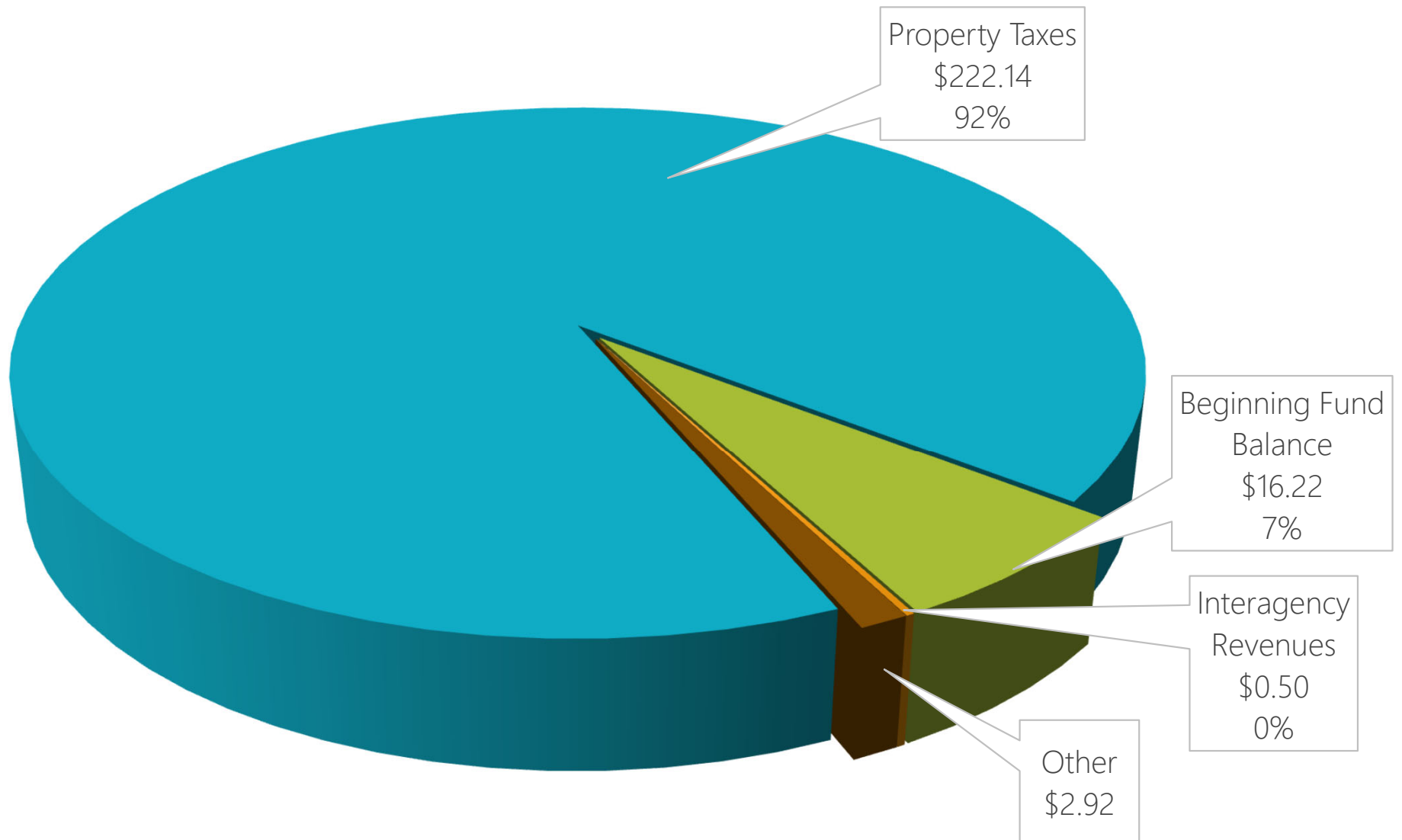
- Largest items: City Attorney's Office (\$352K) and Technology Services (\$244K)
- Growing more than inflation:  8.7% for next year
- Growth is DESPITE applying Mayor's 5% cut constraint

## Everything Else (18%):

- Largest items: claim review expenses (\$307K) and office lease (\$189K)
- Growing a bit faster than inflation:  6.5% for next year
  - ✓ FYE25 includes fund valuation and levy analysis
  - ✓ Conservative budgeting for software, since only item in capital category

<sup>1</sup> Only paid on wages up to a specified maximum

# FYE25 Revenue Overview (\$ Millions)



■ Property Taxes   ■ Beginning Fund Balance   ■ Interagency Revenues   ■ Other

# • Property Tax Revenues •



- Property taxes each year =  
Expense requirements -  
Beginning fund balance -  
Other revenues

\$\$

- Therefore, property taxes generally grow in line with expenses, adjusted for changes in fund balance
  - Other revenues are too small to impact much

\$\$

Expenditure growth for  
FYE25: 10.3%  
+

Planned decline in fund  
balance for FYE25: 3.9%  
=

Tax revenue growth for  
FYE25: 14.7%

# Property Tax Levy

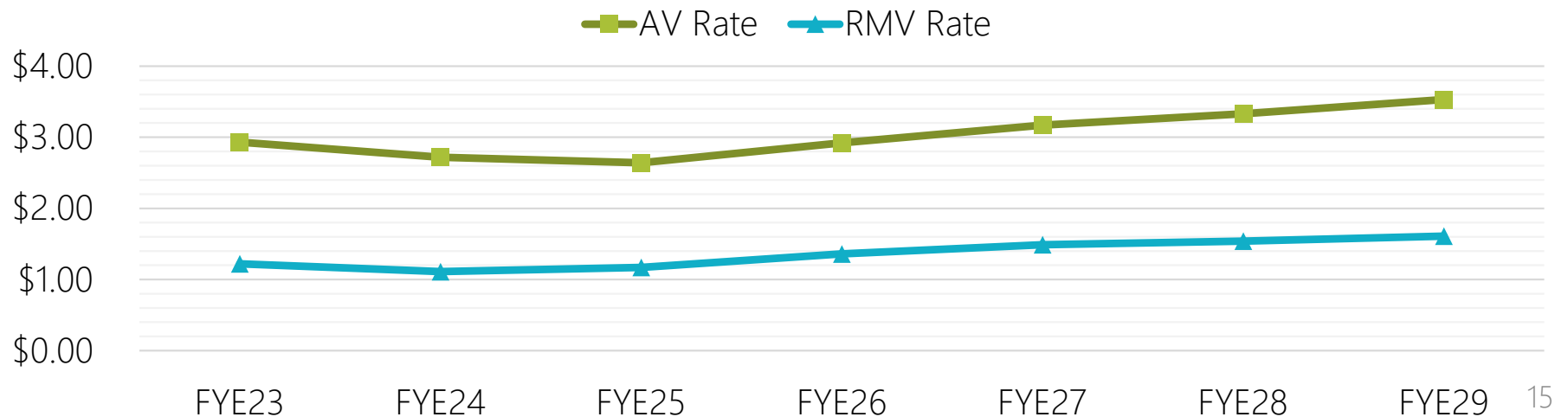
## Major Assumptions and Projections

### PROPERTY TAX LEVY ASSUMPTIONS

	FYE23 Actuals	FYE24	FYE25	FYE26	FYE27	FYE28	FYE29
Real Market Value (RMV) Growth	7.0%	0.0%	0.0%	2.0%	4.0%	4.0%	4.0%
Assessed Value (AV) Growth	4.5%	8.8%	5.0%	2.5%	2.5%	2.5%	4.1%
Compression	-4.5%	-4.0%	-5.0%	-5.3%	-5.3%	-5.3%	-5.5%
Discounts/Delinquencies	-4.6%	-4.7%	-4.7%	-5.0%	-4.7%	-4.5%	-4.5%
RMV (Millions)	\$178,529	\$178,529	\$178,529	\$182,099	\$189,383	\$196,959	\$204,837
AV (Millions)	\$72,889	\$79,274	\$83,250	\$85,319	\$87,440	\$89,615	\$93,331

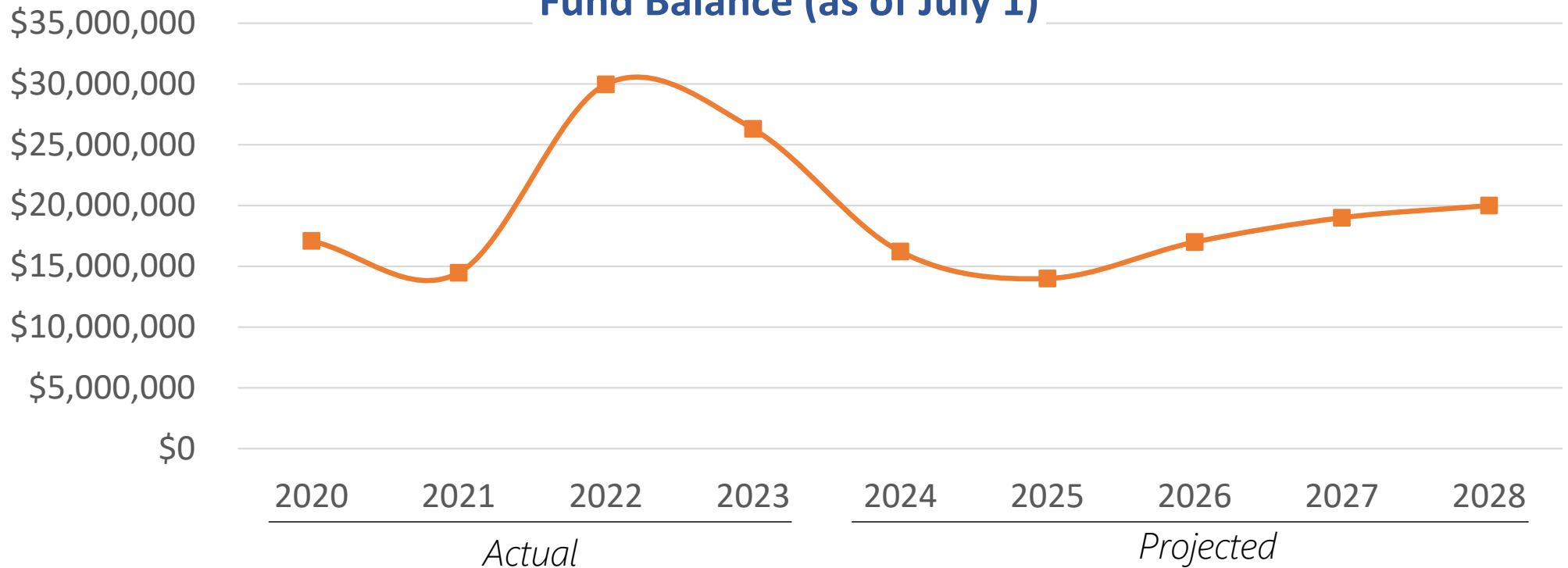
### PROPERTY TAX LEVY PROJECTIONS

	FYE23 Actuals	FYE24	FYE25	FYE26	FYE27	FYE28	FYE29
CY Taxes Required (Millions)	\$181.3	\$191.5	\$220.0	\$243.8	\$262.7	\$286.1	\$309.4
Assessed Value (AV) Tax Rate	\$2.7182	\$2.6403	\$2.9188	\$3.1748	\$3.3276	\$3.5276	\$3.6728
Real Market Value (RMV) Tax Rate	\$1.1098	\$1.1724	\$1.3611	\$1.4875	\$1.5364	\$1.6050	\$1.6735



# Managing the Fund

Fund Balance (as of July 1)



Must pay “overhead” for Citywide services:

- Examples are Emergency Management, Human Resources
- \$145K for FY 2024-25

\$\$

New overhead this year, for City restructuring:

- *General*: City Council expansion; new City Administrator and staff
- *Our Service Area*: Deputy City Administrator and staff, perhaps some shared services
- Placeholder in budget for now

\$\$

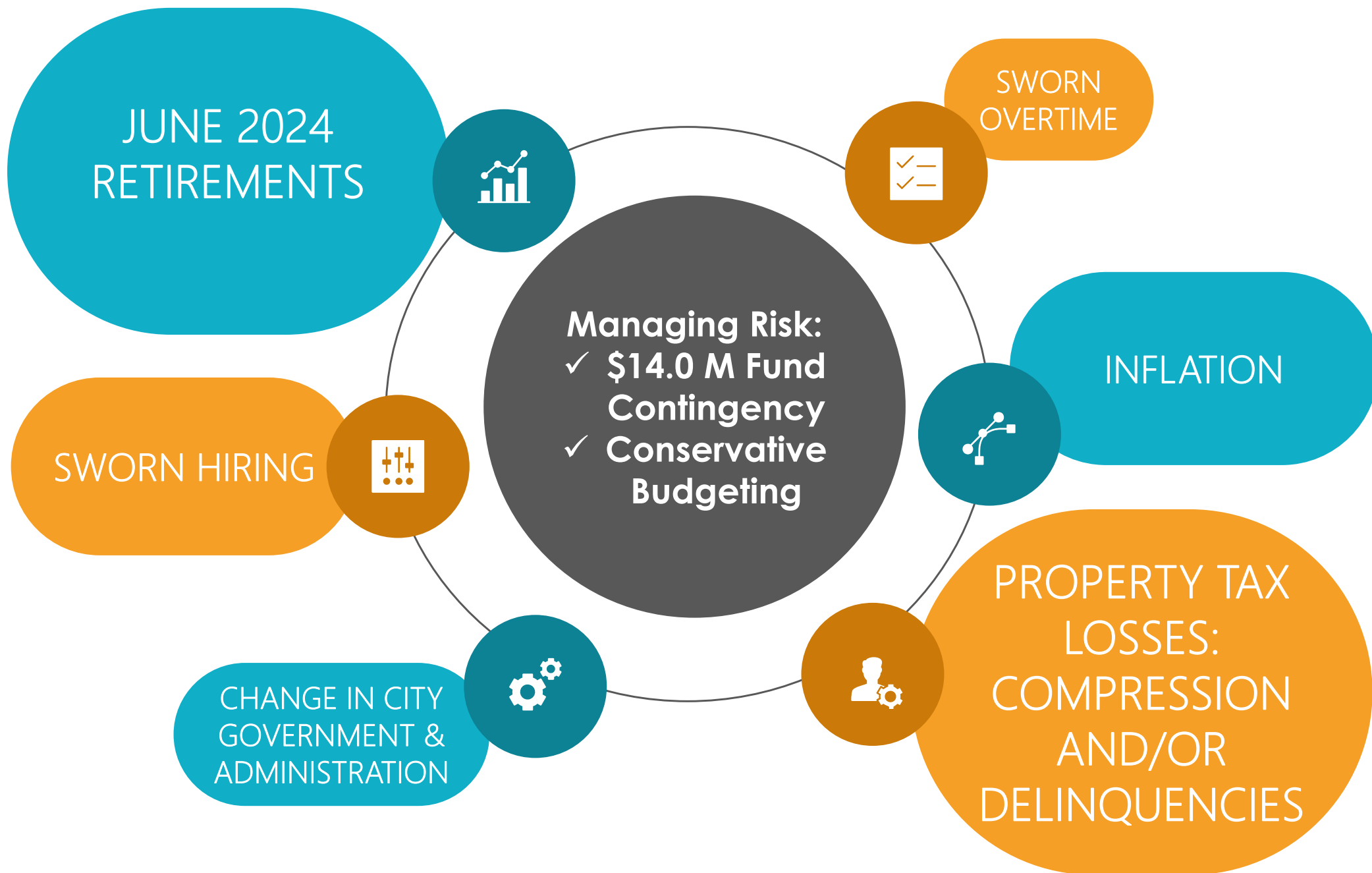
Must manage our own cash flow:

- Example: Issuing TANS
- TAN interest/issuance cost \$1.8 M-\$3.1 M per year, but (usually) more than offset by arbitrage earnings

But also earn interest on our own fund balance:

- \$2.8 M-\$4.6 M per year

# Risks to the Forecast



# • Key Budget Take Aways •



## FYE24 COULD BE SECOND HIGHEST RETIREMENT YEAR ON RECORD

Projecting 85 retirements (49 so far)

Previous high was 106 in FYE21

Many retirements will be in June 2024 (27 pay date month)

Will not know full impact to FYE25 pension budget and Police/Fire hiring projections until start of next fiscal year



## NO RMV GROWTH = HIGHER RMV TAX RATE

City Economist projecting ZERO RMV growth again in FYE25

- ✓ Never projected 0% growth 2 years in row
- ✓ Was 0.15% for FYE24
- ✓ Downtown and commercial concerns

That raises projected FPDR RMV tax rate to \$1.36 for FYE25

- ✓ FYE25 tax rate projected at \$1.33 one year ago and \$1.30 two years ago



## INFLATION TEMPERING, BUT PAST INFLATION BAKED INTO FUTURE COSTS

Inflation expected to continue cooling for next 1 - 2 years and then drop under 2.5%

However, inflation forecasts remain unusually uncertain

Wage increases awarded in response to past inflation will continue to come online for next 3 years



## PERS CONTRIBUTIONS BECOMING REAL BUDGET FACTOR

Now that FPDR 3 members are half the workforce:

- ✓ Volatility from factors like OT have bigger impact
- ✓ Larger overall budget
  - Size also makes volatility harder to manage

As FPDR 3 members age, trying to project promotion and premium assignment rates as well as hiring rates



Questions?

Changes?





**Future  
Adjustments**

**Motion to Adopt**

# Bureau of Fire and Police Disability and Retirement

**Rene Gonzalez,**  
**Commissioner in Charge**

Samuel Hutchison, Director



**FYE25 Recommended  
Budget**

## Bureau Summary

### Bureau Mission

The mission of the Bureau of Fire & Police Disability & Retirement is to deliver peace of mind to our fire and police members and their survivors by providing disability and retirement benefits in a timely, compassionate, and fiscally responsible manner.

### Bureau Overview

The Bureau of Fire & Police Disability & Retirement (FPDR) consists of four programs: two retirement programs—FPDR Pension Benefits and Sworn PERS Contributions—plus the Disability and Death Benefits program and the Administration and Support program. FPDR serves plan members in three distinct tiers: FPDR One members are those who were retired or on long-term disability before January 1, 1990; FPDR Two members are those who were working or hired between December 31, 1989 and December 31, 2006; and FPDR Three members are those who were hired after December 31, 2006. The FPDR Plan provides pension and disability benefits for FPDR One and Two members, but only disability benefits for FPDR Three members. In addition, the FPDR Fund finances contributions to the Oregon Public Employees Retirement System (PERS) for FPDR Three members, who are enrolled in the pre-funded PERS Plan for pension benefits. FPDR benefits and administrative expenses are funded by a dedicated FPDR property tax levy, separate from the City's general government levy. The FPDR levy is capped at \$2.80 per \$1,000 of real market value by City Charter.

#### FPDR Pension Benefits

The FPDR Pension Benefits program pays direct monthly pension benefits to FPDR One and Two members, and their survivors and alternate payees (former spouses). The program also provides pension estimates, retirement counseling, and retirement workshops for FPDR Two members who are still working. The Pension Benefits program represents 71.9% of total bureau requirements for FY 2024-25. As of January 1, 2024 there were 2,108 people receiving pension benefits: 255 FPDR One beneficiaries and 1,853 FPDR Two beneficiaries. The FY 2024-25 Recommended Budget for FPDR Pension Benefits is \$162.3 million. This is an increase of \$9.9 million or 6.5% over the FY 2023-24 Revised Budget, a slightly higher annual growth rate than usual. With two advantageous 27 pay date retirement months in the current fiscal year, FPDR projects that retirements will far exceed beneficiary deaths in FY 2023-24. In addition, inflation has resulted in unusually rapid wage growth for the sworn workforce (4.8% to 7.5% annually over the last two years). This in turn raises the cost of future pensions for new retirees.

#### FPDR Disability and Death Benefits

The Disability and Death Benefits program oversees an approved substitute workers' compensation program for the City's sworn employees, as well as a disability program for non-work injuries and illnesses. Thus, the program administers both service-connected and nonservice disability claims and disability benefits, including wage replacement for lost time from work, medical care expenses, vocational rehabilitation, and funeral benefits. The Disability and Death Benefits program represents 4.2% of total bureau requirements for FY 2024-25. The

Recommended Budget for this program is \$9.6 million, which is \$0.5 million or 6.1% more than in FY 2023-24. Disability expenses have dropped from the all-time highs reached during the pandemic, as COVID infections and mandatory quarantine periods have eased. However, time loss benefits (wage replacement for missed work) remain significantly higher than before the pandemic because of wage inflation and other factors.

**Sworn PERS Contributions**

The Sworn PERS Contributions program manages reimbursements to Portland Fire & Rescue and the Portland Police Bureau for PERS contributions made on behalf of FPDR Three members. The program represents a growing proportion of total bureau requirements, 22.4% for FY 2024-25, up from 16.8% in FY 2023-24 and 14.1% in FY 2022-23. Program expenditures are budgeted at \$50.6 million for FY 2024-25, an increase of \$9.8 million or 24.1% over the FY 2023-24 Revised Budget. This is a similar growth rate as in past years. Increases are due to the aforementioned wage growth and a recent spike in public safety overtime spending, as well as to structural factors: the rising proportion of the sworn workforce hired after 2006 and the movement of this younger group of employees through the police officer and fire fighter pay steps, as well as their increasing promotion rates and specialty pay assignments as they spread through the ranks. This program will experience exponential expenditure growth until all or nearly all active sworn employees are FPDR Three members, projected to occur in the mid-2030s. At that point, cost increases will be limited to growth in wages and PERS contribution rates. FPDR Three members were 56% of the workforce on July 1, 2023.

**Administration and Support**

The Administration and Support program includes the costs of operating the bureau and administering the benefits described above. The program is comprised of office management and frontline member service; executive leadership; and financial, legal, and technology business systems support. The Administration and Support budget represents 1.5% of total bureau requirements for FY 2024-25. Bureau expenditures in the Administration and Support program for FY 2024-25 are budgeted at \$3.3 million. Program expenses include a \$200,000 placeholder amount for costs associated with the transition to a new form of City government on January 1, 2025, as directed by Portland voters in 2022. Like all City bureaus, FPDR will share in the costs of an expanded City Council, as well as a new City Administrator and Deputy City Administrators. FPDR also anticipates fresh opportunities to pool resources for shared specialist services, such as communications and equity management.

**Base Budget Adjustments**

FPDR has not made significant realignments or adjustments to its baseline budget for FY 2024-25.

# Bureau of Fire & Police Disability & Retirement

Budget & Finance Service Area

## Fire & Police Disability & Retirement

### Resources

		2021-22 Actuals	2022-23 Actuals	2023-24 Revised Budget	2024-25 Recommended Budget
External Revenues	Taxes	\$ 194,147,019.68	\$ 183,562,429.73	\$ 193,701,162.00	\$ 222,144,981.00
	Charges for Services	\$ 30.30	\$ 15.30	\$ -	\$ -
	Miscellaneous	\$ 469,055.07	\$ 1,688,100.60	\$ 1,980,800.00	\$ 2,922,000.00
	Bond & Note Proceeds	\$ 38,542,500.00	\$ 28,000,000.00	\$ 38,000,000.00	\$ 48,000,000.00
External Revenues Total:		\$ 233,158,605.05	\$ 213,250,545.63	\$ 233,681,962.00	\$ 273,066,981.00
		2021-22 Actuals	2022-23 Actuals	2023-24 Revised Budget	2024-25 Recommended Budget
Internal Revenues	Interagency Revenue	\$ 324,343.46	\$ 405,346.66	\$ 445,500.00	\$ 496,300.00
	Fund Transfers - Revenue	\$ -	\$ -	\$ 1,500,000.00	\$ 750,000.00
Internal Revenues Total:		\$ 324,343.46	\$ 405,346.66	\$ 1,945,500.00	\$ 1,246,300.00
		2021-22 Actuals	2022-23 Actuals	2023-24 Revised Budget	2024-25 Recommended Budget
Beginning Fund Balance		\$ 15,217,675.00	\$ -	\$ 24,959,481.00	\$ 16,970,577.00
Resources Total:		\$ 248,700,623.51	\$ 213,655,892.29	\$ 260,586,943.00	\$ 291,283,858.00

## Fire & Police Disability & Retirement

### Requirements

		2021-22 Actuals	2022-23 Actuals	2023-24 Revised Budget	2024-25 Recommended Budget
Fund Expense	Fund Transfers - Expense	\$ 136,693.00	\$ 171,249.00	\$ 1,651,673.00	\$ 907,769.00
	Contingency	\$ -	\$ -	\$ 13,980,376.00	\$ 14,000,000.00
	Debt Service	\$ 38,689,771.04	\$ 28,418,299.25	\$ 38,978,478.00	\$ 49,876,062.00
	<b>Fund Expense Total:</b>	<b>\$ 38,826,464.04</b>	<b>\$ 28,589,548.25</b>	<b>\$ 54,610,527.00</b>	<b>\$ 64,783,831.00</b>

		2021-22 Actuals	2022-23 Actuals	2023-24 Revised Budget	2024-25 Request - V52 - No DP
Bureau Expense	External Materials & Services	\$ 148,555,724.16	\$ 154,636,303.49	\$ 160,060,955.00	\$ 170,280,703.00
	Internal Materials & Services	\$ 28,006,617.30	\$ 32,082,703.34	\$ 42,131,339.00	\$ 52,151,823.00
	Capital Outlay	\$ 39,780.00	\$ 59,020.00	\$ 55,093.00	\$ 60,000.00
	Personnel	\$ 2,607,578.16	\$ 2,771,576.25	\$ 2,979,029.00	\$ 3,257,501.00
	<b>Bureau Expense Total:</b>	<b>\$ 179,209,699.62</b>	<b>\$ 189,549,603.08</b>	<b>\$ 205,226,416.00</b>	<b>\$ 225,750,027.00</b>

	<b>Requirements Total:</b>	<b>\$ 248,700,623.51</b>	<b>\$ 218,139,151.33</b>	<b>\$ 260,586,943.00</b>	<b>\$ 291,283,858.00</b>
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Program Budget View	2021-22 Actuals	2022-23 Actuals	2023-24 Revised Budget	2024-25 Recommended Budget
Administration & Support	\$ 2,615,735.12	\$ 2,923,874.20	\$ 3,057,373.00	\$ 3,305,171.00
Disability and Death Benefits	\$ 7,970,546.68	\$ 8,092,499.52	\$ 9,033,553.00	\$ 9,579,669.00
FPDR Pension Benefits	\$ 141,810,928.92	\$ 147,637,658.43	\$ 152,405,490.00	\$ 162,305,187.00
Sworn PERS Contributions	\$ 26,812,488.90	\$ 30,895,570.93	\$ 40,730,000.00	\$ 50,560,000.00
<b>Total Programs:</b>	<b>\$ 179,178,353.24</b>	<b>\$ 189,206,510.35</b>	<b>\$ 205,226,416.00</b>	<b>\$ 225,750,027.00</b>

# Bureau of Fire & Police Disability & Retirement

Public Safety Service Area

## Fire & Police Disability & Retirement

### FY 2024-25 Recommended Personnel Budget

Job Classification	FTE	Salary		Benefit	Statutory	Total
		Supplemental				
30003978 - Analyst I - CPPW	1.00	\$ 114,982.00		\$ 50,226.00	\$ 8,796.00	\$ 174,004.00
Retirement System Payments Subtotal	1.00	\$ 114,982.00		\$ 50,226.00	\$ 8,796.00	\$ 174,004.00

### Disability & Death Benefits

Job Classification	FTE	Salary		Benefit	Statutory	Total
		Supplemental				
30003979 - Analyst II - CPPW	1.00	\$ 115,773.00		\$ 54,468.00	\$ 8,857.00	\$ 179,098.00
30003978 - Analyst I - CPPW	1.00	\$ 114,982.00		\$ 54,228.00	\$ 8,796.00	\$ 178,006.00
30003978 - Analyst I - CPPW	1.00	\$ 108,888.00		\$ 48,584.00	\$ 8,330.00	\$ 165,802.00
30003979 - Analyst II - CPPW	1.00	\$ 102,627.00		\$ 46,899.00	\$ 7,851.00	\$ 157,377.00
30003081 - Manager I	1.00	\$ 151,798.00		\$ 65,427.00	\$ 11,613.00	\$ 228,838.00
30000066 - Claims Technician	1.00	\$ 78,374.00		\$ 40,316.00	\$ 5,995.00	\$ 124,685.00
30000065 - Claims Technician, Assistant	1.00	\$ 66,144.00		\$ 37,005.00	\$ 5,060.00	\$ 108,209.00
30000063 - Accountant II	1.00	\$ 89,107.00		\$ 46,323.00	\$ 6,817.00	\$ 142,247.00
30003979 - Analyst II - CPPW	1.00	\$ 122,637.00		\$ 52,289.00	\$ 9,381.00	\$ 184,307.00
Disability & Death Benefits Subtotal	9.00	\$ 950,330.00		\$445,539.00	\$ 72,700.00	\$1,468,569.00

### Administration

Job Classification	FTE	Salary		Benefit	Statutory	Total
		Supplemental				
30003987 - Financial Analyst III - CPPW	1.00	\$ 113,006.00		\$ 49,694.00	\$ 8,645.00	\$ 171,345.00
30003012 - Business Systems Analyst III	1.00	\$ 132,545.00		\$ 59,552.00	\$ 10,140.00	\$ 202,237.00
30003077 - Legal Assistant	1.00	\$ 82,971.00		\$ 41,579.00	\$ 6,347.00	\$ 130,897.00
30003037 - Director I	1.00	\$ 197,662.00		\$ 72,500.00	\$ 15,121.00	\$ 285,283.00
30000013 - Office Support Specialist III	1.00	\$ 69,123.00		\$ 37,810.00	\$ 5,288.00	\$ 112,221.00
30003034 - Deputy Director I	1.00	\$ 142,801.00		\$ 45,161.00	\$ 10,925.00	\$ 198,887.00
30003976 - Administrative Specialist II - CPPW	1.00	\$ 104,208.00		\$ 47,324.00	\$ 7,972.00	\$ 159,504.00
30003986 - Financial Analyst II - CPPW	1.00	\$ 110,594.00		\$ 36,484.00	\$ 8,461.00	\$ 155,539.00
DRDR000004 - Administration Subtotal	8.00	\$ 952,910.00		\$390,104.00	\$ 72,899.00	\$1,415,913.00

### Salary Contingencies

Merit Increases, COLA, Contingency						\$ 199,015.38
Fire & Police Disability & Retirement Total	18.00	\$2,018,222.00		\$885,869.00	\$154,395.00	\$3,257,501.38



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 1

Actuarial Standard of Practice (ASOP) No. 4 presentation  
by Lorne Dauenhauer, FPDR outside counsel





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## MEMORANDUM

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**TO:** Board of Trustees  
City of Portland Fire & Police Disability & Retirement Fund

**FROM:** Lorne Dauenhauer, Esq. 

**DATE:** January 11, 2024

**SUBJECT:** Evaluation of Concerns Raised in Written Comments Concerning Compliance  
with Actuarial Standards of Practice (ASOP) No. 4.

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### Executive Summary

The City of Portland Fire & Police Disability & Retirement Fund (“FPD&R”) has previously contracted with Milliman, Inc. (“Milliman”), an actuarial firm, to perform, among other things, “tax levy adequacy analyses” on a biannual basis (each such analysis is referred to herein as a “Levy Adequacy Analysis”). At a meeting held on April 4, 2023, the Board of Trustees for the FPD&R (the “Board”) approved an updated service agreement with Milliman (the “Revised Service Agreement”). Among other things, the Revised Service Agreement provides that Milliman will prepare an updated Levy Adequacy Analysis as of June 30, 2024 (the “2024 Levy Adequacy Analysis”).

Kevin Machiz, a Portland resident, has on at least two occasions taken the position that Milliman’s performance of the 2024 Levy Adequacy Analysis will constitute a “funding valuation” within the meaning of Actuarial Standards of Practice (“ASOPs”) recently revised by the Actuarial Standards Board (the “ASB”) – more specifically, under ASOP No. 4.

Moreover, Mr. Machiz has indicated a further concern that the Revised Service Agreement fails to comply with ASOP No. 4 because it does not include specific references to deliverables that Milliman would be required to prepare under revised ASOP No. 4 (e.g., if and to the extent the 2024 Levy Adequacy Analysis was considered a “funding valuation.”)

We have reviewed Mr. Machiz’ stated concerns on behalf of the FPD&R, taking into consideration relevant facts and circumstances. As further discussed below, on basis of known relevant facts and circumstances, we have concluded that: (1) questions regarding whether Milliman’s completion of

the 2024 Levy Adequacy Analysis constitutes a “funding valuation” under ASOP No. 4 is a professional standards issue and thus solely a matter for Milliman to resolve (with guidance from appropriate professional bodies, as determined necessary or appropriate by Milliman in its sole and complete discretion); and (2) because the Revised Service Agreement provides that Milliman is required to “perform all services in accordance with applicable standards,” there is no need, from the FPD&R’s perspective, that the Revised Service Agreement go into specific detail concerning how Milliman’s services will comply with each and every aspect of the ASOPs that apply to Milliman and the services to be provided by Milliman under the Revised Service Agreement, including but not necessarily limited to ASOP No. 4.

As discussed in more detail below, we understand that Milliman intends to communicate with the Actuarial Board for Counseling and Discipline (the “ABCD”) to seek guidance from them as to whether the ABCD would consider the 2024 Levy Adequacy Analysis to be a funding valuation under ASOP No. 4. We have asked Milliman to update the Board with any information Milliman receives from the ABCD with respect to this determination.

## **I. Background**

The Board has previously engaged Milliman to serve as the Fund’s actuary. Periodically, a new contract is entered into with Milliman regarding future services to be performed by Milliman with respect to the Fund. A copy of a proposed new Milliman service agreement, together with a staff memorandum concerning that service agreement, was included as part of the materials provided to the Board in advance of its April 4, 2023, meeting. At its meeting held on April 4, 2023, the Board discussed and approved the Revised Service Agreement. Copies of the staff memorandum and of the Revised Service Agreement are attached hereto as Attachment A.

### *A. Brief Summary of ASOP No. 4*

As a firm that employs accredited actuaries, when performing actuarial work for the Fund, Milliman and its actuaries are governed by the ASOPs. It is important to note that it is Milliman’s responsibility to perform Fund work in accordance with the ASOPs. Consequences for any failure to perform work in accordance with the ASOPs falls squarely on Milliman and its professional actuaries, not the Fund.

Pursuant to ASOP No. 1, section 1, the ASOPs “identify what [an] actuary should consider, document, and disclose when performing an actuarial assignment.... ASOPs are binding on members of the U.S.-based actuarial organizations when rendering actuarial services in the U.S.”

Pursuant to ASOP No. 3, section 4, “Failure to comply with an applicable ASOP results in a breach of the [Code of Professional Conduct, as promulgated by the American Academy of Actuaries]. Such breaches subject the actuary to the profession’s counseling and discipline process.” This counseling and disciplinary process is exclusively the provenance of the Actuarial Board for Counseling and Discipline (the “ABCD”), as established by the American Academy of Actuaries.

Pursuant to ASOP No. 3, section 3.14, the “ASOPs allow for the actuary to use professional judgment when ... reaching a conclusion, and recognize that actuaries can reasonably reach different conclusions when faced with the same facts.”

ASOP No. 4 is entitled “Measuring Pension Obligations and Determining Pension Plan Costs or Contributions.” It was most recently updated in December 2021, effective for any actuarial reports issued on or after February 15, 2023. In its current form, ASOP No. 4 includes a new definition of what constitutes a “funding valuation” for ASOP purposes. See ASOP No. 4, section 2.12.

Under ASOP No. 4, section 3.19, if an actuary performs a “funding valuation” (as that term is newly defined under ASOP No. 4, Section 2.12), then “the actuary should” perform certain additional analyses. For a detailed list of the additional analyses the actuary “should” perform, see ASOP No. 4, section 3.19, a copy of which is attached hereto as Attachment B. Among the additional analyses that the actuary conducting a funding valuation “should” perform are (1) making qualitative assessments of the fund’s contribution allocation procedure and funding policy and (2) assessing whether the fund’s contribution allocation procedure or funding policy is “significantly inconsistent with the plan accumulating assets adequate to make benefits payments when due, and estimate the approximate time until assets are depleted.” Moreover, under ASOP No. 4, Section 3.21, if an actuary performs a “funding valuation” the actuary should also disclose a “reasonably actuarially determined contribution” (as that term is defined in ASOP No. 4), except where there is an actuarially determined contribution prescribed by applicable law.

#### *B. Summary of Requests for Comments Concerning ASOP No. 4 Compliance*

In an e-mail to Fund Director Sam Hutchison dated March 29, 2023, Kevin Machiz submitted written comments concerning the Revised Service Agreement. These written comments expressed a concern that, for reasons discussed in more detail below, the agreed-upon services fail to comply with the requirements of ASOP No. 4, at least with respect to the 2024 Levy Adequacy Analysis. Those written comments were entered into the record at the April 4, 2023, meeting. A copy of these written comments are attached hereto as Attachment C.

In public comments at the May 23, 2023, Board meeting, Mr. Machiz submitted additional testimony reiterating his position that the Revised Service Agreement’s provisions with respect to the 2024 Levy Adequacy Analysis are inconsistent with ASOP No. 4. Moreover, in these public comments, he alleged that, among other things, the Board “was ... presented with mistaken facts leading up to its [April 4, 2023] decision” to approve the Revised Service Agreement. A copy of the transcript of these public comments is enclosed hereto as Attachment D.

#### *C. Brief Summary of the Revised Service Agreement with Milliman*

Under the Revised Service Agreement, among other things, Milliman has agreed to perform the 2024 Levy Adequacy Analysis. As explicitly stated in the Statement of Work (Exhibit B to the Revised Service Agreement), the very purpose of a Levy Adequacy Analysis is to provide “assessments of the long-term adequacy of the dedicated FPDR property tax levy to fund<sup>1</sup> the Plan’s obligations and City

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<sup>1</sup> The term “fund” can have different meanings depending on context. As it appears in Section 2 of Exhibit B to the new Milliman contract, in light of the fact that FPD&R is an unfunded, pay-as-you-go system, the term “fund” is used in

contributions to the Oregon PERS Plan for FPDR Three members and [to] present the results [of the analyses] to FPDR staff and the FPDR Board of Trustees.”

Additionally, and as discussed in the March 7, 2023, Staff memorandum that accompanied the Revised Service Agreement, “FPDR’s status as a pay-as-you-go plan means that FPDR does *not* require” certain actuarial services that might otherwise be required when performing actuarial services for a funded governmental retirement plan, including: (i) the calculation of a current value for the plan’s long-term assets (not necessary because the FPD&R does not have any long-term assets); (ii) the calculation of the plan’s funded status (not necessary because the FPD&R is not a funded arrangement); (iii) the calculation of a required annual contribution to maintain the plan’s funded level (again, not necessary because the FPD&R is not a funded arrangement) and (iv) the development of a strategy and recommendation to pay down any unfunded liability (again, not necessary because the FPD&R is not a funded arrangement with long-term assets). Although the Revised Service Agreement relates to services to be performed with respect to the FPD&R, the contract itself is between Milliman and the City of Portland.

Finally, although the FPD&R’s operating costs (including the payment of benefits and the payment of PERS contributions with respect to FPDR Three members) are currently financed completely by the “FPD&R property tax levy” (the “Levy”), in the event that the Levy ever was to become inadequate to pay the 100% of the FPD&R’s liabilities, that does not mean that the FPD&R’s benefit liabilities would not be paid: the City would remain financially responsible for paying all FPD&R promised benefits – which benefit payments could be sourced from the City of Portland’s General Fund. See, for example, Section 5-102(d) of the Charter for the City of Portland (the “Charter”).

## **II. Summary of Assertions Made by Mr. Machiz Concerning ASOP No. 4 Compliance**

In his March 29, 2023, written comments, Mr. Machiz made the following assertion as to why he believes the Revised Service Agreement is inconsistent with the requirements of ASOP No. 4:

“Any Levy Adequacy Analysis [performed after February 15, 2023] and any potential accompanying formal report documents on the same subject would meet the definition of a funding valuation under ASOP No. 4.”

In his May 23, public comments, Mr. Machiz made the following assertions as to why he believes the Revised Service Agreement is inconsistent with the requirements of ASOP No. 4:

- Any “levy adequacy analysis [resulting in reports issued on or after February 15, 2023] would constitute a funding valuation as defined by ASOP No. 4.”
- “The definition of a funding valuation is one sentence long and it does not provide any loopholes through which a levy adequacy analysis could escape.”

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reference to the Levy as a source of financing of (i.e., coming up with the tax revenue to pay for) future FPD&R benefit and administrative obligations.

- He had “spoken to three [unidentified] actuarial experts in public plans [each of whom] agreed [that] the levy adequacy analysis would meet the [ASOP No. 4] definition of a funding valuation.”
- One of these three actuarial experts had, purportedly, sought and received guidance from an [unidentified] member of the Actuarial Board of Counseling and Discipline that confirmed that “the levy adequacy analysis indeed appeared to be a funding valuation as defined by ASOP No. 4.”
- It is “clear [that] the Board was ... presented with mistaken facts leading up to its [April 4, 2023] decision” to approve the Revised Service Agreement.

### III. Analysis of Mr. Machiz’ Assertions Concerning the Application of ASOP No. 4

The best evidence to determine if Mr. Machiz’ key assertion concerning whether the 2024 Levy Adequacy Analysis satisfies the definition of a “funding valuation” as defined under ASOP No. 4 is the definition itself. See ASOP No. 4, section 2.12, which reads in its entirety as follows:

“Funding Valuation – A measurement of pension obligations or projections of cash flows performed by the actuary intended to be used by the principal to determine plan contributions or to evaluate the adequacy of specified contribution levels to support benefit provisions.”

Based on a plain reading of ASOP No. 4, we believe that the 2024 Levy Adequacy Analysis would likely be considered a “funding valuation” under ASOP No. 4 if that analysis was being used either to:

1. Provide information to the City (as settlor of the Fund) regarding the determination of a contribution amount required to achieve a specific funding objective; or
2. Provide information to the City (as settlor of the Fund) concerning whether contribution levels were adequate to ensure that those contribution levels were sufficient to allow for the payment of promised benefits.

To date, the Levy has been the City’s sole source of revenue to pay the FPD&R’s ongoing liabilities (including, e.g., administrative expenses, benefits to FPD&R One and Two members and beneficiaries, and PERS contributions for FPD&R Three members). However, neither the City nor the Board is using the 2024 Levy Adequacy Analysis for either of the purposes set forth in ASOP No. 4, section 2.12. Indeed, the sole purpose of the 2024 Levy Adequacy Analysis is to determine the likelihood of whether the Levy will remain adequate to continue to be the Fund’s sole revenue source into the future.

As noted above, although the City has historically relied on the Levy as the FPD&R’s exclusive revenue source, if in the future for whatever reason the City could not completely pay for the FPD&R’s ongoing cash-flow requirements using Levy proceeds, that fact alone would not affect the City’s obligations to pay all FPD&R benefits when due: it would simply mean that the City would have to find a different revenue source to pay ongoing FPD&R liabilities in excess of the amounts available from the Levy.

More specifically, pursuant to the Revised Service Agreement, all reports Milliman is being engaged to prepare are solely for:

- A. Preparing actuarial schedules and tables as required by GASB Statements 67 and 68 and in compliance with Annual Comprehensive Financial Reporting (ACFR) standards, for use in the annual FPD&R Plan financial statements and the annual City of Portland ACFR.
- B. Preparing biannual [actuarial] valuations of the FPD&R Plan[’s benefit liabilities] and present the results to FPD&R staff and the FPD&R Board of Trustees.
- C. Preparing biannual assessments of the long-term adequacy of the dedicated FPD&R property tax levy to fund the Plan’s obligations and City contributions to the Oregon PERS Plan for FPD&R Three members and present the results to FPD&R staff and the FPD&R Board of Trustees.

There is nothing in the Revised Service Agreement to even suggest that any of the work performed by Milliman is to be used by the City (or Board) (the “principal”) to determine plan contributions: plan contributions are determined in-house by FPD&R staff, and those contributions are based on projections of benefit payments (and administrative expenses) likely to arise within a given fiscal period (*i.e.*, 7/1 – 6/30).

Moreover, Milliman’s reports are not being used to “evaluate the adequacy of specified contribution levels to support benefit provisions”: the sole purpose of the Levy Adequacy Analysis is to determine whether future benefit payments would require contributions in excess of amounts permitted under the Levy. Even if Milliman concluded the future benefit payments would require contributions in excess of Levy limits, there’s nothing that the City or FPD&R can do about that.

In the (per Milliman: remote) event Levy revenue is insufficient to satisfy FPD&R’s future financial and/or benefit obligations, the City would still have to come up with an alternate revenue source to fund those future obligations – likely out of the General Fund (although the ultimate sourcing would have to be determined by City Council).

Effectively, the 2024 Levy Adequacy Analysis is being performed for the City’s benefit, not FPD&R’s benefit: it provides the City with a barometer reading as to the likelihood of whether the City would need to find another revenue source in the future, in addition to the Levy. In this regard, Milliman’s reports are totally agnostic as to whether “specified contribution levels” are adequate to support the FPD&R’s benefit obligations.

Stated more plainly: the core purpose of the 2024 Levy Adequacy Analysis is not to determine how much funding will be required to sustain the FPD&R, but rather to determine the source from which any required FPD&R funding can be satisfied.

#### **IV. Conclusion and Next Steps**

For the reasons discussed above, based on our review of the Revised Service Agreement and ASOP No. 4, we think it is unlikely that the Levy Adequacy Analysis is a “funding valuation” within the meaning of ASOP No. 4. Moreover, we find no basis to support any claims that the Board was provided with “mistaken facts” when it approved the Revised Service Agreement at its April 4, 2023, meeting.

Of course, ASOP No. 4 is binding only on actuaries, and not the FPD&R. Accordingly, any question concerning Milliman’s compliance with ASOP No. 4 is a professional standards matter for Milliman to consider. In discussing this matter with Milliman, in light of the fact that revised ASOP No. 4 is relatively new, Milliman itself has not yet reached a definitive conclusion as to whether the 2024 Levy Adequacy Analysis will be considered “funding valuation” within the meaning of ASOP No. 4.

In order to enable Milliman to reach a professional conclusion as to whether or not the 2024 Levy Adequacy Analysis will be considered a “funding valuation” under ASOP No. 4, we understand that Milliman is planning to seek guidance from the Actuarial Board for Counseling and Discipline (the “ABCD”). Following Milliman’s discussions with the ABCD, Milliman should inform the Board in writing as to Milliman’s position as to whether the 2024 Levy Adequacy Analysis will be treated as a funding valuation under ASOP No. 4; if so, Milliman should further inform the Board of the practical and legal implications of that particular work being considered a funding valuation for further discussion.

Finally, and as to Mr. Machiz’ concerns that the text of the Revised Service Agreement is inconsistent with the requirements of ASOP No. 4 because, among other things, it does not specifically obligate Milliman to perform services and provide reports that would be required incident to a “funding valuation,” we note that the Revised Service Agreement requires that Milliman “will perform all services in accordance with applicable professional standards.” Accordingly, we believe that Mr. Machiz’ ASOP No. 4 concerns with the text of the Revised Service Agreement itself to be unfounded.

To the extent that Milliman, in the exercise of its professional judgment, concludes that the Levy Adequacy Analysis is a funding valuation under ASOP No. 4., then Milliman is contractually required to follow the requirements of ASOP No. 4 when performing the 2024 Levy Adequacy Analysis – whether or not specifically called for within the four corners of the Revised Service Agreement – which may require that Milliman perform, among other things: (1) qualitative assessments of the Fund’s contribution allocation procedure and funding policy; (2) assessments regarding whether the Fund’s contribution allocation procedure or funding policy is “significantly inconsistent” with the plan accumulating assets adequate to make benefits payments when due, and estimate the approximate time until assets are depleted; and (3) disclosure of a “reasonably actuarially determined contribution.”

Please let me know if you have any questions concerning the foregoing.

LOD:lod



# FIRE AND POLICE DISABILITY AND RETIREMENT

## City of Portland, Oregon



1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166

Samuel Hutchison, Director

fpdr@portlandoregon.gov

DATE: March 8, 2023

TO: FPDR Board of Trustees

FROM: Stacy Jones, FPDR Deputy Director/Finance and Pension Manager *SJ*

RE: FPDR Two Pension COLA for July 1, 2023

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### **Action Item Before the Board**

The FPDR Board of Trustees traditionally awards an annual cost-of-living adjustment (COLA) to FPDR Two retirees, survivors, and alternate payees on July 1. This memo provides information to support the Board in making an FPDR Two COLA decision for 2023. The Trustees generally discuss and approve a COLA at the March and/or May Board meeting. At this year's March meeting, the Board may either:

- 1) Vote to approve an FPDR Two July 1, 2023 COLA percent or methodology, OR
- 2) Request additional information or analysis from staff, and delay a vote to the May meeting

### **Board Authority**

The Portland City Charter grants the FPDR Board of Trustees sole discretion over the timing and amount of FPDR Two pension COLAs, subject to the limitation that "the percentage rate of change shall not exceed the percentage rate applied to retirement benefits payable to police and fire employees by the Public Employees Retirement System of the State of Oregon." While Oregon Public Employees Retirement System (PERS) police and fire retirees receive a variety of annual COLA percentages based on the timing of their service and the amount of their PERS benefit, the City Attorney's Office has interpreted the Charter language to mean the Board may award *up to* the maximum rate provided by PERS, which is 2%.

### **Inflation**

The consumer price index for urban consumers in the West region (CPI-U West) was 6.25% for calendar year 2022.



### **Comparison to Last Year**

The same consumer price index was 7.65% for calendar year 2021. In light of this historically high inflation, the Board awarded the maximum COLA (2%) to all FPDR Two beneficiaries for July 1, 2022. As macroeconomic conditions remain broadly similar to last year, and the composition of the Board is identical, FPDR staff have assumed the Board may wish to award a 2% COLA again for July 1, 2023. However, the Board may of course consider other options. If the Board would like additional information or analysis to compare alternatives, staff will prepare requested materials for the May Board meeting.

### **Considerations**

Historically, the Trustees have considered many factors in making the annual FPDR Two COLA decision:

- Inflation and the erosion of purchasing power for members and their survivors
- Taxpayer cost
- Risk of the FPDR tax levy hitting the \$2.80 cap in City Charter
- Desirability, or not, of maintaining a connection to the PERS COLA methodology
- Economic pressures/context for both taxpayers and beneficiaries

### **Costs and Impacts of a 2% FPDR Two COLA for July 1, 2023**

A 2% COLA award for FPDR Two beneficiaries on July 1, 2023 would result in the following approximate costs to the FPDR Fund and impacts for FPDR Two members, survivors and alternate payees:

FPDR Two	
COLA Percent	2%
Total Beneficiaries <sup>1</sup>	1,822
Median Monthly Increase	\$128.01
Range of Individual Monthly Increases	\$4.59 - \$323.99
FPDR Cost, FY 2023-24 <sup>2</sup>	\$224,029

### **Background**

As the Board may recall from previous presentations and discussions, the FPDR COLA method and the PERS COLA method were identical until the PERS method was changed by the Oregon Legislature and Oregon Supreme Court. That earlier method (known as “Old PERS”) resulted in a 2% COLA whenever inflation exceeded 2%, and also allowed retirees to carry over “excess” in years when inflation exceeded 2%. That carry over could then be “spent down” to bring beneficiary COLAs up to 2% in the relatively infrequent years when inflation was less than 2%.

In 2014, the PERS COLA method changed to a blended rate based both on service timing and individual pension amounts. Those who completed PERS service before October 8, 2013 continued to have their COLAs calculated in accordance with the “Old PERS” methodology, and thus receive 2% each year. Each PERS retiree with service after October 8, 2013 receives an individual COLA rate that is a blend of 0.15%, 1.25%, and the “Old PERS” method, depending on their unique service timing and benefit amount.

Since 2014, the FPDR COLA methodology has always been more generous than the new PERS COLA methodology. The FPDR Board has sometimes selected a modified version of the new PERS COLA method, and sometimes chosen to award the maximum 2% COLA to all beneficiaries. Even when a modified version of the new PERS COLA method has been employed, the FPDR Board has never applied a lower COLA rate to higher pension amounts (as PERS does), and the FPDR Board has sometimes selected a higher rate to apply to periods of service after October 2013 (for example, 1.75% instead of the PERS rate of 1.25%).

### **July 1, 2023 Pension COLA for FPDR One Beneficiaries**

The Board does not have discretion over annual pension COLAs for FPDR One retirees and survivors. FPDR One pensions are a percent of active fire fighter and police officer pay on July 1 each year. Active police officer pay is scheduled to increase by 5% on July 1, 2023; FPDR One Police pensions will grow in concert. Increases for active fire fighter pay on July 1, 2023 are unknown, and therefore FPDR One Fire pension increases are also uncertain. (The Portland Fire Fighters Association contract expires on June 30, 2023 and a successor contract is still under negotiation.) If FPDR One Fire beneficiaries were to receive the same COLA as FPDR One Police beneficiaries on July 1, 2023 (5%), the FY 2023-24 FPDR cost for the FPDR One Fire COLA would be \$25,289.

FPDR One		
	Police	Fire
COLA Percent	5%	Unknown
Total Beneficiaries <sup>1</sup>	141	134
Median Monthly Increase	\$165.79	Unknown
Range of Individual Monthly Increases	\$62.09 - \$323.95	Unknown
FPDR Cost, FY 2023-24 <sup>3</sup>	\$27,871	Unknown

<sup>1</sup> As of March 1, 2023

<sup>2</sup> For simplicity of modeling, assumes no changes to the FPDR Two beneficiary population between now and June 30, 2024 (no new retirements, deaths, or new surviving spouses).

<sup>3</sup> For simplicity of modeling, assumes no changes to the FPDR One Police beneficiary population between now and June 30, 2024 (no deaths or new surviving spouses)



# FIRE AND POLICE DISABILITY AND RETIREMENT

## City of Portland, Oregon



1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166

Samuel Hutchison, Director

fpdr@portlandoregon.gov

DATE: March 8, 2023

TO: FPDR Board of Trustees

FROM: Stacy Jones, FPDR Deputy Director/Finance and Pension Manager *SJ*

RE: New Actuarial Services Contract

### **Action Item Before the Board**

FPDR staff are asking the Board of Trustees to approve a not-to-exceed amount and the contract terms outlined below for a new actuarial services contract with Milliman, Inc. FPDR staff are also asking the Board to grant the FPDR Director authority to complete contract negotiations within the parameters and amounts discussed below and sign an agreement. This action requires a Board motion and three affirmative votes.

### **Contract Deliverables and Pricing**

	Due Date	Fixed Price in Year 1	Annual Increase for Years 2 - 5	Current Price in Current Contract
Annual Financial Reporting Schedules Under GASB 67/68	August 25 each year	\$5,500	CPI-W for West Region	\$5,200
Biannual Plan Valuation	January 10 of odd years	\$40,000	CPI-W for West Region	\$39,000
Biannual Tax Levy Analysis	January 10 of odd years	\$16,000	CPI-W for West Region	\$15,500
Experience Study	March 31, 2026	\$38,000	N/A	\$37,500
Domestic Relations Order (DRO) Calculations	Within 30 days of receipt	\$900 each	None	\$850
Ad-hoc Analyses	Negotiable	\$105 - \$480/hour	CPI-W for West Region	\$195 - \$400/hour

The City of Portland complies with all non-discrimination, Civil Rights laws including Civil Rights Title VI and ADA Title II. To request translation, interpretation, accommodation, modifications, or additional information, please contact FPDR at (503) 823-6823, or use City TTY (503) 823-6868, or Oregon Relay Service: 711

### **Duration and Proposed Not-to-Exceed Amount**

The term of the proposed contract is April 1, 2023 – March 31, 2028, with an option to extend for up to five additional years. (FPDR's current actuarial services contract expires on March 31, 2023.) The recommended not-to-exceed (NTE) amount for this five-year contract is \$350,000, calculated as follows:

	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total
Projected CPI-W, West Region, from City Economist		2.9%	2.3%	2.1%	2.1%	
Experience Study			\$38,000			\$38,000
Plan Valuation		\$40,000		\$41,779		\$81,779
Tax Levy Analysis		\$16,000		16,712		\$32,712
GASB 67/68 Schedules	\$ 5,500	\$5,660	\$5,790	\$5,911	\$6,035	\$28,896
DROs (Estimate = 15/year)	\$13,500	\$13,500	\$13,500	\$13,500	\$13,500	\$67,500
Ad-Hoc Work						
Estimated 10 hrs/year @ Principal Actuary Rate	\$4,800	\$4,939	\$5,053	\$5,159	\$5,267	\$25,218
Estimated 20 hrs/year @ Consulting Actuary Rate	\$6,500	\$6,689	\$6,842	\$6,986	\$7,133	\$34,150
Estimated 15 hrs/year @ Actuarial Analyst Rate	\$3,375	\$3,473	\$3,553	\$3,627	\$3,704	\$17,732
Cushion	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000
<b>Total</b>	<b>\$33,675</b>	<b>\$90,260</b>	<b>\$72,738</b>	<b>\$93,675</b>	<b>\$35,639</b>	<b>\$350,986</b>

This compares with an NTE amount of \$615,000 for the previous ten-year contract period, and with actual spending of appropriately \$260,000 for the previous five fiscal years (FYE19 – FYE23). Note that of the \$350,000 recommended NTE amount for this contract, only \$181,387 is for known, certain costs: one experience study, two plan valuations, two levy analyses, and five financial reporting schedules. Price increases for these individual deliverables range from 1.3% to 5.9% over current rates. The remaining recommended NTE amount is for DRO calculations, whose number is unpredictable and uncontrollable, and contingency for any ad-hoc analyses or studies the Board may request over the next five years or CPI values higher than estimated (which would in turn further increase Milliman rates).

The Board is required to approve any contract extensions and/or increases to the not-to-exceed amount.

### **Firm Selection Process**

FPDR published a Request for Proposals through the City of Portland's Procurement web site (Buyspeed) on December 15. The City received five proposals before the submission deadline on

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January 31. An evaluation committee comprised of myself, Trustee MacLeod, the City Controller, an FPDR financial analyst, and a member of the City's Minority Evaluator Program scored the proposals in accordance with City rules and the evaluation framework detailed in the RFP. Points were awarded based on each evaluator's assessment of the proposed project team, the proposing firm's capabilities, the proposed project approach & understanding, proposed cost, and corporate responsibility of the proposing firm. Milliman, Inc. earned the most total points in the evaluation process and was also the top choice of each individual evaluator.

### **Purpose of Contract**

Pension plans require actuaries to perform a variety of services, including:

- Calculate the net present value of the Plan's liabilities, and other associated values and measures, in accordance with specific actuarial methods, techniques and standards. Inclusion of this information in both the FPDR annual audit and the City of Portland's Annual Comprehensive Financial Report is legally required.
- Conduct plan experience studies to develop probabilistic assumptions used for a variety of purposes, including developing the budget and calculating the plan valuation. Examples of this are probabilities of member death, retirement, disability, and marriage at different ages, service levels, etc.
- Divide pensions in accordance with divorce-related court orders, which requires longevity modeling for both the member and the alternate payee as well as time-value discounting.
- Provide long-term cost and savings estimates related to plan amendment, design, funding, or other parameters.

In addition, FPDR requires its actuaries to perform a unique service:

- Assess the adequacy of the capped FPDR tax levy to fully fund FPDR plan benefits over 20 year periods in concert with the biannual plan valuation

Finally, FPDR's status as a pay-as-you-go plan means that FPDR does *not* require these actuarial services needed by prefunded plans:

- Calculate a current value for the plan's long-term assets
- Calculate a funded status for the plan
- Calculate a required annual contribution to maintain the funded level of the plan and/or develop a strategy and recommendation to pay down any unfunded liability

### **Status of Contract Negotiation and Next Steps**

Two minor items remain under negotiation with Milliman:

- 1) FPDR staff are seeking a cap on annual inflationary increases in the contract pricing.

- 2) FPDR staff are discussing whether a formal tax levy adequacy report, in addition to the usual Board presentation, should be added to the required deliverables.

Assuming Board approval, the next steps are:

- FPDR staff will complete negotiations related to the two items disclosed above
- Milliman will sign the contract and submit additional required documentation, including proof of insurance, business tax registration documents, and EEO certification
- The City Attorney's office will review and approve the contract
- The Chief Procurement Officer will review and sign the contract
- The City Auditor's office will review, sign, and release the contract
- A copy of the fully executed contract will be returned to Milliman with a notice to proceed

City Council is not required to approve the contract.

## **RESOLUTION NO. 548**

WHEREAS, the Board of Trustees of the Fire and Police Disability and Retirement Fund (FPDR) desires an actuarial consultant to provide biannual plan valuations and tax levy adequacy analyses, annual accounting schedules, plan experience studies, domestic relations order calculations, and other general actuarial consultation and advisory services, and

WHEREAS, a bid process through the City's Request for Proposal (RFP) process was conducted and an actuarial consultant was selected by the FPDR Selection Committee; and

WHEREAS, the FPDR Selection Committee selected Milliman Actuarial Services; and

WHEREAS, Milliman has indicated that they are ready, willing and able to act as actuarial consultant and provide services to the Board of Trustees and FPDR staff; and

WHEREAS, a contract between FPDR and Milliman is attached hereto and by this reference made a part hereof.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the FPDR, that the FPDR Director be and is hereby authorized to select, negotiate, initiate, and enter into a contract with Milliman to provide actuarial consultant and advisory services, valuation services, experience analyses and other general duties for a five (5) year period not to exceed \$350,000.

ADOPTED by the Board of Trustees on this 21st day of March 2023.

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Sam Hutchison, FPDR Director

**CITY OF PORTLAND**  
**CONTRACT FOR GOODS AND SERVICES**  
**for**  
**ACTUARIAL SERVICES**

**Contract Number:**

As authorized by the Portland Fire and Police Disability and Retirement Board of Trustees, this Contract is made effective on April 1, 2023 (“Effective Date”) by and between the City of Portland (“City”), a municipal corporation of the State of Oregon, and Milliman, Inc. (“Contractor”), by and through their duly authorized representatives. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.”

The initial Term of this Contract shall be from the Effective Date through March 31, 2028, with the City’s option to extend for an additional five years, for a total not to exceed ten years. The total not-to-exceed amount under this Contract for the initial Term shall be \$350,000.

Party contacts and Contractor’s and City’s Project Manager for this Contract are:

For City of Portland:	For Contractor:
Name: Stacy Jones	Name: Scott Preppernau
Title: Deputy Director	Title: Principal & Consulting Actuary
Address: 1800 SW 1 <sup>st</sup> Ave, Suite 250	Address: 1455 SW Broadway, Suite 1600
City, State: Portland, OR	City, State: Portland, OR
e-mail: stacy.jones@portlandoregon.gov	e-mail: scott.preppernau@milliman.com
Copy to: Nicky Almirol-Robbins	Copy to: Matt Larrabee
Procurement Services	Milliman, Inc.
1120 SW 5 <sup>th</sup> Ave.	1455 SW Broadway, Suite 1600
Portland OR 97204	Portland OR 97204

**Scope and Consideration**

- a. Contractor shall perform the Services and provide the Deliverables set forth in the Statement of Work by the due dates specified in the Contract.
- b. City agrees to pay Contractor a sum not to exceed \$350,000 for accomplishment of the Project.
- c. Payments shall be made to Contractor according to the schedule identified in Exhibit A, the Contractor’s Price.



Recitals:

WHEREAS, to further its government operations, the City of Portland, Bureau of Fire and Police Disability and Retirement desires to contract for actuarial services to provide biannual plan valuations and tax levy adequacy analyses, annual financial reporting schedules, a plan experience study, domestic relations order calculations, and other general actuarial consultation and advisory services (the “Project”); and

WHEREAS, the City issued Request for Proposal (RFP) 129425 for actuarial services; and

WHEREAS, Contractor, in its Proposal dated January 31, 2023 submitted in response to the City’s RFP, represented that it has the knowledge, experience, and expertise in actuarial services for public pension plans required to perform these services; and

WHEREAS, the City selected Contractor based on its Proposal;

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**SECTION 1 DEFINITIONS**

General Definitions. These definitions apply to the entire Contract, subsequent Amendments, and any Change Orders or Task Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

“Acceptance” means the Deliverable demonstrates to the City’s satisfaction that the Deliverable conforms to and operates according to the Acceptance Criteria, and if required, has successfully completed Acceptance review, and for Deliverables not requiring Acceptance Testing that the Deliverable conforms to the Acceptance Criteria or the City’s Specifications.

“Acceptance Certificate” means a written instrument by which the City notifies Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

“Acceptance Criteria” means functionality and performance requirements determined by the City, based upon the Specifications, which must be satisfied prior to City’s Acceptance of a Deliverable. City and Contractor shall agree upon written Acceptance Criteria.

“Acceptance Date” means the date on which the City issues an Acceptance Certificate for the Deliverable(s).

“Affiliates” means, for Contractor, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term “control” means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

“Amendment” means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Contract, Contract amount, or substantially altering a Statement of Work.

“Business Day” means a twenty-four hour day, excluding weekends and City holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Calendar Day” means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Change Order” means a document, agreed and signed by both Parties, that changes an existing Statement of Work or Task Order. Change Orders cannot change Contract amount or Master Terms and Conditions.

“Confidential Information” means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.345(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) attorney/client privileged communications; (7) information which is exempt per federal laws (including but not limited to copyright, HIPPA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing Party.

“Contract” means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

“Contract Price” means the not-to-exceed price agreed upon by the Parties for all Services.

“CPI-U West Region index” means the Consumer Price Index for All Urban Consumers: All Items in West Region (not size or subregion specific), otherwise known as series CUUR0400SAO, as published by the U.S. Bureau of Labor and Industry.

“Deliverable(s)” means the Services, Documentation or documents or tangible work products described in the Statement of Work to be provided to the City by Contractor under this Contract.

“Documentation” means user manuals and other written materials in any form that describe the features or functions of the Deliverables and Services, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Defect” means any error, problem, condition, bug, or other partial or complete inability of a Service, Deliverable or component thereof, to operate in accordance with the applicable Specifications.

“Final Acceptance” means the City has determined that all Deliverables have successfully completed Acceptance Testing, which demonstrates to the City’s satisfaction that all Deliverables conform to and operate according to the Acceptance Criteria, applicable Documentation, and Contractor’s representations; and that for Deliverables not requiring Acceptance Testing, that the Deliverables conform to the Acceptance Criteria or the City’s specified requirements.

“Force Majeure Event” means an exceptional and unavoidable occurrence beyond the reasonable control of the affected Party, such as, riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party’s reasonable control.

“Goods” means materials supplied by Contractor under this Contract.

“Intellectual Property Rights (IPR)” means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

“Key Personnel” means the specific individuals identified in Section 3.12 to fill Key Positions.

“Key Position” means a job position critical to the success of the Project as identified in Section 3.12 of this Contract.

“Key Position” means a job position critical to the success of the Project as identified in Section 3.12 of this Contract.

“Master Terms and Conditions” means the body of text from the preamble through the signature page of this Contract.

“Material Breach” means any breach of this Contract that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Contract.

“Personally Identifiable Information (PII)” means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, as described in the Oregon Consumer Identity Theft Protection Act.

“Project” means the overall delivery of the Services including, without limitation, design, development, integration, implementation, testing, support, and any Deliverables any of which Contractor may be providing in whole or in part.

“Proposal” means Contractor’s response to the City’s RFP referenced on page one of this Contract.

“Services” means ordinary or professional services performed by Contractor under this Contract.

“Statement of Work” (SOW) means the written detailed specifications of the Services(s) to be delivered to the City by Contractor, including any Change Orders or Task Orders subject to the terms and conditions of this Contract.

“Subcontractor” means any person or entity under the control of Contractor, other than an employee of Contractor, utilized by Contractor to perform all or part of this Contract.

“Task Order” means any written request or document issued by the City and signed by both Parties for additional Service(s) to be provided under this Contract. Task Orders shall document the description of Services, price, payment schedule, Project and performance schedule, due dates, milestones and Deliverables.

“Term” means the period of time that this Contract is in effect as stated on page one.

## **SECTION 2 ORDER OF PRECEDENCE**

2.1 Order of Precedence. In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict or ambiguity will be resolved in accordance with the order of precedence below. This order of precedence designates which portion of the Contract takes precedence over the other for purposes of interpretation. Contractor’s hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties’ obligations in the Confidentiality, Indemnification, or Choice of Law provisions in these Master Terms and Conditions. In this Contract the order of precedence shall be:

1. Amendments

2. Master Terms and Conditions
3. Exhibit A, Contractor's Price
4. Change Orders
5. Exhibit B, Statement of Work
6. Exhibit C, City RFP No. 129425 and Addendums
7. Exhibit D, Contractor's Proposal, including any information hyperlinked therein

### **SECTION 3 GENERAL AND ADMINISTRATIVE PROVISIONS**

- 3.1 Term. This Contract shall begin on the Effective Date and end upon the expiration date set forth on page one of this Contract unless terminated or extended under the applicable Contract provisions.
- 3.2 Point of Contact. Contractor shall be the sole point of contact for the City with regard to this Contract and the System.
  - 3.2.1 Written Notifications. All notices to, and other written communication between the Parties shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services, or by e-mail. All notices and written communications shall be sent to the Parties set forth on page 1 of the Contract, or to such other places as they may designate by like notice from time to time. Each Party shall provide written notice of any changes to the Party's contacts within thirty (30) Calendar Days.
- 3.3 Changes to Contract.
  - 3.3.1 Amendment of the Contract. Any changes to the provisions of this Contract shall be in the form of an Amendment. No provision of this Contract may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Contract as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect. The City reserves the right to make administrative changes to the Contract unilaterally, such as extending option years and increasing compensation. An administrative change means a written Contract change that does not affect the substantive rights of the Parties.
  - 3.3.2 Change Orders to a Statement of Work. The City and Contractor can agree to make changes, at any time to a Statement of Work or Task Order in the form of a Change Order. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified amount.

- 3.4 Time is of the Essence. The Parties agree that time is of the essence as to the delivery of Deliverables and performance of Services under this Contract. By executing this Contract and accepting the Statement of Work, Contractor agrees that the time limits specified in the Statement of Work are reasonable. By accepting late or otherwise inadequate performance of Contractor's obligations, the City will not waive its rights to require timely performance of Contractor's obligations thereafter.
- 3.5.1 Late Delivery. In the event that any specified delivery date is not met, Contractor shall be liable for any loss, expense, or damage resulting from delay in delivery or failure to deliver Deliverables or provide Services which is due to any cause except as set forth in Force Majeure. In the event of delay due to any such cause, the City may obtain substitute Services from another source and bill all additional costs directly to Contractor who shall remain financially liable for all additional acquisition costs.
- 3.5.2 Best Efforts. Contractor shall use best efforts to minimize any delay in the provision of Deliverables or performance of Services. If Contractor anticipates any delay that may prevent timely performance of Contractor's obligations under this Contract, Contractor shall promptly notify the City, including the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures.
- 3.6 City Reporting Requirements. The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, Emerging Small Business, Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) participation and Subcontractor/Supplier Payment. The City will enforce all diversity in workforce and D/M/W/ESB/SDVBE subcontracting commitments made by Contractor in its Proposal.
- 3.7 Payment. Payment(s) shall be in accordance with the payment schedule set forth in Exhibit A: Contractor's Price.
- 3.7.1 Payment shall be issued by the City net thirty (30) Calendar Days from receipt of a complete and acceptable invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-required reporting, if any, and the title and phone number of the person to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to Contractor.
- 3.7.2 The City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, Contractor shall execute the City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the City to deposit payment directly into specified Contractor accounts

with specified financial institutions. All payments shall be made in United States currency.

3.8 Payment of Taxes/Contractor Shall Withhold. Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations for its employees. Contractor shall also ensure that any Subcontractor shall comply with the foregoing obligations for its employees. The City shall have no duty to pay or withhold such obligations.

### 3.9 Records and Audits

3.9.1 Records Retention. Contractor shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Contractor agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Contract during the Term of this Contract and for a minimum of six (6) years after the expiration or termination date of this Contract or until the resolution of all audit questions or claims, whichever is longer.

3.9.2 City Audits. The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Contract and during the records retention period listed above. Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.

3.9.3 Access to Records. The City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Contract at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.

3.10 Overpayment. If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.

3.11 Independent Contractor. Contractor is independent of the City and, accordingly, this Contract is not entered into as a joint venture, partnership, or agency between the Parties. No employment or agency relationship is or is intended to be created between the City and any individual representing Contractor. Employees of Contractor and any authorized

Subcontractors shall perform their work under this Contract under Contractor's sole control.

### 3.12 Personnel.

- 3.12.1 Key Positions and Personnel. For the period of performance until Final Acceptance has been completed, the Parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the City's Project:

Name	Title/Role	% of Time	Company
Scott Preppernau	Primary Consulting Actuary	10% - 20%	Milliman
Gary Deeth	Supporting Actuary	10% - 20%	Milliman
Matt Larrabee	Review Consulting Actuary	5%	Milliman

- 3.12.2 Substitution of Key Personnel. Contractor shall make no substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. Contractor shall notify the City within ten (10) Calendar Days after the occurrence of any of these events.

Any substitutions or replacements of Key Personnel require the written approval of the City. Contractor shall provide the City with the maximum possible period of notice of substitution or replacement of Key Personnel.

For any proposed substitute or replacement of Key Personnel, Contractor shall provide the following information to the City: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the City. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced. No change in Contract prices may occur as a result of substitution or replacement of Key Personnel.

- 3.12.3 Security Requirements for Personnel. If required by the City, Contractor shall conduct a criminal history/records check of all personnel that will have access to City information, systems, or payments and ensure ongoing security requirements for personnel are maintained.

- 3.13 Termination. The following conditions apply to termination of this Contract. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason in the City's sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all Deliverables Accepted or Services performed and Accepted through the effective date of the termination. In the event of termination all of Contractor's Work Product to date shall be delivered to the City, and it will become and remain property of the City. Contractor makes



no express or implied warranty and shall have no liability of any type whatsoever with respect to any draft or unfinished work product that is clearly marked as or otherwise clearly indicated to be a draft and delivered to the City pursuant to this clause. The City shall not attribute any such draft/unfinished work as a Contractor Work Product.

- 3.14 Mutual Agreement. The City and Contractor, by mutual written agreement, may terminate this Contract at any time.
- 3.15 Material Breach. Either Party may terminate this Contract in the event of a Material Breach of this Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Calendar Days of the notice, then the Party giving the notice shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.
- 3.16 Force Majeure. Either Party may terminate this Contract due to a Force Majeure event as set forth in Section 5.12, Force Majeure.
- 3.17 Bankruptcy. The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) Calendar Day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- 3.18 Void Assignment. In the event that Contractor assigns its obligations under this Contract to a third party in a manner other than as set forth in Section 5.7, Assignment, the City shall have the option to terminate this Contract without any notice or cure period or further obligation to Contractor or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.
- 3.19 Waiver. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract. The failure of either Party to insist upon any of its rights under this Contract upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 3.20 Severability. Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.

- 3.21 Business Tax Registration. Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to execution of this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full Term of this Contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.
- 3.22 EEO Certification. Contractor shall be certified as an Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 5.33.076 of the Code of the City of Portland and maintain its certification throughout the term of this Contract.
- 3.23 Non-Discrimination in Benefits. Throughout the term of this Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.
- 3.24 Sustainability. Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore, in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of Products or Services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable Products or Services into its work performance wherever possible. "Environmentally preferable" means Products or Services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the Product or Service.
- 3.25 Packaging. All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 3.26 News Releases and Public Announcements. Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. Contractor shall not use the City seal without specific written permission from the City Auditor.
- 3.27 Rule of Construction/Contract Elements/Headings. This Contract has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of

reference and convenience only and shall not affect or enter into the interpretation of any portion of this Contract.

- 3.28 Survival. All obligations relating to Confidential Information; indemnification; publicity; representations and warranties; remedies; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Contract prior to termination or expiration shall survive the termination or expiration of this Contract and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City.
- 3.29 Access to City Facilities. Contractor agrees that Contractor's physical or remote access to City facilities shall be subject to the security interests and health controls necessary to protect public property, City employees and the public. The City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

#### **SECTION 4 STATUTORY REQUIREMENTS, PUBLIC RECORDS AND CONFIDENTIALITY**

- 4.1 Governing Law and Jurisdiction. This Contract shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon. Each Party agrees to waive its right to a trial by jury in any action related to this Contract.
- 4.2 Public Records Request. Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. All information submitted by Contractor is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Contractor requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.
- 4.3 Public Records. The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon and Portland City Code public records and archiving laws.

#### 4.4 Confidentiality.

- 4.4.1 Contractor's Confidential Information. During the term of this Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Contract itself shall not be considered Confidential Information. Subject to Section 4.2, the City shall: (1) limit disclosure of Contractor Confidential Information to those directors, employees, contractors and agents of the City who need to know the Contractor Confidential Information in connection with the City Project and who have been informed of confidentiality obligations at least as strict as those contained in this Contract, and (2) exercise reasonable care to protect the confidentiality of the Contractor Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.
- 4.4.2 City's Confidential Information. Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit in the performance of this Contract. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors and agents of Contractor who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Contract, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent. Notwithstanding the foregoing, Contractor may retain one copy of the City Confidential Information as necessary to comply with all applicable archival and professional work product documentation standards, subject to Contractor's continued compliance with its confidentiality obligations herein.
- 4.4.3 Scope. This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. Contractor's confidentiality obligations under this Contract shall survive termination or expiration of this Contract.

- 4.4.4 Equitable Relief. Contractor acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Contract, in the event of a breach or a threatened breach of Contract terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- 4.4.5 Discovery of Documents. In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will, to the extent legally permissible, notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

## **SECTION 5 CONTRACTOR PERFORMANCE AND WARRANTIES**

### **5.1 General Warranties. Contractor makes the following warranties:**

- 5.1.1 Capacity. Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.
- 5.1.2 Authority to Conduct Business. Contractor warrants it is lawfully organized and constituted and duly authorized to operate and do business in all places where it shall be required to do business under this Contract, and that it has obtained or will obtain all necessary licenses and permits required in connection with this Contract.
- 5.1.3 Disclosure of Litigation. Contractor warrants that as of the Effective Date there are no suits, actions, other proceedings, or reasonable anticipation thereof, in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City in writing if, during the Term of this Contract, Contractor becomes aware of, or has reasonable anticipation of, any lawsuits, actions, or proceedings in any judicial or quasi-judicial forum that involves Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract.
- 5.1.4 Conflict of Interest. Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under this Contract.

- 5.1.5 Compliance with Applicable Law. Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is currently in compliance with all tax laws.
- 5.1.6 Public Contracts. Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A and 279B require every public contract to contain certain provisions. To the extent applicable, ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.
- 5.1.7 Compliance with Civil Rights Act. Contractor warrants it is in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/bibs/article/446806>
- 5.1.8 Respectful Workplace Behavior. The City of Portland is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees of the City as well as contractors, vendors or consultants who provide services to the City of Portland. Contractor warrants its compliance with terms and conditions HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>

## 5.2 Compliance with Non-Discrimination Laws and Regulations.

- 5.2.1 Nondiscrimination. Pursuant to all City, State, and federal non-discrimination and civil rights laws, Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, color, national origin, including limited English proficiency, sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income, including in employment practices, the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- 5.2.2 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract relative to nondiscrimination on the grounds of race, color, national origin, sex, sexual orientation, age, religion, disability, marital status, or family relationships.
- 5.2.3 Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to withholding of payments to Contractor under this

Contract until Contractor complies, and/or cancellation, termination, or suspension of this Contract, in whole or in part.

- 5.2.4 ADA Compliance. Contractor shall comply with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on City or Contractor as a result of the Products, Services or activities requested to be provided for City under this Agreement.

Contractor shall document each ADA request for modification to the Products or Services and Contractor's fulfillment of the request. If Contractor determines that it is unable to promptly fulfill the request for modification under the ADA, Contractor will contact the City contract manager within the same business day, proving reasons why Contractor is unable to fulfill the request for modification and to identify alternate accessibility options that Contractor can perform.

Within 10 Business Days after receipt, City and Contractor shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Agreement, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Agreement or the programs, Products, Services or activities that Contractor is undertaking for City under this Agreement.

- 5.2.5 Required Reporting. If any person or class of persons files a complaint with Contractor alleging discrimination under Title VI of the Civil Rights Act of 1964 (race, color, or national origin, including limited English proficiency), Contractor will notify the City of Portland of the complaint and cooperate with any investigation related to the complaint. Notifications shall be sent to Title VI Program Manager, 421 SW 6th Ave, Suite 500, Portland, Oregon 97204, or [title6complaints@portlandoregon.gov](mailto:title6complaints@portlandoregon.gov).

5.3 Service(s) and Deliverables Warranties. Contractor makes the following warranties:

- 5.3.1 No Third-Party Conflict or Infringement. As of the Effective Date, Contractor warrants the execution and performance of this Contract, shall not contravene the terms of any contracts with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision. Contractor agrees to promptly notify the City, in writing, if during the Term of the Contract, a potential third-party conflict or infringement of third-party Intellectual Property Rights arises.
- 5.3.2 No Encumbrances. All Deliverables provided by Contractor under this Contract shall be transferred to the City free and clear of any and all restrictions of transfer or distribution and free and clear of any and all liens, claims, security interests, liabilities and encumbrances of any kind.

- 5.3.3 Conformance with Specifications. Contractor warrants that the Deliverables and Services shall operate in conformance with the Specifications.
- 5.3.4 Compliance with Law. Contractor warrants that the Deliverables conform to all requirements of applicable law, including all applicable health, safety, privacy, data security and environmental laws and regulations.
- 5.3.5 Industry Standards. Contractor warrants that the Services performed under this Contract will meet the standards of skill and diligence normally employed by persons performing the same or similar services.
- 5.3.6 Substitution or Modification of Products at No Charge. In the event that Contractor substitutes or modifies the Deliverables, Contractor shall ensure that the new or modified Deliverables shall conform in all aspects to the Specifications. Such substitutions or modifications shall in no way degrade the performance or functionality of the Deliverables and shall not result in additional cost to the City.
- 5.4 No Waiver of Warranties or Representation. Performance of Services shall not be construed to represent Acceptance nor relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.
- 5.5 No Third Party to Benefit. This Contract is entered into for the benefit of the City and Contractor. Except as set forth herein, nothing in this Contract shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a Party to this Contract to maintain a suit for breach of contract, personal injuries, property damage, or any other relief in law or equity in connection with this Contract.
- 5.6 Assignment. Neither Party shall assign, transfer, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld. For purposes of this Section, the acquisition, merger, consolidation or change in control of Contractor or any assignment by operation of law shall be considered an assignment of this Contract that requires the City's prior written consent. Notwithstanding the foregoing: (a) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, upon written notice to the other Party, and (b) Contractor may, without the City's consent, but upon prior written notice to the City, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract. Any attempted assignment or delegation in violation of this Section shall be void.



- 5.7 Notice of Change in Financial Condition. Contractor must maintain a financial condition commensurate with the requirements of this Contract. If, during the Term of this Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform the obligations of this Contract, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition is sufficient grounds for terminating this Contract.
- 5.8 Notice of Change in Ownership. If, during the Term of this Contract, Contractor experiences a change in ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in ownership or control is sufficient grounds for terminating this Contract.
- 5.9 Subcontractors. Contractor shall not subcontract any work under this Contract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors, including any Affiliates, at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its Subcontractors for Services authorized under this Contract.

All D/M/W/ESB/SDVBE (COBID Certified) Subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any D/M/W/ESB/SDVBE Subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior written consent.

- 5.10 Flow-down Clauses. Contractor shall include the following clauses, or substantially similar language, in its subcontracts under this Contract:

Section 4.4, Confidentiality  
Section 5.3, Compliance with Non-Discrimination Laws and Regulations  
Section 6.1, Hold Harmless and Indemnification  
Section 6.2, Insurance

- 5.11 Force Majeure.

- 5.11.1 In the event that either Party is unable to perform any of its obligations under this Contract due to a Force Majeure Event not the fault of the affected Party, the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, the performance obligations affected by the Force Majeure event shall immediately be suspended.

- 5.11.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Statement of Work.
- 5.11.3 If the period of nonperformance due to a Force Majeure Event does not exceed fifteen (15) Calendar Days, such nonperformance shall automatically extend the Project schedule for a period equal to the duration of such events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.
- 5.11.4 If the period of nonperformance due to Force Majeure Event is longer than fifteen (15) Calendar Days, the Parties shall negotiate options for mitigation of the Force Majeure Event.
- 5.12 Ownership of Property. Subject to the restrictions and limitations contained herein, all work product produced by the Contractor under this Contract is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Contractor and the City intend that such Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that Work Product.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Contractor are and will remain the exclusive property of Contractor. Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, data, databases, methods, ideas, concepts, know-how, techniques, generic documents and templates ("Tools") that have been previously developed by Contractor, or such Tools developed during the course of the provision of the Services, provided such Tools do not contain and/or are not based upon or derived from any City Confidential Information or proprietary data. Rights and ownership by Contractors of its Tools shall not extend to or include all or any part of City's proprietary data or City Confidential Information. To the extent that Contractor may include in the materials any Tools, Contractor agrees that City shall be deemed to have a non-exclusive, fully paid up perpetual license to make copies of

the Tools as part of this engagement for its internal business purposes and provided that such Tools cannot be modified or distributed outside City without the written permission of Contractor or except as otherwise permitted herein.

Contractor's work is prepared solely for the use and benefit of City in accordance with its statutory and regulatory requirements. Contractor recognizes that materials it delivers to City may be public records subject to disclosure to third parties, however, Contractor does not intend to benefit and assumes no duty or liability to any third parties who receive Contractor's work and may include disclaimer language on its work product so stating. City agrees not to remove any such disclaimer language from Contractor's work.

## **SECTION 6 INDEMNIFICATION, INSURANCE, BONDING, LIQUIDATED DAMAGES**

### **6.1 Hold Harmless and Indemnification.**

6.1.1 Subject to the limitation set forth in Section 6.7, Contractor shall indemnify, defend and hold harmless the City of Portland, its officers, agents, and employees, from all third party claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all reasonable attorneys' fees and costs), resulting from or arising out of the negligent or fraudulent actions, errors, or omissions of Contractor or its officers, employees, Subcontractors, or agents under this Contract.

6.1.2 Infringement Indemnity. Contractor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, and agents from and against any and all third party claims, demands, suits, and actions for any damages, liabilities, losses, costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual misappropriation, violation, or infringement of any proprietary right or Intellectual Property Right of any person whosoever. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise.

6.1.3 Contractor shall indemnify, defend, and hold harmless the City against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City may be required to pay arising from Deliverables and Services provided by Contractor under this Contract. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

6.2 Insurance. Contractor shall not commence work until Contractor has met the insurance requirements in this section and Contractor has provided insurance certificates approved by the City Attorney. Contractor shall acquire insurance issued by insurance companies or financial institutions with an AM Best rating of A- or better and duly licensed, admitted and authorized to do business in the State of Oregon.

6.2.1 Insurance Certificate. As evidence of the required insurance coverage, Contractor shall provide compliant insurance certificates, including required endorsements, to the City prior to execution of the Contract. The certificates shall list the City as certificate holder. Contractor shall maintain continuous, uninterrupted coverage for the Term of this Contract and to provide insurance certificates demonstrating the required coverage for the Term of this Contract. Contractor's failure to maintain insurance as required by this Contract constitutes a Material Breach of this Contract. Contractor must notify the City in writing thirty (30) Calendar Days prior to a cancellation, non-renewal, or material changes to the insurance policy.

6.2.2 Additional Insureds. For commercial general liability coverage, Contractor shall provide City with a blanket additional insured endorsement form that ~~names~~ includes the City of Portland, Oregon, and its officers, agents and employees, as an additional insured. The additional insured endorsement must be attached to the general liability certificate of insurance.

6.2.3 Insurance Costs. Contractor shall be financially responsible for all premiums, deductibles, self-insured retentions, and self-insurance.

6.2.4 Coverage Requirements. Contractor shall comply with the following insurance requirements:

6.2.4.1 Commercial General Liability. Contractor shall acquire commercial general liability ("CGL") and property damage insurance coverage in an amount not less than \$2 million per occurrence for damage to property or personal injury arising from Contractor's work under this Contract. The foregoing limits may be met through a combination of primary and excess coverage.

☒ Required and attached ☒ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director

6.2.4.2 Automobile Liability. Contractor shall acquire automobile liability insurance to cover bodily injury and property damage in an amount not less than \$2 million for each accident. The foregoing limits may be met through a combination of primary and excess coverage. Contractor's insurance must cover damages or injuries arising out Contractor's use of any vehicle.

☒ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director

6.2.4.3 Workers' Compensation. Contractor shall comply with Oregon workers' compensation law, ORS Chapter 656, as it may be amended. If Contractor is required by ORS Chapter 656 to carry workers' compensation insurance, Contractor shall acquire workers' compensation coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City for the entire period during which work is performed under this Contract. Contractor shall acquire

workers compensation coverage in an amount not less than \$1 million each accident, \$1 million disease each employee, and \$1 million disease policy limit.

☒ Required and attached ☐ Proof of exemption (Complete Independent Contractor Certification Statement)

6.2.4.4 Professional Liability. Contractor shall acquire insurance to cover damages caused by negligent acts, errors or omissions related to the professional Services, and performance of duties and responsibilities of the Contractor under this Contract in an amount not less than \$1 million per occurrence claim and annual aggregate of \$3 million for all claims per occurrence. ~~In lieu of an occurrence-based policy, Contractor may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Contractor will maintain coverage, acquire an extended reporting period, or tail coverage for not less than three (3) years following the termination or expiration of the Contract.~~

☒ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director

6.3 Rolling Estoppel. Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under this Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives written notification of a failure to meet such obligations in the next status report, or within ten (10) Business Days following such failure, whichever is sooner, and Contractor identifies the specific failure in that notification. The City's failure to meet obligations must be described in terms of how it has affected the Project schedule or a specific performance requirement of Contractor.

6.3.1 Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under this Contract, or the Contract price, if Contractor knew of that problem and failed to provide notification to the City as set forth above or to include it in the applicable status report to the City's project manager.

6.3.2 In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's notification should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Manager can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.

6.4 Dispute Resolution. Contractor shall cooperate with the City to ensure that all claims and controversies which arise during this Contract will be resolved as expeditiously as possible in accordance with the following resolution procedure:

6.4.1 Any dispute between the City and Contractor shall be resolved, if possible by the Project Manager or their designee on behalf of the City and Scott Preppernau on behalf of Contractor.

- 6.4.2 If the Project Manager or the Project Manager's designee and Contractor are unable to resolve any dispute within three (3) Business Days after notice of such dispute is given by either Party to the other, the matter shall be submitted to Samuel Hutchison on behalf of the City and Matt Larrabee on behalf of Contractor for resolution, if possible.
- 6.4.3 Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- 6.4.4 Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract. Any arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing and such discovery shall be conducted consistent with the Federal Rules of Civil Procedures. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other party, except that disclosure is permitted to a party's auditors and legal advisors.
- 6.4.5 Unless ordered by the City to suspend performance of all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute while having the right to withhold payments that are in dispute.
- 6.5 Remedies. The remedies provided in this Contract are cumulative and may be exercised concurrently or separately. In the event of any Material Breach by Contractor, which Material Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law or equity. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

- 6.6 Cost of Cover. In the event of termination of this Contract by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. After termination, in the event the cost of completing the Project exceeds the amount the City would have paid Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.
- 6.7 Limitation of Liability. Contractor will perform all services in accordance with applicable professional standards. In the event of any claims arising from services provided by Contractor at any time, the total liability of Contractors, its officers, directors, agents and employees to City shall not exceed five million dollars (\$5,000,000). This limit applies regardless of the theory of law under which is claim is brought, including negligence, tort, contract, or otherwise. In no event shall Contractor be liable for lost profits of City or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Contractor.

## SIGNATURE PAGE

Contractor represents that Contractor has had the opportunity to consult with its own independently selected attorney in the review of this Contract. Neither Party has relied upon any representations or statements made by the other Party that are not specifically set forth in this Contract.

This Contract constitutes the entire agreement between the City and Contractor and supersedes all prior and contemporaneous proposals and oral and written agreements, between the Parties on this subject, and any different or additional terms on a City purchase order or Contractor quotation or invoice.

The Parties agree that they may execute this Contract and any Amendments to this Contract, by electronic means, including the use of electronic signatures.

This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereby cause this Contract to be executed.

CONTRACTOR:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Contract Number: XXXXXXXXX

Contract Title: Actuarial Services

CITY OF PORTLAND SIGNATURES

By: \_\_\_\_\_  
Bureau Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chief Procurement Officer

Date: \_\_\_\_\_



By:   N/A    
Elected Official

Date: \_\_\_\_\_

Approved:

By: \_\_\_\_\_  
Office of City Auditor

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Office of City Attorney

Date: \_\_\_\_\_

**Exhibit A**  
**Contractor's Price**

<b>Product or Service</b>	<b>Cost</b>	<b>Specifications</b>
Annual GASB 67/68 Calculations with ACFR-Compliant Schedules	\$5,500 for June 30, 2023 schedules  Cost for future valuations shall increase at the same rate as the annual value of the CPI-U West Region index, measured from a calendar year 2023 base, but shall not exceed 5% per year.	Cost includes: Completion and submission of schedules to the City; Standard correspondence with OMF and external auditor; Communication with and assistance to FPDR and other City staff
Biannual Actuarial Valuation	\$40,000 for June 30, 2024 valuation  Cost for future valuations shall increase at the same rate as the annual value of the CPI-U West Region index, measured from a calendar year 2023 base, but shall not exceed 5% per year.	Cost includes: Formal written report; Slide deck presentation of results to FPDR Board; In-person delivery of presentation to FPDR Board
Biannual Levy Adequacy Analysis	\$16,000 for January 2025 analysis  Cost for future valuations shall increase at the same rate as the annual value of the CPI-U West Region index, measured from a calendar year 2023 base, but shall not exceed 5% per year.	Cost includes: Slide deck presentation of results to FPDR Board; Correspondence and communication with FPDR and other City staff; In-person delivery of presentation to FPDR Board
Experience Study	\$40,000	Cost includes: Formal written report; Slide deck presentation of results and recommendations to FPDR Board; Review of medical reimbursement claims to establish disability-related medical reimbursement "load" on pension liabilities; In-person delivery of presentation to FPDR Board
Domestic Relations Orders (DRO) calculations	\$900 per calculation	Cost includes: Memo outlining the calculated benefit amount for alternate payee (or reduction to member benefit) for the earliest commencement date and each of the following ten years

Other Projects	<p>Billed either:</p> <ol style="list-style-type: none"> <li>1) On an hourly basis, using the rates below OR</li> <li>2) As a fixed fee negotiated between the parties when determining the scope of work.</li> </ol> <p>Matt Larrabee: \$480/hour  Scott Preppernau: \$465/hour  Gary Deeth: \$325/hour  Meghan Davison: \$225/hour  Support/Administrative: \$105/hour</p> <p>Hourly billing rates shall increase at the same rate as the annual value of the CPI-U West Region index, measured from a calendar year 2023 base, but shall not exceed 5% per year.</p>	To be agreed upon at time of scope determination
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## **Exhibit B**

### **Statement of Work**

#### **SECTION 1 SUMMARY**

FPDR requires the services of an independent actuary to prepare schedules required by Governmental Accounting Standards Board (GASB) Statements 67 and 68 for inclusion in both the FPDR Plan financial statements and the City of Portland's Annual Comprehensive Financial Report; to prepare biannual Plan valuations; to provide biannual assessments of the adequacy of the tax levy to continue financing FPDR Plan requirements and Oregon PERS contributions for FPDR Three members, over at least a 20-year period; to conduct a Plan experience study and to develop Plan actuarial assumptions for use in calculating the Plan liability and preparing Plan budgets; to calculate pension divisions in accordance with domestic relations orders; and to perform other actuarial services requested by FPDR staff or the FPDR Board of Trustees.

#### **SECTION 2 SCOPE OF WORK**

Contractor shall provide the following Services:

- Prepare actuarial schedules and tables as required by GASB Statements 67 and 68 and in compliance with Annual Comprehensive Financial Reporting (ACFR) standards, for use in the annual FPDR Plan financial statements and the annual City of Portland ACFR.
- Prepare biannual valuations of the FPDR Plan and present the results to FPDR staff and the FPDR Board of Trustees.
- Prepare biannual assessments of the long-term adequacy of the dedicated FPDR property tax levy to fund the Plan's obligations and City contributions to the Oregon PERS Plan for FPDR Three members and present the results to FPDR staff and the FPDR Board of Trustees.
- Complete a plan experience study to develop appropriate plan assumptions with respect to retirement, disability incidence, withdrawal rates, salary growth and other factors for use in calculating the FPDR Plan liability and preparing FPDR budgets and financial forecasts. Present the results and recommendations of the experience study to FPDR staff and the FPDR Board of Trustees.
- Calculate actuarially-determined benefit amounts for alternate payees or members in accordance with the terms of domestic relations orders dividing pensions.
- Perform cost analyses of any proposed changes to the FPDR Plan or administrative rules, as requested by FPDR staff or the FPDR Board of Trustees.
- Provide general actuarial consultation services on any matter relating to the administration of the FPDR Plan.
- Provide other financial and actuarial services as requested by FPDR staff or the FPDR Board of Trustees.

#### **SECTION 3 DELIVERABLES**

Deliverables shall be considered those tangible resulting work products that are to be delivered to the City such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings, and reports. Unless otherwise specified by the City, the successful Proposer shall prioritize submitting applicable deliverables electronically, and any paper-based deliverables shall be printed double-sided and in bindings or report covers that are

fully recyclable, preferably using materials containing post-consumer waste (PCW) recycled content.

The individual Deliverables and their Due Dates are listed in the table below:

<b>Product or Service</b>	<b>Due Date</b>	<b>Description</b>
GASB 67/68 Calculations with ACFR-Compliant Schedules	August 25 each year	Completed GASB 67/68 memo with all required schedules: Net Pension Liability, Discount Rate, Key Actuarial Assumptions, Changes in Net Pension Liability, Discount Rate Sensitivity Analysis, Schedule of Changes in Pension Liability and Related Ratios, Pension Expense, Deferred Outflows/Inflows, Schedule of Deferred Outflow/Inflows, Net Pension Liability plus Net Deferrals
Biannual Actuarial Valuation	January 10 of odd-numbered years (report and slide deck)  Fourth Tuesday in January of odd-numbered years (in-person presentation)	Completed written report and slide deck presentation  In-person delivery of presentation to FPDR Board of Trustees
Biannual Levy Adequacy Analysis	January 10 of odd-numbered years (slide deck)  Fourth Tuesday in January of odd-numbered years (in-person presentation)	Completed slide deck presentation  In-person delivery of presentation to FPDR Board of Trustees
Mortality Tables	Within 30 days of Board acceptance of new mortality assumptions	Excel file with average life expectancy and annual probability of death for various members and beneficiaries at a range of ages
Experience Study	March 31, 2026  Fourth Tuesday in May 2026	Completed written report and slide deck presentation, including recommended assumption changes  In-person delivery of presentation to FPDR Board of Trustees

Domestic Relations Orders (DRO) calculations	Within 30 days of receipt of all necessary information from FPDR staff	Completed memo
Other Projects	Negotiated at time of scope determination	

If a due date falls on a non-business day, the deliverable shall be due on the last business day before the due date.

All deliverables and resulting work products from this contract will become the property of the City of Portland. As such, the Contractor grants the City the right to copy and distribute (in any and all media and formats) project deliverables for regulatory, project certification/recognition, program development, public education, and/or for any purposes at the sole discretion of the City of Portland.

## SECTION 4 PROJECT MANAGEMENT

### 5.1 Place of Performance

Generally, Contractor shall perform work at contractor facilities. Contractor will deliver in-person presentations to the FPRD Board of Trustees in Portland City Hall, or another location as directed by the City Project Manager. Otherwise, Contractor shall provide City with services at City locations only when and as directed by the City Project Manager.

### 4.1 Project Managers

The City's Project Manager will be Stacy Jones. The City may change City's Project Manager from time to time upon written notice to Contractor.

Contact Information: (503) 865-6488 | [stacy.jones@portlandoregon.gov](mailto:stacy.jones@portlandoregon.gov)

The Contractor's Project Manager will be Scott Preppernau.

Contact Information: (503) 796-2659 | [scott.preppernau@milliman.com](mailto:scott.preppernau@milliman.com)



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 1

### Actuarial Standard of Practice (ASOP) No. 4

Public Comment  
provided by Kevin Machiz

**Subject:** FPDR Board Written Public Comment for January 23

Director Hutchison,

I am submitting this written public comment in reference to the January 23, 2024 Board Materials, specifically a memo from outside counsel to the FPDR Board of Trustees titled "Evaluation of Concerns Raised in Written Comments Concerning Compliance with Actuarial Standards of Practice (ASOP) No. 4." under Information Item 1. This memo referenced public comments by me from the April 4, 2023 and May 23, 2023 FPDR Board meetings. In these public comments, I pointed out that a memo from staff to the FPDR Board of Trustees regarding an actuarial services contract was inconsistent with ASOP No. 4. I have read the memo from outside counsel and would like to respond with a few statements.

First, I stand by everything I said in my public comments.

Second, the memo from outside counsel states repeatedly that I have expressed concerns with a Revised Service Agreement between the City of Portland and Milliman. This is false. In fact, I have never expressed any concerns with this Revised Service Agreement in public or in private. To remove all doubt, I have read the copy of the Revised Service Agreement included in the Board Materials and can affirmatively state that I have no objections to it.

Counsel gives an opinion regarding the Revised Service Agreement. Compliance with professional standards is required both by the contract and by the actuarial profession; compliance is not optional or as the opinion acknowledges "it is Milliman's responsibility to perform Fund work in accordance with [professional standards]." Nevertheless, the opinion concludes that because the professional standard at issue "is binding only on actuaries, and not the FPD&R...any question concerning Milliman's compliance with ASOP No. 4 is a professional standards matter for Milliman to consider." In its introduction, the opinion goes further stating that because compliance with ASOP No. 4 is a professional standards matter, determining compliance is solely "for Milliman to resolve (with guidance from appropriate professional bodies, as determined necessary or appropriate by Milliman in its sole and complete discretion)," notwithstanding that the contract itself requires compliance with that standard.

Contracts that require performance (here compliance with professional standards) on one party (here Milliman) are not optional for that party because the counterparty is not contractually obligated to enforce the requirement. Were that so, almost all contracts of every sort would be unenforceable. Likewise, the Board is not helpless to enforce compliance with professional standards because the ultimate arbiter of what those standards mean is a professional body.

Third, I was pleased to learn that Milliman is planning to seek guidance from the Actuarial Board for Counseling and Discipline regarding whether the 2024 Levy Adequacy Analysis will be considered a funding valuation under ASOP No. 4, and therefore what professional standards and the Revised Service Agreement requires of them.

In conclusion, I commend the Board's vigorous pursuit of this issue, consistent with the prudent discharge of its duties.

Kevin Machiz, CFA, FRM

Opinions expressed herein reflect only the author's





# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 2

Disability Pension benefits review  
(comparison of FPDR and PERS Disability Benefits)

## PERS Tier II and FPDR Two Disability Retirement Comparison

(January 12, 2024)

For this exercise, we are comparing disability benefits for:

1. A police officer employed by the City of Portland and covered under the FPDR Two Plan
2. A police officer employed by an Oregon PERS-covered public employer other than the City of Portland

### Assumptions:

	FPDR Two Member	PERS Tier II member
<b>Background</b>		
Job position	Police Officer	Police Officer
Date of Birth	July 4, 1975	July 4, 1975
Hire Date	January 15, 2000	January 15, 2000
Date of Disability	December 20, 2023	December 20, 2023
Salary at time of disability	<b>\$120,000</b>	<b>\$120,000</b>
Definition of Disability	An Active Member shall be eligible for the service-connected disability benefit when unable to perform the Member's required duties because of an injury or illness arising out of and in the course of the Member's employment in the Bureau of Police or Fire.	A member must be totally, not partially, disabled and anticipate being unable to perform <b>any work</b> for which they are qualified to perform, not just their last or usual job, for a minimum of 90 consecutive days.  Work was the material contributing cause of their injury or disease.

For this example, we have assumed the FPDR and PERS members are permanently disabled and unable to perform any work.

	FPDR DISABILITY
	Under the FPDR Plan, disabled members will receive disability benefits until they reach retirement age. After which, they will receive service retirement benefits.
1 <b>Date of Disability/ Date Benefits Start</b>	December 20, 2023
2 <b>Benefit</b>	<b>\$90,000</b>  75% of Member's base pay in effect at disability including applicable premiums. Does not include overtime.  Calculation: \$120,000 * 75%
3 <b>COLA</b>	Member is treated as if they are still on active duty for the purpose of salary increases. Member receives increases in benefits based on salary increases outlined in the appropriate labor agreement.  For this example, assuming 3.25% annual salary increase based on most recent actuarial assumptions.
4 <b>Taxability</b>	Benefits are not taxable
5 <b>Service Credit</b>	Receives full service credit for each year member received disability benefits <b>assuming they are not SGA</b> and receive full disability benefits
6 <b>Benefits End</b>	January 15, 2030  The earlier of the date the FPDR Two Member earns 30 Years of Service or the date the FPDR Two Member attains Social Security retirement age.

## PERS Tier II and FPDR Two Disability Retirement Comparison

(January 12, 2024)

	FPDR SERVICE RETIREMENT	PERS DISABILITY RETIREMENT
7	<b>Date of Disability Retirement/ Date Benefits Start</b>	December 20, 2023
8	<b>Mandatory Retirement Date if Still Receiving Disability Benefits</b>	January 15, 2030
9	<b>Final Average Salary</b>  Salary at time of disability (\$120,000) adjusted for annual increases, assuming a 3.25% annual salary increase.	<b>\$133,702 (15% OT Load)</b>  The 'final average salary' is the average salary, including overtime, for the three years prior to retirement. Overtime is the average overtime for Portland police officers, at time of disability, which is presently estimated at 15.0% of salary.
10	<b>Years of Service</b>  30  The earlier of the date the FPDR Two Member earns 30 Years of Service or the date the FPDR Two Member attains Social Security retirement age.  Assumes member was not SGA and received full disability benefit	<b>30</b>  The years and months of service the member would have accrued had they been able to work to age 55.  Will turn age 55 on July 4, 2030.
11	<b>Multiplier</b>  2.8%  Lowest survivor benefit	<b>2.0%</b>  Refund Annuity multiplier of 2%
12	<b>Benefit (December 20, 2023)</b>  \$90,000  75% of Members rate of base pay in effect at disability  Calculation: \$120,000 * 75%	<b>\$80,221 (15% OT Load)</b>  Final Average Salary x Years of Service as if worked to 55 x Multiplier 2.0%  Calculation = Final Average Salary (\$133,702) x 30 x 2.0%
13	<b>Benefit (January 15, 2030)</b>  \$126,093  (FPDR Pension Benefit)  Calculation = \$150,111 (Projected final salary of working police officer in 2030) x 30 x 2.8%	<b>\$89,319 (15% OT Load)</b>  Adjusted monthly benefit on January 2030 (salary plus PERS COLAs (1.55%) from December 2003 to January 2030)
14	<b>COLA</b>  Set by the FPDR Board annually, cannot exceed maximum PERS COLA of 2%	Per PERS formula, 1.25% to a maximum 2%.  COLA calculation: •2% on service credit earned up to October 1, 2013, except for some OPSRP members*. •1.25% on service credit earned after that date. And if your annual benefit is more than \$60,000, you will receive 0.15% COLA on benefits exceeding that amount.  For this member, annual COLA ~1.55%
15	<b>Taxability</b>  Benefits are taxable	Benefits are not taxable
16	<b>IAP</b>  N/A	Members can draw from their IAP account

## PERS Tier II and FPDR Two Disability Retirement Comparison

	FPDR		PERS	
	Salary	Benefit	Salary	Benefit
2023	\$120,000	\$90,000	\$133,702	\$80,221
2024	\$123,900	\$92,925		\$81,474
2025	\$127,927	\$95,945		\$82,743
2026	\$132,084	\$99,063		\$84,026
2027	\$136,377	\$102,283		\$85,326
2028	\$140,809	\$105,607		\$86,641
2029	\$145,386	\$109,039		\$87,972
2030	\$150,111	\$112,583		\$89,319
2031		\$126,093		\$90,682
2032		\$128,615		\$92,062
2033		\$131,187		\$93,459
2034		\$133,811		\$94,872
2035		\$136,487		\$96,303
2036		\$139,217		\$97,751
2037		\$142,001		\$99,217
2038		\$144,841		\$100,700
2039		\$147,738		\$102,201
2040		\$150,693		\$103,721

### Notes

FPDR benefits equals 75% of salary; PERS 60%

FPDR annual benefit increase is 3.25%; PERS 1.55%

FPDR Service Retirement begins

FPDR Benefit equals 84% of final salary; PERS 60%

FPDR annual increase is 2%; PERS 1.55%



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 2.5

Overview and Discussion of FPDR Disability/Disability  
Retirement Benefit presentation by Lorne Dauenhauer,  
FPDR outside counsel

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## MEMORANDUM

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**TO:** Board of Trustees  
City of Portland Fire & Police Disability & Retirement Fund

**FROM:** Lorne Dauenhauer, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.)  
Franco A. Lucchin, Esq. (Portland Office of the City Attorney)

**DATE:** January 12, 2024

**SUBJECT:** Overview and Discussion of FPDR Disability / Disability Retirement Benefit

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### Executive Summary

Over the past several years, the Board of Trustees (the “Board”) of the City of Portland Fire & Police Disability & Retirement Fund (“FPDR”) has heard public testimony on numerous occasions concerning disability benefits made available to FPDR members. This public testimony has chiefly centered on (i) the tax-treatment of the disability benefits, (ii) whether the fact that FPDR does not provide a completely tax free service-connected disability benefit to FPDR Two Members violates the “equal to or better than” (ETOB) requirements under applicable Oregon law, and (iii) allegations concerning the elimination of a completely tax-free “disability retirement” through administrative rules adopted by the Board back in 2015.

As discussed in more detail below –

- (i) The tax treatment of benefits payable to a disabled FPDR Two member is due to the way in which benefits are calculated;
- (ii) The tax character of a benefit is not taken into consideration for ETOB testing purposes; and
- (iii) FPDR Two has never had a “disability retirement” benefit.

This memorandum also discusses what would need to be done to change FPDR’s service-connected disability benefit provisions to make those benefits completely tax-free. However, and as discussed below, a Federal law passed in late 2022 has addressed the tax issue for first responders receiving service connected disability benefits, starting in 2026.

## **I. Tax Treatment of Service-Connected Disability Benefits Payable to FPDR Two Members**

If an FPDR Two Member qualifies for disability benefits, the benefits payable to that Member are calculated as a percentage of the Member's rate of Base Pay. See FPDR Charter 5-306(e) (which for the first year following a service connected disability provides for a benefit based on 75% of Base Pay (reduced by 50% of wages paid to the member during the first year) and for subsequent years (once medically stationary and capable of Substantial Gainful Activity) is based on 50% of Base Pay (reduced by 25% of wages paid to the member), with a minimum pre-retirement disability benefit of 25% of Base Pay) and FPDR Charter 5-307(b) (which for non-service connected disabilities provides for a benefit based on 50% of Base Pay (reduced by 50% of wages paid to the member during the disability). For purposes of this memo, further FPDR Charter references are simplified to include only number references: e.g., to 5-306(e) and 5-307(b). Copies of 5-306 and 5-307 are attached for reference.

Both service-connected disability benefits and non-service connected disability benefits stop when the disabled Member attains his or her "Disability Retirement Age." Upon attainment of Disability Retirement Age, "the disabled Member shall be entitled to receive only a retirement benefit [under 5-304]." See 5-306(g) and 5-307(d).

The retirement benefit payable to an FPDR Two Member under 5-304 is equal to 2.2% of the member's Base Pay times the members "Years of Service." Thus, unlike the disability benefits payable under 5-306 and 5-307 (which are based purely on a Member's rate of pay), the retirement benefit is based both on a Member's rate of pay **and** the Member's length of service.

The differences in the way disability benefits and retirement benefits under FPDR Two are calculated are significant for income tax purposes.

In general, all distributions paid to any FPDR Member are includible in the Member's taxable income and are reported to the Member and the IRS as taxable payments on Form 1099-R. However, under Section 104(a)(1) of the Internal Revenue Code of 1986, as amended (the "Code"), income paid to an employee does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness. The IRS treats the Code section 104(a)(1) exemption to apply to amounts payable under "a statute *in the nature of a* worker's compensation act, that provides compensation to employees for personal injuries or sickness *incurred during employment.*" Treas. Reg. § 1.104-1(b). Copies of both Code section 104(a)(1) and Treas. Reg. § 1.104-1(b) are attached for reference.

However, those same IRS rules clarify that favorable Code section 104(a)(1) treatment does not apply if either: (1) the amount payable is "determined by reference to the employee's age or length of service ...even though the employee's retirement is occasioned by an occupational injury or sickness" OR (2) the amount is "received as compensation for a non-occupational injury."

Accordingly:

1. All disability benefits payable under 5-307 (non-service connected disabilities) must be included in the recipient's taxable income.
2. All disability benefits payable under 5-306 (service-connected disabilities) are excludible from the recipient's taxable income, but only for so long as those amounts are calculated solely on the basis of compensation and are not "determined by reference to the employee's age or length of service."

As noted above, the service-connected disability payable to an FPDR Two Member ends upon the Member's "Disability Retirement Age." At that point, the service-connected disability benefit under 5-306 ends, and the regular retirement benefit under 5-304 begins.

Since the regular retirement benefit is determined, in part, on the Member's length of service, the benefit payable to that disabled Member under 5-304 is not excludible from taxable income under Code section 104(a)(1) – even though the Member left employment due to a service-connected disability.

If 5-306 did not require the disability benefit to end upon the Member's Disability Retirement Age, but instead the service-connected disability benefit as calculated under 5-306 continued for the life of the Member, then presumably that monthly benefit would continue to enjoy exemption from income tax under Code section 104(a)(1).

However, in its current form, while payments of an FPDR Two Member's service-connected disability benefits are not includible in the recipient's taxable income, that favorable tax treatment ends when the Member attains Disability Retirement Age, at which point the regular (taxable) retirement pension begins.

Notwithstanding the foregoing to the contrary, the SECURE 2.0 Act of 2022 added a new section to the Internal Revenue Code governing the taxation of service-connected disability retirement benefits paid to qualifying first responders – Code section 139C.

Code section 139C applies to pension distributions paid to individuals who incurred a service-connected disability prior to retirement. Under these new rules, if a member was receiving a tax-exempt disability benefit, and the member's benefit is converted to a taxable retirement benefit, that portion of the retirement that does not exceed the tax exempt disability benefit being received prior to retirement is exempt from tax.

Basically, Code section 139C seems to address the service-connected disability tax issue that has been raised with the Board several times via public comments. However – Code section 139C does not apply to service-connected disability payments paid prior to December 31, 2026. A copy of Code section 139C is attached for reference.



## **II. Tax Treatment of Service-Connected Disability Benefits is Irrelevant for ETOB Purposes**

### **1. General discussion of ETOB requirements.**

In general, all public employers of police officers or firefighters are required to cover those employees under Oregon’s Public Employees Retirement System (“PERS”). ORS (“Oregon Revised Statutes”) 237.620(1). However, with respect to FPDR One and Two members, the City of Portland (the “City”) is relying on an exemption from the foregoing PERS requirement: police officers and firefighters employed by certain public employers do not need to be covered by PERS, “if the Public Employees Retirement Board [“PERB”] determines that the public employer provides retirement benefits [to certain classes of police officers and fire fighters] that are equal to or better than the retirement benefits that would be provided to the equivalent classes of employees under the Public Employees Retirement System.” ORS 237.620(2) (this requirement is referred to colloquially as “Equal to or Better Than” or, more simply, as “ETOB”).

We understand that, unlike FPDR, if a police officer or firefighter member of PERS qualifies for a service-connected disability, the disability benefit is always calculated as a percentage of the PERS member’s pay – and therefore the benefit is always exempt from tax. This difference in the way a service-disability is calculated (and taxed) under PERS versus FPDR likely is one reason for the public comments received by the FPDR Board.

The reasoning for those challenging the FPDR’s service-connected disability retirement benefit goes something like this: if PERS offers a service-connected disability benefit on a completely tax-free basis, how can FPDR possibly be “equal to or better than” PERS, if FPDR doesn’t also offer the same service-connected disability benefit on a tax-free basis.

As noted above, the PERB is the sole decision maker as to whether a non-PERS fund (such as FPDR) satisfies ETOB. The Standards of Review by which PERB decides whether ETOB is satisfied are set forth in OAR (“Oregon Administrative Rules”) 459-030-0025. Significantly, OAR 459-030-0025(8) provides that, when evaluating a non-PERS fund’s plan provisions for ETOB purposes, PERB “may not value portability of pension benefits, tax advantages, Social Security benefits or participation, any worker’s compensation component of a public employer’s retirement plan as determined by the employer or any portion of a benefit funded by the member.” (emphasis supplied). Copies of both ORS 237.620 and OAR 457-030-0025 are attached for reference.

Stated differently: PERB does not take the tax treatment of a particular benefit under a non-PERS plan into consideration when reviewing whether that plan satisfies ETOB.

Accordingly, under the current administrative rules regarding the ETOB requirements, the fact that a service-connected disability benefit for a disabled FPDR Two member becomes taxable at Disability Retirement Age is irrelevant with respect to FPDR’s ability to satisfy ETOB.

### **2. Discussion of litigation and other legal actions involving the tax-treatment of FPDR’s service connected disability benefits.**

The issue of whether the FPDR is legally required to offer a fully tax-free disability benefit (referred to in this section of the memorandum as a “disability retirement” benefit) for its FPDR Two Members was raised and answered in 2016 by the State of Oregon’s Office of Administrative Hearings (OAH). The answer is no.

The Senior Administrative Law Judge who authored the Final Order found no basis in the Charter or law in general requiring a retirement benefit exempt from taxation under the Internal Revenue Code. A copy of the Final Order is attached for reference. The Final Order was appealable to the Multnomah County Circuit Court through the writ of review for 60 days but not appealed.

As explained in the Final Order, a disability benefit is properly terminated upon an FPDR Two Member reaching Disability Retirement Age under the FPDR Plan and accruing sufficient service credit, through a combination of working and time spent receiving the service-connected disability benefit, to begin receiving the FPDR Two retirement benefit. This is because the FPDR Plan requires permanently disabled FPDR Two Members receiving service-connected disability benefits to retire at their Disability Retirement Age and receive a retirement benefit calculated under the terms of the FPDR Plan.

In 2017, in a separate case brought in the Multnomah County Circuit Court, the same plaintiff (this time unrepresented) again asserted a right to a “disability retirement” benefit for FPDR Two Members. This time, in addition to the City of Portland, the plaintiff sued the State of Oregon Public Employees Retirement System Board. The Complaint is attached for reference. The Multnomah County Circuit Court granted the defendants’ motions to dismiss with prejudice. As to the claims against the City of Portland, FPDR, the Court determined that it did not have jurisdiction over the case because the plaintiff had not appealed the 2016 Final Order through a writ of review.

### **III. Assertions that a tax-favored Disability Retirement Benefit was eliminated in 2015 via adoption of Administrative Rule changes.**

Public testimony on a number of occasions has alleged that the FPDR once had a “disability retirement” benefit that would have allowed tax-free service-connected disability payments to FPDR Two members to continue into retirement. As discussed below, that public testimony was incorrect and likely has its genesis in Board-approved editorial changes to the FPDR Administrative Rules on September 22, 2015.

Prior to September 22, 2015, FPDR Administrative Rule 5.9.10(A) (relating to post-retirement medical benefits) included a reference to “Disability Retirement.” Here is how that particular rule existed prior to September 22, 2015:

“(A) ***Disability Retirement:*** Medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable, if the Member’s disability benefits continued until the Member reached Disability Retirement Age.”

(emphasis added).

As part of a “clean-up” of the FPDR’s Administrative Rules, the Board considered and passed Resolution No. 501. A copy of Resolution No. 501 as approved by the Board is enclosed for reference. As to Rule 5.9.10(A), as shown in the attached resolution, the Board approved a very minor, non-substantive change – to change the phrase “Disability Retirement” to “Retirement from Disability.” FPDR staff has advised us that no changes have been made involving the phrase or term “disability retirement” other than as made under Resolution No. 501.

Again, we believe that the public testimony concerning a rule change affecting the tax treatment of service-connected disability benefits for FPDR Two members has its origins in the above-discussed change to Rule 5.9.10(A). This rule change was non-substantive and it did not make any changes to the FPDR’s service-connected disability rules nor did it “eliminate” any previously existing “disability retirement” benefit.

\* \* \* \* \*

As discussed above, the tax treatment of the service-connected disability benefit for FPDR Two Members solely a function of the Internal Revenue Code. Specifically, as required under Code section 104(a)(1), the service-connected disability benefit is tax-free up to the FPDR Two Member’s Disability Retirement Age, and becomes taxable upon conversion to a regular retirement benefit when the Member attains Disability Retirement Age.

The only way to change the tax-treatment of the service-connected disability benefit for FPDR Two Members is to change how the benefit is calculated as of the Member’s Disability Retirement Age. That change would require a modification of the Charter.

Generally, there are two different types of Charter amendments: (1) mandatory amendments and (2) discretionary amendments.

1. Changes via Ordinance for Mandatory Benefits. 5-403 allows City Council to amend the Charter by ordinance to the extent the City “is required by law to extend to the Members additional benefits not described by this Chapter....”

As discussed above, the City of Portland is permitted to cover its police officer and firefighter employees under the FPDR only to the extent the benefits provided under the FPDR Charter satisfy the ETOB test, as mandated by Oregon statute. Currently, administrative rules issued under the applicable ETOB statute provide that the taxation of a benefit is not taken into consideration when determining satisfaction of ETOB.

If either (i) the ETOB statute or (ii) the administrative rules promulgated under the ETOB statute are revised so that the taxation of a benefit is taken into consideration for ETOB purposes, and the FPDR cannot satisfy ETOB based on the current FPDR service-connected disability benefit design, then City Council could revise existing 5-306 as necessary to keep FPDR in compliance with the ETOB rules.

2. Discretionary Changes Require Voter Approval. Absent a situation involving mandatory Charter changes under 5-403, a revision of the existing service-connected disability benefit for FPDR Two Members would require a discretionary change to 5-306. Pursuant to

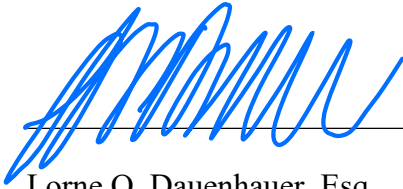
Portland City Code Section 2.04.040, there are three different ways to amend the Charter for discretionary benefit changes:

- a. *Referral to Voters by City Council.* The City council can refer a discretionary amendment to the ballot for voter approval
- b. *Referral to Voters by Petition.* A petition may be submitted by registered voters to place a discretionary amendment to the ballot for voter approval. The petition must satisfy a number of criteria, including that the Chief Petitioners must be registered to vote in the City of Portland, the petition must specify the election date for which the initiative is intended, the petition must be filed within a certain timeframe of the intended election date, and must include the signatures of a certain proportion of registered Portland voters.
- c. *Referral to Voters by Charter Commission.* The Charter Commission can refer a discretionary amendment to the ballot for voter approval. Referral by the Charter Commission requires an affirmative vote of at least 15 members of the Charter Commission, which convenes every ten years, after a public hearing process prescribed by the City Council. If this affirmative vote threshold is met, the measure then goes through the process required by the City Charter to be referred to voters for election. This involves the City Auditor's Office doing the following with the measure: filing it as a report from the Charter Commission to the City Council; placing it on the Council Agenda; presenting it to the Council at a Council meeting; forwarding it to the City Attorney's Office for preparation of a ballot title and explanatory statement in conformance with the requirements of state law; publishing the ballot title and explanatory statement consistent with the requirements of the City Code after receiving it from the City Attorney's Office; and ultimately filing the measure, ballot title, and explanatory statement with the county elections officers, following completion of the ballot title challenge process.

As discussed above, absent a situation involving a mandatory amendment by ordinance under 5-403, amending the Charter to modify the service-connected disability benefit for FPDR Two Members is an involved and lengthy process – and ultimately requires approval by the City's voters. Copies of 5-403 and Portland City Code Section 2.04.040 are attached for reference.

Finally, the tax treatment issue of service-connected disability payments to FPDR Two Members has, in a sense, been addressed by Congress. Once it goes into effect, newly enacted Code section 139C prospectively changes the tax treatment of service-connected disability benefits – although this new tax provision does not go into effect until 2027. Even if there currently is appetite for a discretionary amendment to address the service-connected retirement tax issue, the enactment of Code section 139C arguably obviates the need for that sort of amendment (albeit not until 2027).

Please let either of us know if you have any questions concerning the foregoing.



Lorne O. Dauenhauer, Esq.  
Shareholder  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.



Franco A. Lucchin, Esq.  
Senior Deputy City Attorney  
Portland Office of the City Attorney

Enclosures:

Charter Sections: 5-304, 5-306, 5-307  
Code section 104(a)(1)  
Code section 139C  
Treas. Reg. § 1.104-1(b)  
ORS 237.620  
OAR 459-030-0025  
Final Order dated April 15, 2016  
Complaint filed on or about May 18, 2017 that was the subject of the Final Order  
FPDR Board Resolution No. 501  
Portland City Code Section 2.04.040



## Section 5-304 Retirement Benefits.

### City Charter Section

### Search Code, Charter, Policy

#### Keywords

**(a) Eligibility.** A FPDR Two Member shall be eligible to receive a retirement benefit upon termination of employment with the Bureau of Fire or Police on or after attaining age 50 if the FPDR Two Member has 25 or more Years of Service or on or after attaining age 55. A FPDR Two Member receiving disability benefits under Section 5-306 or 5-307 shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the date the FPDR Two Member earns 30 Years of Service under Section 5-302 or the date the FPDR Two Member attains social security retirement age. For purposes of this subsection, social security retirement age means the retirement age provided in Section 216(l)(1) of the Social Security Act.

**(b) Amount of Benefit.** The retirement benefit shall be 2.2 percent of the FPDR Two Member's Final Pay times the FPDR Two Member's Years of Service. The amount shall not exceed the maximum benefit permissible under Section 415 of the Internal Revenue Code of 1986 or any successor provision, and regulations issued thereunder, as they may be amended from time to time. The provisions of such Section 415 or its successor, and such regulations, are incorporated by this reference.

**(c) Form of Benefit.** One-twelfth of the retirement benefit shall be payable monthly for the life of the FPDR Two Member, commencing with the month following retirement. The benefit shall be adjusted as provided in Section 5-312.

**(d) FPDR Three retirement benefits** shall be provided as set out in the Oregon Public Employees Retirement System, as amended, and funded in accordance with this Chapter. The Fund shall pay the employee contribution required by the Public Employee Retirement System statutes. A FPDR Three Member shall also be credited with a contribution of three percent (3%) of salary, as defined in the PERS statute and accompanying rule and regulations, to the Individual Account Plan, or successor defined contribution plan established under the Public Employees Retirement System. If the City of Portland is required by law, or the Members elect to enter the federal Social Security system, the three percent (3%) of salary contribution to the Individual Account Plan, or successor defined contribution plan under the Public Employees Retirement System in this subsection shall cease as to those affected Members.



## Section 5-306 Service Connected and Occupational Disability Benefits.

### City Charter Section

### Search Code, Charter, Policy

#### Keywords

**(a) Interim Disability Benefits.** An Active Member may receive Interim Disability Benefits beginning with the payroll period when the Fund Administrator receives the required application for Service-Connected and Occupational Disability benefits, including a written statement from the Member's attending physician that the Member is unable to perform the Member's required duties because of an injury or illness arising out of and in the course of the Member's employment in the Bureau of Police or Fire. Interim Disability Benefits may be payable until the claim is approved, denied or withdrawn. If the Fund Administrator determines the Member is eligible for service-connected or occupational disability and approves the Member's application for benefits, disability benefits under Subsections (b), (c) or (d) of this Section will be payable during the period the Member continues to be eligible. If the application for benefits is denied or withdrawn by the Member, Interim Disability Benefits will cease immediately, and the Member shall repay the Fund the total amount of Interim Disability Benefits paid. The Board of Trustees shall provide by Administrative Rule the method of payment and repayment of Interim Disability Benefits.

**(b) Eligibility for Service-Connected Disability Benefit.** An Active Member shall be eligible for the service-connected disability benefit when unable to perform the Member's required duties because of an injury or illness arising out of and in the course of the Member's employment in the Bureau of Police or Fire. The Fund Administrator shall determine the existence of a disability and whether it arises out of and in the course of such employment. A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure.

**(c) A Member shall not be eligible for the service-connected disability benefit on the basis of a condition of stress or mental disorder unless:**

1. The employment conditions producing the stress or mental disorder exist in a real and objective sense;
2. The employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police or fire

employment or reasonable disciplinary, corrective, or job performance evaluation actions by the employer, or cessation of employment;

**3.** There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community;

**4.** There is clear and convincing evidence that the stress or mental disorder arose out of and in the course of employment as an Active Member; and

**5.** The Member's employment conditions are the primary cause of the stress or mental disorder.

**(d)** Eligibility for Occupational Disability Benefit. An Active Member shall be eligible for the occupational disability benefit when unable to perform the Member's required duties because of heart disease, hernia of abdominal cavity or diaphragm, AIDS, AIDS-related complex, tuberculosis, hepatitis B, or pneumonia (except terminal pneumonia). A Member shall not be eligible for an occupational disability benefit because of heart disease unless the Member has five or more Years of Service when the disability arises. The Fund Administrator shall deny an occupational disability benefit if the Fund Administrator determines, by a preponderance of the evidence, that the disability was not contracted as a result of service as a police officer or fire fighter. No Member shall be eligible to receive a benefit for an occupational disability incurred while receiving benefits under Section 5-307, unless such occupational disability is incurred within two years after such Member had commenced and continued to receive benefits under Section 5-307, or unless such occupational disability is a recurrence of an occupational disability which became disabling and was compensated for under this Section.

**(e)** Amount of Benefits. During the period the Member continues to be eligible under Subsection (a), (b), (c) or (d) benefits shall be paid as follows:

**1.** During the first year from the date of disability, the Member shall be paid 75 percent of the Member's rate of Base Pay in effect at disability, reduced by 50 percent of any wages earned in other employment during the period the benefit is payable.

**2.** The Member shall continue to be paid the benefit described in Paragraph 1 after one year from the date of disability until the earliest date on which the Member is both medically stationary and capable of Substantial Gainful Activity. If not medically stationary sooner, the Member shall be treated as medically stationary for purposes of this Section on the fourth anniversary of the date of disability, regardless of the Member's condition. The Member is capable of Substantial Gainful Activity if qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member's rate of Base Pay at disability.



**3.** After the date described in Paragraph 2, the Member shall be paid 50 percent of the Member's rate of Base Pay at disability, reduced by 25 percent of any wages earned in other employment during the same period.

**4.** The minimum benefit shall be 25 percent of the Member's rate of Base Pay, regardless of the amount of wages earned in other employment.

**5.** The Fund Administrator may suspend or reduce the benefit if the Member does not cooperate in treatment of the disability or in vocational rehabilitation or does not pursue other employment.

**6.** Notwithstanding any other provision of the Chapter or the City Charter, a disabled Member receiving or eligible to receive Service-Connected and Occupational Disability Benefits under Section 5-306, or Non-Service Connected Disability Benefits under Section 5-307, shall not receive any such benefit for periods of time during which the member is incarcerated subsequent to and for the conviction of a crime. One-half of such benefit, however, shall be payable to the Member's spouse, if not incarcerated, or Member's minor children, during such periods of incarceration.

**(f)** Form of Benefits. The service-connected and occupational disability benefits shall be paid on the same schedule as the Member's regular payroll during the first year from the date of disability and paid monthly thereafter. The Board may adopt administrative rules which allow exceptions to the Form of Benefits in accordance with this Subsection. The benefits shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability.

**(g)** Service-connected or occupational disability benefits to a FPDR Two Member shall cease at Disability Retirement Age under Subsection 5-304(a) unless the Fund Administrator determines that the service-connected or occupational disability is temporary. If the service-connected or occupational disability is determined by the Fund Administrator to be temporary, a FPDR Two Member shall be eligible to receive disability benefits for a period of two (2) years from the date of such disability or the Disability Retirement Age, whichever is later. At the end of such period, the disabled Member shall be entitled to receive only a retirement benefit. Service-connected or occupational disability benefits to a FPDR Three Member shall cease at Normal Retirement Age under PERS unless the Fund Administrator determines that service-connected or occupational disability is temporary. If the service-connected or occupational disability is determined by the Fund Administrator to be temporary, a FPDR Three Member shall be eligible to receive disability benefits for a period of two (2) years from the date of such disability or the Normal Retirement Age, whichever is later.

**(h)** Medical and Hospital Expenses.

**1.** For members who are retired as of January 1, 2007, in addition to the benefits described above, a Member with a service-connected or occupational injury or illness shall be reimbursed from the Fund for reasonable medical and hospital expenses arising from the injury or illness, as determined by the Fund Administrator. Such reimbursement shall be allowed for expenses incurred while serving as an Active Member, while the FPDR Two Member's disability benefits under this Section continue and, if the FPDR Two Member continues to receive such benefits until Disability Retirement Age while retirement benefits under Section 5-304 continue to the FPDR Two Member. A FPDR Three Member shall receive a reimbursement for such reasonable medical and hospital expenses while serving as an Active Member, while the FPDR Three Member's disability benefit under this Section continue and, if the FPDR Three Member continues to receive such benefits until Normal Retirement Age under PERS while retirement benefits continue under PERS to the FPDR Three Member. The Fund Administrator may limit reimbursement to particular medical and hospital service providers with which it has made fee arrangements and may join in the purchase of services and administration of claims for other employees of the City of Portland.

**2.** For members who are not retired before January 1, 2007, in addition to the benefits described above, a Member with a service-connected or occupational disability accepted before retirement shall be reimbursed from the Fund for reasonable medical and hospital expenses arising from the injury or illness, as determined by the Fund Administrator. The Fund Administrator may limit reimbursement to particular medical and hospital service providers with which it has made fee arrangements and may join in the purchase of services and administration of claims for other employees of the City of Portland.

**3.** If the Fund Administrator determines by a preponderance of the evidence that a claim under Subsection 2 from a retired Member,

**a.** is for medical or hospital expenses related to an injury or illness that was based upon fraud, misrepresentation, an omission, or illegal activity by the Member, or

**b.** is for medical or hospital expenses related to an injury or illness that was accepted in good faith, in a case not involving fraud, misrepresentation, an omission, or illegal activity by the Member, and within two (2) years of the initial acceptance the Administrator obtains evidence that the claim is not a service-connected or occupational injury or the Fund is not responsible for the injury or illness, or

**c.** that the medical or hospital expenses are not related to the service-connected injury or illness,

the Fund Administrator shall deny the claim for medical or hospital expenses pursuant to Subsection 2. Nothing in this Subsection shall limit the Fund's ability to recover costs, fees, and other remedies for

other benefits previously received by the Member based upon fraud, misrepresentation, an omission, or illegal activity.

**(i) Waiver of Other Remedies.** By applying for and accepting service-connected or occupational disability benefits, a Member waives any right to recover any other compensation or damages from the City of Portland as a result of such disability.

**(j) Offset.** The monthly amount of service-connected or occupational disability benefits under this Charter shall be reduced by any monthly disability benefit payment made by PERS up to the amount provided in Subsection (e) of this Section. The Fund Administrator shall reduce any service-connected or occupational disability benefit payable under this Chapter in the amount determined to be necessary by the Fund Administrator to meet the limitation imposed by this Subsection.



## Section 5-307 Nonservice-Connected Disability Benefits.

### City Charter Section

### Search Code, Charter, Policy

### Keywords

**(a) Eligibility.** An Active Member shall be eligible for the nonservice-connected disability benefit if the Member has 10 or more Years of Service and is unable to perform the Member's required duties because of an injury or illness that does not qualify as service-connected or occupational under Subsection 5-306(a), (b), (c) or (d). No Member shall receive benefits under this Section as a result of the following: willful injuries; injuries sustained while, or illness contracted as a result of, willfully doing an unlawful act; or weakness, illness or disability resulting directly or indirectly from the habitual excessive use of or addiction to use of alcoholic beverages or illegal drugs.

**(b) Amount of Benefit.** The benefit shall be 50 percent of the Member's Base Pay at disability, reduced by 50 percent of any wages the Member earns in other employment during the period the benefit is payable. The Fund Administrator may reduce or terminate the benefit if the Member does not cooperate in treatment of the disability or in vocational rehabilitation or does not pursue other employment.

**(c) Form of Benefit.** The nonservice-connected disability benefit shall be payable monthly from the date of disability. The Board may adopt administrative rules which allow exceptions to the Form of Benefit in accordance with this Subsection. The amount shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability. The benefit shall cease when the Member reaches Disability Retirement Age under Subsection 5-304(a).

**(d) Nonservice-connected disability benefits to a FPDR Two Member shall cease at Disability Retirement Age under Subsection 5-304(a) unless the Fund Administrator determines that the nonservice-connected disability is temporary. If the nonservice-connected disability is determined by the Fund Administrator to be temporary, a FPDR Two Member shall be eligible to receive disability benefits for a period of two (2) years from the date of such disability or the Disability Retirement Age, whichever is later. At the end of such period, the disabled FPDR Two Member shall be entitled to receive only a retirement benefit. Nonservice-connected disability benefits to a FPDR Three Member shall cease at Normal Retirement Age under PERS unless the Fund Administrator determines that nonservice-connected disability is temporary. If the nonservice-connected disability is determined by the Fund Administrator to be temporary, a FPDR Three Member shall be eligible to receive disability benefits for a period of two**

(2) years from the date of such disability or the Normal Retirement Age, whichever is later.

**(e)** Offset. The monthly amount of nonservice-connected disability benefits under this Charter shall be reduced by any monthly disability benefit payment made by PERS up to the amount provided in Subsection (b) of this section. The Fund Administrator shall reduce any nonservice-connected disability benefit payable under this Chapter in the amount determined to be necessary by the Fund Administrator to meet the limitation imposed by this Subsection.

§104 Compensation for injuries or sickness.

Internal Revenue Code (RIA)

## **Internal Revenue Code**

### **§ 104 Compensation for injuries or sickness.**

**(a) In general.**

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include-

**(1)**

amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

**(2)**

the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

**(3)**

amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

**(4)**

amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980;

**(5)**

amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2) ); and

**(6)**

amounts received pursuant to-

(A) section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 ); or

(B) a program established under the laws of any State which provides monetary compensation for surviving dependents of a public safety officer who has died as the direct and proximate result of a personal injury sustained in the line of duty,

except that subparagraph (B) shall not apply to any amounts that would have been payable if death of the public safety officer had occurred other than as the direct and proximate result of a personal injury sustained in the line of duty.

For purposes of paragraph (3) , in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a) , or under a plan described in section 403(a) , shall, to the extent allowed as deductions under section 404 , be treated as contributions by the employer which were not includible in the gross income of the employee. For purposes of paragraph (2) , emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1) ) attributable to emotional distress.

**(b) Termination of application of subsection (a)(4) in certain cases.**

**(1) In general.**

Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2) .

**(2) Individuals to whom subsection (a)(4) continues to apply.**

An individual is described in this paragraph if-

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4) ,

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Department of Veterans Affairs.

**(3) Special rules for combat-related injuries.**

For purposes of this subsection , the term "combat-related injury" means personal injury or sickness-

(A) which is incurred-

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2) , except as provided in paragraph (4) , the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

**(4) Amount excluded to be not less than veterans' disability compensation.**

In the case of any individual described in paragraph (2) , the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

**(c) Application of prior law in certain cases.**

The phrase "(other than punitive damages)" shall not apply to punitive damages awarded in a civil action-



**(1)**

which is a wrongful death action, and

**(2)**

with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2) .

**(d) Cross references.**

**(1)**

For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106 .

**(2)**

For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section , see section 1403 of title 10, United States Code (relating to career compensation laws).

§139C Certain disability-related first responder retirement payments.

Internal Revenue Code (RIA)

## Internal Revenue Code

### § 139C Certain disability-related first responder retirement payments.

**Caution:** Code Sec. 139C, following, is added, effective for tax. yrs. begin. after 12/31/2026.

**(a) In general.**

In the case of an individual who receives qualified first responder retirement payments for any taxable year, gross income shall not include so much of such payments as do not exceed the annualized excludable disability amount with respect to such individual.

**(b) Qualified first responder retirement payments.**

For purposes of this section, the term "qualified first responder retirement payments" means, with respect to any taxable year, any pension or annuity which but for this section would be includible in gross income for such taxable year and which is received-

**(1)**

from a plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B), and

**(2)**

in connection with such individual's qualified first responder service.

**(c) Annualized excludable disability amount.**

For purposes of this section-

**(1) In general.**

The term "annualized excludable disability amount" means, with respect to any individual, the service-connected excludable disability amounts which are properly attributable to the 12-month

period immediately preceding the date on which such individual attains retirement age.

**(2) Service-connected excludable disability amount.**

The term "service-connected excludable disability amount" means periodic payments received by an individual which-

- (A) are not includible in such individual's gross income under section 104(a)(1),
- (B) are received in connection with such individual's qualified first responder service, and
- (C) terminate when such individual attains retirement age.

**(3) Special rule for partial-year payments.**

In the case of an individual who only receives service-connected excludable disability amounts properly attributable to a portion of the 12-month period described in paragraph (1), such paragraph shall be applied by multiplying such amounts by the ratio of 365 to the number of days in such period to which such amounts were properly attributable.

**(d) Qualified first responder service.**

For purposes of this section, the term "qualified first responder service" means service as a law enforcement officer, fire fighter, paramedic, or emergency medical technician.

(Reg Caution) Reg §1.104-1 Compensation for injuries or sickness.

Final, Temporary & Proposed Treasury Regulations (RIA)

## Federal Regulations

### Reg § 1.104-1. Compensation for injuries or sickness.

**Caution:** The Treasury has not yet amended Reg § 1.104-1 to reflect changes made by P.L. 107-134, P.L. 104-188, P.L. 101-239, P.L. 97-473, P.L. 94-455



**Effective:** January 23, 2012. For date of applicability, see §1.104-1(c)(3). These regulations apply

to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after January 23, 2012. This September 13, 1995, effective date derives from an exception set forth in section 1605(d)(2) of the 1996 Act to the statutory effective date of the amendments to section 104(a)(2). In addition, taxpayers may apply these regulations to amounts paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996, and if otherwise eligible may file a claim for refund for a taxable year for which the period of limitation on credit or refund under section 6511 has not expired. To qualify for a refund of tax on damages paid after August 20, 1996, under a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, a taxpayer must meet the requirements of the 1996 Act, including the requirement that excludable damages must be received on account of personal physical injuries.

**(a) In general.** Section 104(a) provides an exclusion from gross income with respect to certain amounts described in paragraphs (b), (c), (d) and (e) of this section, which are received for personal injuries or sickness, except to the extent that such amounts are attributable to (but not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year. See section 213 and the regulations thereunder.

**(b) Amounts received under workmen's compensation acts.** Section 104(a)(1) excludes from gross income amounts which are received by an employee under a workmen's compensation act (such as the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C., c. 18), or under a statute in the nature of a workmen's compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an

occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts. See, however, §§ 1.105-1 through 1.105-5 for rules relating to exclusion of such amounts from gross income.

**(c) Damages received on account of personal physical injuries or physical sickness.**

*(1) In general.* Section 104(a)(2) excludes from gross income the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness. Emotional distress is not considered a physical injury or physical sickness. However, damages for emotional distress attributable to a physical injury or physical sickness are excluded from income under section 104(a)(2). Section 104(a)(2) also excludes damages not in excess of the amount paid for medical care (described in section 213(d)(1)(A) or (B)) for emotional distress. For purposes of this paragraph (c), the term damages means an amount received (other than workers' compensation) through prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution.

*(2) Cause of action and remedies.* The section 104(a)(2) exclusion may apply to damages recovered for a personal physical injury or physical sickness under a statute, even if that statute does not provide for a broad range of remedies. The injury need not be defined as a tort under state or common law.

*(3) Effective/applicability date.* This paragraph (c) applies to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after January 23, 2012. Taxpayers also may apply these final regulations to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996. If applying these final regulations to damages received after August 20, 1996, results in an overpayment of tax, the taxpayer may file a claim for refund before the period of limitations under section 6511 expires. To qualify for a refund of tax on damages paid after August 20, 1996, under a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, a taxpayer must meet the requirements of section 1605 of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1838).

**(d) Accident or health insurance.** Section 104(a)(3) excludes from gross income amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent that such amounts (1) are attributable to contributions of the employer which were not includible in the gross income of the employee, or (2) are paid by the employer). Similar

treatment is also accorded to amounts received under accident or health plans and amounts received from sickness or disability funds. See section 105(e) and §1.105-5. If, therefore, an individual purchases a policy of accident or health insurance out of his own funds, amounts received thereunder for personal injuries or sickness are excludable from his gross income under section 104(a)(3). See, however, section 213 and the regulations thereunder as to the inclusion in gross income of amounts attributable to deductions allowed under section 213 for any prior taxable year. Section 104(a)(3) also applies to amounts received by an employee for personal injuries or sickness from a fund which is maintained exclusively by employee contributions. Conversely, if an employer is either the sole contributor to such a fund, or is the sole purchaser of a policy of accident or health insurance for his employees (on either a group or individual basis), the exclusion provided under section 104(a)(3) does not apply to any amounts received by his employees through such fund or insurance. If the employer and his employees contribute to a fund or purchase insurance which pays accident or health benefits to employees, section 104(a)(3) does not apply to amounts received thereunder by employees to the extent that such amounts are attributable to the employer's contributions. See §1.105-1 for rules relating to the determination of the amount attributable to employer contributions. Although amounts paid by or on behalf of an employer to an employee for personal injuries or sickness are not excludable from the employee's gross income under section 104(a)(3), they may be excludable therefrom under section 105. See §§ 1.105-1 through 1.105-5, inclusive. For treatment of accident or health benefits paid to or on behalf of a self-employed individual by a trust described in section 401(a) which is exempt under section 501(a) or under a plan described in section 403(a), see paragraph (g) of § 1.72-15.

**(e) Amounts received as pensions, etc., for certain personal injuries or sickness.**

(1) Section 104(a)(4) excludes from gross income amounts which are received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service. For purposes of this section, that part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of 10 U.S.C. 1401, or under 10 U.S.C. 1402(d), on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury or sickness, resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service (see 10 U.S.C. 1403 (formerly 37 U.S.C. 272(h), section 402(h) of the Career Compensation Act of 1949)). See paragraph (a)(3)(i) (a) of §1.105-4 for the treatment of retired pay in excess of the part computed on the basis of percentage of disability as amounts received through a wage continuation plan. For the rules relating to certain reduced uniformed services retirement pay, see paragraph (c)(2) of §1.22-1. For rules relating to a waiver by a member or former member of the uniformed services of a portion of disability retired pay in favor of a pension or compensation receivable under the laws administered by the Veterans Administration (38 U.S.C. 3105), see §1.122-1(e)(3). For rules relating to a reduction of the disability retired pay of a member or former member of the uniformed services under the Dual Compensation Act of 1964 (5 U.S.C. 5531) by

reason of Federal employment, see § 1.122-1(c)(4).

(2) Section 104(a)(4) excludes from gross income amounts which are received by a participant in the Foreign Service Retirement and Disability System in a taxable year of such participant ending after September 8, 1960, as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021). However, if any amount is received by a survivor of a disabled or incapacitated participant, such amount is not excluded from gross income by reason of the provisions of section 104(a)(4).

(3) Section 104(a)(4) excludes from gross income amounts which are received by a participant in the Retired Serviceman's Family Protection Plan as a disability annuity payable under the provisions of 10 U.S.C. 1431. However, if any amount is received by a survivor of a disabled or incapacitated participant, such amount is not excluded from gross income by reason of the provisions of section 104(a)(4).

T.D. 6169 , 4/13/56 , amend T.D. 6722 , 4/13/64 , T.D. 7043 , 6/1/70 , T.D. 9573 , 1/20/2012 .

## ORS § 237.620

Section 237.620 - Membership of police officers and firefighters in Public Employees Retirement System; death benefits

**(1)** Except as provided in this section, all public employers of police officers or firefighters shall provide retirement benefits to those employees under the Public Employees Retirement System.

**(2)** Notwithstanding subsection (1) of this section, a public employer of police officers or firefighters need not provide retirement benefits to those employees under the Public Employees Retirement System if the Public Employees Retirement Board determines that the public employer provides retirement benefits to each of the following classes of employees that are equal to or better than the retirement benefits that would be provided to the equivalent classes of employees under the Public Employees Retirement System:

**(a)** Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system before January 1, 1996, as described in ORS 238.430(2);

**(b)** Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system on or after January 1, 1996, and before August 29, 2003, as described in ORS 238A.025(4); and

**(c)** Police officers or firefighters who establish membership in the system on or after August 29, 2003, and are entitled to benefits only under the Oregon Public Service Retirement Plan.

**(3)** A public employer that provides retirement benefits under subsection (2) of this section must provide that:

**(a)** If an employee to whom the public employer provides retirement benefits dies before the employee's effective date of retirement, a former spouse of the employee is entitled to a death benefit if and to the extent provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation, as if the former spouse were the surviving spouse of the employee, as provided in ORS 237.600.

**(b)** If an employee to whom the public employer provides retirement benefits dies before the employee's effective date of retirement and has a dependent child who is not supported by the former spouse who is treated as the surviving spouse under paragraph (a) of this subsection, the dependent child is entitled to a death benefit.

**(4)** Notwithstanding subsection (3) of this section, a former spouse or dependent child of an employee is not entitled to a death benefit if, before the death of the employee, the former spouse or dependent child has commenced receiving a retirement benefit provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any



judgment of annulment or dissolution of marriage or of separation, as provided in ORS 237.600.

(5) At such times as may be established by board rule, the Public Employees Retirement Board shall review the retirement benefits provided by a public employer of police officers or firefighters that does not provide retirement benefits for those employees under the Public Employees Retirement System. The review must be conducted at the expense of the public employer. Based on the review, the board shall determine whether the public employer complies with the requirements of subsection (2) of this section. If the board determines that the public employer does not comply with the requirements of subsection (2) of this section for any class of employees described in subsection (2) of this section, the public employer must provide that class of employees with retirement benefits adequate to meet the requirements of subsection (2) of this section. If the public employer fails to provide those benefits, any employee within the class may bring an action in circuit court to compel compliance with the requirements of this section.

*ORS 237.620*

Amended by 2015 Ch. 506, § 4, eff. 6/19/2015.

1971 c.692 §3; 1973 c.704 §16; 1975 c.449 §13; 1989 c.888 §2; 1991 c.67 §56; 2001 c.945 §76; 2003 c. 625, § 33; 2007 c. 622, § 1

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# Oregon Public Employees Retirement System

## Chapter 459

### Division 30

### LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR POLICE OFFICERS AND FIRE FIGHTERS

#### 459-030-0025

#### Standards for Review of Police Officers and Firefighters Retirement Plans

(1) For purposes of this rule:

(a) "Assumed rate" has the same meaning as provided in OAR 459-007-0001.

(b) "Valuation date" means the date set by the Board as of which the retirement benefits under the public employer's retirement plan and the retirement benefits under the PERS Plan shall be compared.

(2) A determination whether a public employer provides retirement benefits to its police officers and firefighters that are equal to or better than the benefits that would be provided to them by PERS will be made as of the valuation date.

(3) The Board will consider the aggregate total actuarial present value, as of the valuation date, of all retirement benefits accrued up to the valuation date and projected to be accrued thereafter to the date of projected retirement by the group of police officers and firefighters employed on the valuation date by the public employer. The Board will compare the retirement benefits provided under the public employer's retirement plan for each of the following classes of employees to the retirement benefits provided to the equivalent class of employees participating in the PERS Plan:

(a) Police officers or firefighters who would have established membership in the system before January 1, 1996, as described in ORS 238.430(2), and would have been entitled to receive benefits under the PERS Plan;

(b) Police officers or firefighters who would have established membership in the system on or after January 1, 1996, as described in ORS 238.430, and before August 29, 2003, as described in 238A.025, and would have been entitled to receive benefits under the PERS Plan; and

(c) Police officers or firefighters who would have established membership in the system on or after August 29, 2003, and would have been entitled to benefits under the PERS Plan.

(4) For each class of employees described in section (3) of this rule:

(a) The aggregate total actuarial present value as of the valuation date of the projected full-career retirement benefits provided by the public employer must be equal to or better than those provided by PERS to the equivalent class of employees.

(b) The actuarial present value of projected retirement benefits for each individual employee need not be equal to or better than the present value that employee would have received as a member of that employee's equivalent class in PERS.

(c) The public employer's retirement plan or plans must provide at least eighty percent (80%) of the actuarial present value of projected retirement benefits in each of the major categories of retirement benefits available under PERS, namely: a service retirement benefit, including post retirement health care and a disability retirement benefit, also including post retirement health care.

(5) In adopting the following methods and assumptions, to be used in conducting an actuarial review of a public employer's retirement plan, preference has been given to the simplest, least expensive methodology consistent with ORS 237.610 to 237.620 and applicable actuarial standards:

(a) Only employer funded benefits shall be used as the basis for the test comparison. Any contribution deemed as an employee contribution will be treated as an employee contribution for testing purposes, even if paid for by the employer

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unless the employer's plan specifies that the employer is responsible to make the contribution on the employee's behalf and that responsibility is nonelective.

- (b) The Full Formula, Money Match, Formula Plus Annuity, and OPSRP Pension benefit formulas shall be used as the basis for valuing PERS benefits.
- (c) Prior service benefits that depend on earnings shall be valued using the assumed rate, taking into consideration guaranteed plan returns.
- (d) Future service benefits that depend on earnings shall be valued using the assumed rate, taking into consideration guaranteed plan returns.
- (e) Benefits will be assumed to be paid in the typical and customary distribution form given the structure of the underlying plan. For example, PERS benefits will be paid using the most recent distribution assumption as of the valuation date, and benefits from a defined contribution program will be assumed to be paid as a lump sum at the date of projected retirement.
- (f) Lump sum/annuity conversions, if needed, shall be calculated using the assumed rate.
- (g) The assumed rate will be used to discount projected future benefits back to the valuation date.
- (h) Benefit comparisons shall use a hypothetical PERS member data standard for each demographic group.
- (6) In conducting an actuarial review of the public employer's retirement plan, the actuary retained by the Board will use its current actuarial assumptions for police officers and firefighters of public employers participating in PERS for those employees, subject to any exceptions noted above.
- (7) The Board will consider the estimated cost of the benefits to be provided, the estimated value of projected benefits to the employee, and the proportion of the cost being paid by the public employer and the participating police officers and firefighters. Whether the benefits are provided by contract, trust, insurance, or a combination thereof shall have no effect on the Board's determination.
- (8) In considering a public employer's retirement plan provisions, the Board may not value portability of pension credits, tax advantages, Social Security benefits or participation, any worker's compensation component of a public employer's retirement plan as determined by the employer or any portion of a benefit funded by the member.
- (9) The Board may not consider benefits provided by the PERS Plan under ORS 238.362–238.368 or benefits provided by the employer's retirement plan under ORS 237.635–237.637. The employer must identify benefits paid to comply with ORS 237.635–237.637.
- (10) Additional actuarial assumptions needed to evaluate the public employer's retirement plan may be considered by the Board's actuary to be consistent with assumptions specified in these rules. Any disputes as to the appropriateness of additional actuarial assumptions may be resolved by the Board in its sole discretion.

**Statutory/Other Authority:** ORS 238.650

**Statutes/Other Implemented:** ORS 237.620

**History:**

[PERS 11-2020, minor correction filed 06/24/2020, effective 06/24/2020](#)

PERS 8-2010, f. & cert. ef. 8-2-10

PERS 2-2009, f. & cert. ef. 2-12-09

PERS 9-2005, f. & cert. ef. 2-22-05

PERS 1-1989, f. & cert. ef. 12-4-89

PER 15-1981, f. & ef. 11-23-81

PER 4-1978, f. & ef. 11-2-78

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**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
CITY OF PORTLAND, OREGON  
BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT**

IN THE MATTER OF:

**JOSEPH J. GYMKOWSKI**

) **FINAL ORDER**

)

) OAH Case No.: 1504252

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City Attorney's Office

**HISTORY OF THE CASE**

On or about May 18, 2015, the City of Portland, Oregon, Bureau of Fire and Police Disability and Retirement Fund (FPDR) terminated Member Joseph Gymkowski's disability retirement benefits and began paying retirement benefits pursuant to Chapter 5, section 5-304 of the Charter of the City of Portland. On July 14, 2015, Member Gymkowski requested a hearing on FPDR's action.

FPDR referred the matter to the Office of Administrative Hearings (OAH) on July 15, 2015. The OAH assigned the case to Senior Administrative Law Judge (ALJ) Alison Greene Webster.

ALJ Webster held a prehearing telephone conference on October 16, 2015. Kenneth McGair of the Portland City Attorney's Office represented the Fund. Mr. Gymkowski appeared without counsel. During the conference, the parties agreed to a December 16, 2015 hearing date.

On November 25, 2015, Mr. Gymkowski requested that the hearing be rescheduled. On December 9, 2015, OAH received notice that Mr. Gymkowski retained attorney David Griggs to represent him at the hearing. Pursuant to a second prehearing telephone conference on December 9, 2015, the parties agreed to reschedule the hearing to March 1, 2016. The parties also agreed that the dispute involved a question of law, and established a schedule for briefing on the parties' respective contentions.

On February 2, 2016, FPDR submitted a Memorandum in Support of Director's Decision and supporting documents. On February 16, 2016, Mr. Gymkowski submitted his Response to FPDR's Memorandum in Support of the Director's Decision.

On March 1, 2016, ALJ Webster heard oral argument on the matter at an in-person proceeding at the Office of Administrative Hearings in Tualatin, Oregon. Attorney McGair appeared for FPDR. Attorney Griggs appeared with Mr. Gymkowski. The record closed on March 21, 2016.

## EVIDENTIARY RULINGS

The following documents were admitted into the record: FPDR's Exhibits A through Z and AA, and Mr. Gymkowski's Exhibit 1.

## ISSUE

Whether FPDR properly terminated Mr. Gymkowski's disability benefit upon Mr. Gymkowski reaching his Disability Retirement Age under the terms of Chapter 5, section 5-304(a).

## FINDINGS OF FACT

1. Mr. Gymkowski began his employment as a sworn member of the City of Portland Bureau of Fire and Rescue on February 25, 1985. (Ex. R.) From April 18, 1985 to July 7, 1985, Mr. Gymkowski was laid-off and had 81 days of time loss. (Exs. R, U, V.) As a result of this time loss, Mr. Gymkowski's adjusted appointment date for FPDR membership became May 17, 1985. (*Id.*)
2. On January 22, 1990, Mr. Gymkowski made an irrevocable election to remain a FPDR Tier Two member in accordance with the Portland City Charter, Chapter 5, Section 5-401(c). (Ex. X.)
3. In March 1991, Mr. Gymkowski filed a claim for service-connected disability benefits for Hepatitis C exposure. The claim was approved on June 11, 1991. (Ex. H.)
4. In May 1993, August 1996, and January 1998, Mr. Gymkowski filed claims for recurrence of his 1991 claim for Hepatitis C exposure. (Ex. H.)
5. In late December 1999, Mr. Gymkowski went on disability leave as a result of his Hepatitis C exposure. In January 2001, after a year of receiving continuous bi-weekly disability benefits, FPDR transferred Mr. Gymkowski to a monthly payment schedule. (Ex. Y; Ex. 1.)
6. In May 2005, Mr. Gymkowski was medically separated from his position with the City of Portland Bureau of Fire and Rescue. (Ex. Z.) He continued to receive monthly disability benefits from FPDR. (Ex. 1.)
7. In a letter dated September 23, 2005, FPDR notified Mr. Gymkowski that, as a disabled member of FPDR, he was receiving the maximum service-connected disability benefit allowed of 75 percent of his base wage. The letter further advised that the disability benefit would continue until Mr. Gymkowski "either recovers and returns to work, or reaches mandatory disability retirement at 30 years of service, at which time the Fund will pay a lifetime monthly pension." (Ex. I.)

8. By letter dated January 16, 2015, FPDR notified Mr. Gymkowski that as of May 17, 2015, he would reach Disability Retirement Age under Charter Section 5-304(a),<sup>1</sup> at which time his disability benefit would cease. The letter further advised that, upon reaching Disability Retirement Age, Mr. Gymkowski would become eligible for a pension from FPDR. (Ex. U.)

9. By letters dated April 6, 2015 and April 30, 2015, FPDR again notified Mr. Gymkowski that effective May 17, 2015, he will have reached Disability Retirement Age under Charter Section 5-304(a). The letters further advised Mr. Gymkowski that his disability retirement benefits would cease May 16, 2015 and, in order to receive retirement benefits effective May 17, 2015, he must file an application for retirement benefits no later than that date. (Exs. S and T.) In addition, FPDR's April 30, 2015 letter stated as follows: "Please note that service-connected disability benefits automatically cease when you reach Disability Retirement Age pursuant to Charter Section 5-306(g) regardless of whether or not you file an application for retirement benefits." (Ex. S.)

10. On May 18, 2015, Mr. Gymkowski submitted a signed Member Pension Application to FPDR. He added a notation indicating that he was signing the pension application "under duress and protest." (Ex. Q at 2.) That same date, Mr. Gymkowski also submitted a signed Tax Offset Acknowledgement, acknowledging that pension benefits paid to him from FPDR were subject to Oregon personal income tax under ORS 316.127(9). Mr. Gymkowski also noted on this form that he signed it "under duress and protest." (*Id.* at 3.)

11. On June 9, 2015, Mr. Gymkowski began receiving pension benefits from FPDR. (Stipulation.)

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<sup>1</sup> Charter Section 5-304, addressing retirement benefits for FPDR Tier Two members, states in pertinent part as follows:

(a) Eligibility. A FPDR Two Member shall be eligible to receive a retirement benefit upon termination of employment with the Bureau of Fire or Police on or after attaining age 50 if the FPDR Two Member has 25 or more Years of Service or on or after attaining age 55. *A FPDR Two Member receiving disability benefits under Section 5-306 or 5-307 shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the date the FPDR Two Member earns 30 Years of Service under Section 5-302 or the date the FPDR Two Member attains social security retirement age.* For purposes of this subsection, social security retirement age means the retirement age provided in Section 216(l)(1) of the Social Security Act.

(b) Amount of Benefit. The retirement benefit shall be 2.2 percent of the FPDR Two Member's Final Pay times the FPDR Two Member's Years of Service. The amount shall not exceed the maximum benefit permissible under Section 415 of the Internal Revenue Code of 1986 or any successor provision, and regulations issued thereunder, as they may be amended from time to time. The provisions of such Section 415 or its successor, and such regulations, are incorporated by this reference.

(Emphasis added.)

12. ORS 237.620, enacted in 1971, requires that all public employers of police officers or firefighters provide retirement benefits to those employees under the Public Employees Retirement System (PERS) unless the Public Employees Retirement Board (PERB) determines that the public employer provides retirement benefits to the police officers or firefighters “that are equal to or better than the retirement benefits that would be provided to the equivalent classes of employees” under PERS. The statute further requires that PERB periodically review the retirement benefits provided by these public employer plans to determine whether the public employer’s plan complies with the “equal to or better than” standard. If PERB determines that the public employer’s plan does not meet that standard, then the public employer must obtain PERS coverage for that class of employees. ORS 237.620(3).

13. PERB has always approved FPDR’s plan and the City of Portland has not been required to obtain PERS coverage for its police officers and firefighters. An Actuarial Review Report issued in December 2010, prepared on behalf of PERB, concluded that City of Portland continues to qualify for the exemption under ORS 237.620(2) from participation in PERS because FPDR’s plan satisfies the “equal to or better than” requirement through a side by side comparison of plan provisions. (Ex. AA.)

## CONCLUSION

FPDR properly terminated Mr. Gymkowski’s disability benefit upon Mr. Gymkowski reaching his Disability Retirement Age under the terms of Chapter 5, section 5-304(a).

## OPINION

As noted above, both FPDR and Mr. Gymkowski agree there are no material facts in dispute and the resolution of this case turns on a question of law. In short, Mr. Gymkowski challenges FPDR’s determination to terminate his monthly disability benefit as of May 16, 2015 and pay him instead a monthly pension benefit pursuant Chapter 5, section 5-304(a). Mr. Gymkowski acknowledges that FPDR’s decision to cease his disability benefits once he attained his Disability Retirement Age is consistent with the terms of Chapter 5, sections 5-304(a) and 5-306(g). He argues, however, that insofar as his monthly benefit is now taxable as a normal retirement pension, FPDR has breached a fiduciary duty to Mr. Gymkowski due to an implied contractual obligation to offset tax burdens. Mr. Gymkowski further contends that because FPDR’s retirement plan does not include a disability retirement option, the FPDR plan is not “equal to or better than” a PERS plan. For the reasons set out below, these contentions are not persuasive.

### *Taxability of Disability vs. Pension Benefits*

As both parties acknowledge, disability benefits and retirement benefits are afforded different tax consequences. Under federal and state tax law, “amounts received under workmen’s compensation law as compensation for personal injuries or sickness” are excluded from gross income. 26 U.S.C. §104(a)(1);<sup>2</sup> ORS 316.012 (any term used in Oregon’s Personal

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<sup>2</sup> 26 CFR 1.104-1(b) provides further clarification regarding the tax exemption for compensation for injuries or sickness. It provides as follows:



Income Tax Act has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes). Pension benefits, on the other hand, are not tax-exempt. Pension benefits are governed by 26 U.S.C. § 72(a), which states that “gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.”

Mr. Gymkowski asserts that the FPDR plan wrongly characterizes his entire pension benefit as taxable income. He contends that, notwithstanding the plain language of Chapter 5, FPDR should report all, or at least part, of his retirement benefit as tax exempt because the payments continue to arise and be paid as a direct result of a service-connected injury that left him permanently disabled. He asserts, in essence, that because he was forced into early retirement with a disability benefit, his pension cannot be said to be based solely on years of service.

Despite Mr. Gymkowski’s arguments, Charter sections 5-304(a) and 5-306(g) require FPDR Tier 2 members receiving service-connected disability benefits to retire at their Disability Retirement Age and receive a pension benefit calculated by Years of Service, Final Pay and a service multiplier. As noted above, pursuant to section 5-306(g), service-connected benefits to a FPDR Two Member “shall cease at Disability Retirement Age under Subsection 5-304(a) unless the Fund Administrator determines that the service-connected or occupational disability is temporary.” Mr. Gymkowski’s disability is, undisputedly, permanent. Therefore, under section 5-306(g), FPDR properly terminated Mr. Gymkowski’s service-connected disability benefits once he reached his Disability Retirement Age. Pursuant to Section 5-304(a), Mr. Gymkowski became eligible for a retirement benefit at Disability Retirement Age which, in this case, was May 17, 2015, the date he earned 30 Years of Service under Section 5-302.<sup>3</sup>

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***Amounts received under workmen's compensation acts.*** Section 104(a)(1) excludes from gross income amounts which are received by an employee under a workmen's compensation act \* \* \* or under a statute in the nature of a workmen's compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. *However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.* Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts. See, however, §§ 1.105-1 through 1.105-5 for rules relating to exclusion of such amounts from gross income.

(Emphasis added.)

<sup>3</sup> As pertinent here, Section 5-302 states as follows:

Mr. Gymkowski contends that his pension benefit is really a “disability retirement benefit” that is, in whole or in part, tax-exempt as a *de facto* workers’ compensation benefit. Not so. The Charter language is clear and unambiguous regarding the nature of an FPDR Tier 2 member’s retirement benefit. It is not akin to amounts received under a workers’ compensation plan. Once a permanently disabled FPDR Tier 2 member reaches his or her Disability Retirement Age, the member “shall be eligible to receive a retirement benefit.” Section 5-304(a). The “retirement benefit” amount is 2.2 percent of the member’s Final Pay times the member’s Years of Service. Section 5-304(b). Because the retirement benefit amount is not based solely on the member’s rate of pay, but rather determined by reference to the member’s length of service, the retirement benefit is not eligible for favorable tax treatment under 26 U.S.C. § 104(a)(1).

The circumstances at hand are distinguishable from *Conlee v. Department of Revenue*, 16 Or Tax 406 (2001), where the court held that benefits received under ORS 238.345<sup>4</sup> were in the nature of a workers’ compensation statute in accordance with Internal Revenue Code § 104(1)(a) and excluded from gross income. In *Conlee*, after sustaining an on-the-job injury, a former Multnomah County Sheriff’s Deputy took a service-connected disability retirement allowance under ORS 238.345, electing to receive 50 percent of his final average salary as determined at the date of the injury causing the disability. The tax court concluded that because the benefit under ORS 238.345 was based solely on a percentage of the officer’s final salary and not

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(a) Generally. A FPDR Two or FPDR Three Member shall be credited with Years of Service for periods of service as an Active Member. One Year of Service shall be credited for each completed 12 months in such periods and 1/12th of a Year of Service shall be credited for each additional completed month. A FPDR Two or FPDR Three Member shall not be credited with more than 30 Years of Service. FPDR Three service is equivalent to FPDR Two service for purposes of determining eligibility for disability and death benefits.

\* \* \* \* \*

(c) Disability Service. A FPDR Two Member receiving disability benefits under Section 5-306 or 5-307 shall be credited with Years of Service for the period such benefits are received. The amount credited for each year shall be a fractional Year of Service equal to the FPDR Two Member's disability benefits received during the year divided by 75 percent of the Base Pay for the year for the position held by the FPDR Two Member at disability.

<sup>4</sup> ORS 238.345 provides, in pertinent part:

A police officer or firefighter, other than a volunteer firefighter, who would be entitled to receive disability benefits as a member of the Public Employees Retirement System under ORS 238.320(1), may elect to receive the service-connected disability retirement allowance authorized under this section. The allowance authorized under this section is an amount equal to 50 percent of the police officers or firefighters final average salary as determined at the date of the injury causing the disability. If elected, the allowance authorized under this section is in lieu of any service-connected disability retirement benefit available under this chapter.

determined by reference to the officer's age, length of service or contributions, no portion of the amount received should be included in gross income.

There is no provision in the FPDR plan akin to ORS 238.435. Upon reaching Disability Retirement Age, an FPDR Tier 2 member does not have the option to take a service-connected disability retirement benefit based solely on a percentage of his or her rate of pay. But, the fact that an FPDR Tier 2 member does not have a service-connected disability retirement option does not render FPDR's plan invalid or unlawful. Mr. Gymkowski argues that FPDR has an implicit obligation and/or fiduciary duty to maintain the level of benefits he received under Section 5-306 upon his retirement, but he has offered no persuasive legal authority to support this contention. There is nothing in the Charter or the law in general that requires FPDR to pay Mr. Gymkowski a retirement pension that is exempt from taxation under IRC §104(a).

*Equal to or Better Than Standard*

As noted above, Mr. Gymkowski also contends that because FPDR's plan does not have a "disability retirement benefit" option, FPDR's plan violates the law because it is not "equal to or better than" the benefits provided to police officers or firefighters under the Public Employees Retirement System (PERS).

Pursuant to ORS 273.620, a public employer of police officers or firefighters is not required to provide retirement benefits under PERS if PERB determines that the public employer provides retirement benefits that are "equal to or better than" the retirement benefits that would be provided to such employees under PERS.<sup>5</sup> By statute, PERB has the exclusive purview to

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<sup>5</sup> ORS 237.620 provides as follows:

(1) Except as provided in this section, all public employers of police officers or firefighters shall provide retirement benefits to those employees under the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, a public employer of police officers or firefighters need not provide retirement benefits to those employees under the Public Employees Retirement System if the Public Employees Retirement Board determines that the public employer provides retirement benefits to each of the following classes of employees that are equal to or better than the retirement benefits that would be provided to the equivalent classes of employees under the Public Employees Retirement System:

(a) Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system before January 1, 1996, as described in ORS 238.430 (2);

(b) Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system on or after January 1, 1996, and before August 29, 2003, as described in ORS 238A.025 (4); and

determine whether a public employer's plan is equal to or better than the benefits that would be provided under PERS. Accordingly, this is not the proper forum for Mr. Gymkowski's "equal to or better than" challenge to FPDR's plan. Moreover, as found above, PERB has repeatedly determined that FPDR's retirement plan meets the statutory standard. Mr. Gymkowski's subjective belief that PERS' service-connected disability retirement allowance option (ORS 238.345) renders PERS a better benefit plan than FPDR does not supplant PERB's repeated determination that the City of Portland continues to qualify for ORS 237.620(2) exemption.

In sum, under the terms of Chapter 5 of the Charter, Mr. Gymkowski's entitlement to disability benefits ceased as of the date he attained his Disability Retirement Age (the date he earned 30 years of service with the Bureau of Fire). As of that date, he became eligible for a retirement benefit under Chapter 5, section 5-304(a). The fact that Mr. Gymkowski's pension benefits are taxed as gross income does not render FPDR's plan invalid.

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(c) Police officers or firefighters who establish membership in the system on or after August 29, 2003, and are entitled to benefits only under the Oregon Public Service Retirement Plan.

(3) At such times as may be established by board rule, the Public Employees Retirement Board shall review the retirement benefits provided by a public employer of police officers or firefighters that does not provide retirement benefits for those employees under the Public Employees Retirement System. The review must be conducted at the expense of the public employer. Based on the review, the board shall determine whether the public employer complies with the requirements of subsection (2) of this section. If the board determines that the public employer does not comply with the requirements of subsection (2) of this section for any class of employees described in subsection (2) of this section, the public employer must provide that class of employees with retirement benefits adequate to meet the requirements of subsection (2) of this section. If the public employer fails to provide those benefits, any employee within the class may bring an action in circuit court to compel compliance with the requirements of this section.

## **RULING AND ORDER**

The Director's decision to terminate Mr. Gymkowski's disability benefit in accordance with Chapter 5, section 306(g) and begin paying retirement benefits pursuant to Chapter 5, section 5-304(a) is AFFIRMED.

Alison Greene Webster

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Senior Administrative Law Judge  
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: April 15, 2016

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Final Order, pursuant to Administrative Rule 5.4.08 and ORS 34.030, you have sixty (60) days from the mailing date of the Final Order to petition for a Writ of Review with the Multnomah County Circuit Court. If a Petition for Writ of Review is not filed within thirty (60) days of the mailing date of the Final Order, then pursuant to ORS 30.030 the writ shall not be allowed.

**CERTIFICATE OF MAILING**

On April 15, 2016, I mailed the foregoing FINAL ORDER issued on this date in OAH Case No. 1504252.

By: First Class and Certified Mail

Certified Mail Receipt #7015 1520 0001 8037 6978

David Griggs  
Griggs Law Group PC  
4900 SW Griffith Drive, Suite 165  
Beaverton OR 97005

By: First Class Mail

Samuel Hutchison  
City of Portland, Fire and Police Disability Fund  
1800 SW First Ave Ste 450  
Portland OR 97201

Kenneth McGair  
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City Attorney's Office  
1221 SW 4th Ave Ste 430  
Portland OR 97204

Ryan Clark  
Administrative Specialist  
Hearing Coordinator

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JOSEPH JOHN GYMKOWSKI, III  
PERMANENTLY DISABLED PORTLAND  
FIRE CAPTAIN

**Plaintiff**

vs.

OREGON PERS BOARD MEMBERS:

JOHN THOMAS, PAT WEST, KRYSTAL  
GEMA, LAWRENCE J. FURNSTAHL,  
STEPHEN BUCKLEY

OREGON PERS DIRECTOR, STEVEN  
RODEMAN,

CITY OF PORTLAND, PORTLAND'S FIRE  
AND POLICE DISABILITY, RETIREMENT  
AND DEATH FUND (FPDR) BOARD OF  
DIRECTORS:

TED WHEELER, JASON A. LEHMAN,  
BRIAN HUNZEKER, CATHERINE  
MACLEOD, JUSTIN DELANEY

SAM HUTCHISON, FPDR DIRECTOR

NANCY HARTLINE, FPDR FINANCIAL  
MANAGER (RETIRED)

YVONNE DECKARD, FPDR BOARD  
CHAIR (RETIRED)

LINDA JEFFERSON, FPDR DIRECTOR  
(RETIRED)

DAN SALTZMAN, FIRE COMMISSIONER,  
PORTLAND FIRE & RESCUE

ERIN JANSSENS, PORTLAND FIRE &  
RESCUE FIRE CHIEF (RETIRED)

Case No.: [Assigned by Court]

OREGON DISABILITY TORT CLAIM

NOT SUBJECT TO MANDATORY  
ARBITRATION

FEE AUTHORITY: ORS 21.160 (1) (d)

JURY TRIAL REQUESTED

17 JUL 12 PM 1:27  
SHERIFF'S OFFICE  
CIVIL PROCESS UNIT

JIM FAIRCHILD, PORTLAND FIRE &  
RESCUE HUMAN RESOURCES  
COORDINATOR

CHARLIE HALES, FPDR BOARD CHAIR  
(RETIRED)

**Defendants**

**STATEMENT OF FACTS**

**PORTLAND'S FPDR DOES NOT HAVE A DISABILITY RETIREMENT SYSTEM**

Portland's FPDR is in violation of State and Federal laws, related to the lack thereof a, "Disability Retirement," and Oregon's PERS board, PERS *et al.*, and all contracted PERS agents' *et el.*, have continued approve FPDR, since the 1971 and the passage of HB1849 for their Equal To Or Better (ETOB) Oregon PERS, and not Oregon Public Service Retirement Plan (OPSR) in 1973, 1979, 1981, 1990 and 2005 and most recently in 2010 by Mercer for compliance with Oregon's ORS 237.620, OAR 459-030-0025 and HB 2280 (2007 legislation), and FPDR had complied, each and every time, and was said to be ETOB with PERS. How is this ethically, physically and legally possible when, "FPR does not and had a Disability Retirement, for FPDT never fully complied with all applicable to State and Federal law. I need to go on the record that I tried to settle this matter well before the filing of this Pleading and we denied by the Oregon PERS Board, City of Portland's Fire and Police Disability, Retirement and Death Fund (FPDR), by the FPDk Board, by Portland's Fire & Rescue (PF&R), by the Portland PF&R Fire Commissioner and by Portland's Mayor. I asked to heard so that we could resolve this legal issue in a respectful manner and was denied as every level.



1                    **PORTLAND'S FPDR VIOLATIONS OF OREGON LAW**

2    As per ORS 237.650, OAR 459-030-0025 and Oregon HB 2280 (2007 Legislation) which are the  
3    nexus between Portland's FPDR having a Disability Retirement, that is ETOB to Oregon PERS  
4    on, "Paper only," as per FPDR's own words, videos, actions and ramifications towards any  
5    Portland Police Officer or Portland Police Officer, who becomes the unfortunate person that  
6    suffers a career ending, Line of Duty Injury, as they will discover the disparity between the two  
7    systems of benefits and retirement.  
8

9            We can have an emergency scene where two (2) firefighters fall through a roof into a  
10   burning attic. Both firefighters suffer career ending injuries, except the PERS will can be retired  
11   with a PERS Disability Pension, which PERS documents show a 50% benefit that complies with  
12   all state and federal law as a result of *Hoswer and Belyeu v. PERS, Case No:05C17254, Marian*  
13   *Co. Or. May 24, 2009*). The PERS website and the Mercer, now Milliman ETOB's state the all  
14   PERS members received a 50% Disability Pension but the facts are being omitted. A PERS Tier  
15   1 member can factor in all of their unused vacation and S/L payoff benefits. The record shows  
16   that the majority of Disabled PERS Tier 1 member are well over 50%, in fact, you can validate  
17   these facts in the Oregonian newspaper on PERS retirees. My benefits are and should be  
18   compared to PERS Tier 1, due to my hire date in 1985. Disabled Portland Police Offices and  
19   Firefighters are not part of Oregon Worker Compensation therefor do not receive that aspect of  
20   support that the PERS members receive when they are injured.  
21  
22  
23  
24

25                    **BACKGROUND OF PORTLAND'S FPDR**

26  
27            The City of Portland's Fire and Police Disability, Retirement and Death Fund, commonly  
28   called FPDR, came to fruition in 1948 by the approval of the Portland voters. For many years

1 Portland Police Officers and Portland Firefighters were of the mindset that FPDR was the best  
2 benefit program in the state. As time passed and other systems in Oregon were keeping the  
3 interest of their members in the forefront I eventually learned that this was not the mantra of  
4 FPDR.  
5

6 In 1954, FPDR increases Portland Police Officer and Firefighter pensions by \$25.00,  
7 why? The increase was an offset for the recently reformed, Oregon Public Employee Retirement  
8 System, to ensure that PERS members were able to qualify for a Social Security, through a 218  
9 Agreement with the US Social Security Administration and the State of Oregon. The City of  
10 Portland claimed to be exempt due to having FPDR for Portland Police Officers and Firefighters.  
11

12 In 1971 the Oregon Legislature add an Equal To OR Better (ETOB) for all Oregon  
13 Police Officers and Firefighters. In 1986, Mayor Clark establishes a Task force of Portland  
14 citizens and selected Bureau personal. The Task Force focuses on change and ways to improve  
15 FPRR for the members and bring a saving for Portland Taxpayers.  
16

17 A plan is developed by a Mr. Robert McCrory, a local actuary, and his findings are the  
18 basis for the new FPDR Tier 2, which cover most of my employment. After four (4) years of  
19 studying the new FPDR Tier 2 plan the Portland voters approve the FPDR Charter Change in  
20 1989. FPDR Tier 2 was set to be implemented on July 1, 1990 and most of Portland Police  
21 Officers and Firefighters were working under FPDR Tier 2.<sup>i</sup>  
22

23 Milliman tested FPDR, along with the other 19 agencies Oregon Police and Fire  
24 agencies, that were outside of PERS. Mark Johnson, a Milliman Actuary, completed the ETOB  
25 for all 20 agencies and reported to the PERS Board that, all 20 agencies failed.  
26

27 As per ORS 237, when an agency fails ETOB, they can improve their plan and be  
28 retested by PERS or they can join PERS. Ten (10) of the agencies joined PERS. Nine (9)

1 agencies improved their plans and were retested.

2 Portland FPDR was given, "A one-time exemption," by the PERS Board with the  
3 promise to, "Give to give Portland Police Officers and Firefighters the current PERS legislative  
4 benefits and all subsequent PERS legislative benefits."  
5

### 6 Violations of Oregon Law

7  
8 As per ORS 237.650, OAR 459-030-0025 and Oregon HB 2280 (2007 Legislation) are the basis  
9 of my ~~claim~~ as they are lacking the Disability Retirement as per the referenced laws. In fact,  
10 FPDR possesses documentation that state they are ETOB to PERS, per Tier 1, Tier 2 and Tier 3,  
11 and approved by the PERS Board, completed by Mercer's Actuaries, Preliminary ETOB  
12 evaluations<sup>1</sup>, which are public, legal evaluations, fraught with misleading  
13 Actuarial Assumptions, overlooked and omitted vital information meant to protect  
14 all of Oregon's Police Officers and Firefighters, both active and retired. These  
15 inalienable rights and protections were intentionally incorporated into law by state  
16

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17  
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19  
20 <sup>1</sup> Mercer Actuary Agents, Portland, Oregon, Matt Larrabee, FSA, EA, MAAA and Scott D. Preppernau, FSA, EA, MAAA and  
21 currently Milliman Actuary Agents, Portland, Oregon, who function under strict and have and continue to be the PERS and  
22 FPDR Actuary Agents for all reports related to Pension Actuary Reports, both Service Retirement, Disability Retirement and  
23 overall current and projected Actuary Reports and all matters related to Equal to Or Better than Oregon PERS, OPSRP and  
24 FPDR. Milliman and Mercer have been the proximate agents' *et al.*, related to past and current ETOB reports.

25 Mr. Larrabee and Mr. Preppernau are required to function to the highest standards set by the associations that are reflected in  
26 their titles, such as the Members of the American Academy of Actuaries, Fellow, Society of Actuaries and an Enrolled Actuary  
27 regulated by the Joint Board of Actuaries, associated with the IRS and ERISA. Mr. Larrabee and Mr. Preppernau are required to  
28 be held to a high standard of integrity.

1 and federal legislators for the protection of all of Oregon's Police Officers and  
2 Firefighters, not just the ones covered by Oregon PERS. FPDR's 2010, ETOB,  
3 published on the FPDR website should be, "Voided," as it harms all of Portland's  
4 Police Officers and Firefighters, their Widows and their children.  
5

6  
7 **PORTLAND'S DISABLED POLICE OFFICERS AND FIREFIGHTERS TAKE**  
8 **PRIORITY MY HIPPA PRIVACY PROTECTION**

9 I was a healthy firefighter until I suffered a Line of Duty exposure to HCV. I continued to work  
10 until my physicians stated that I developed an autoimmune response to HCV which is rare but  
11 does occur to a few unfortunate people. Next, I was diagnosed with Autonomic Neuropathy  
12 (AN) and Sensory Neuropathy (SN), both of which have progressed to a point of being  
13 Permanently Disabled by physicals, as well as, city, state and federal officials. Please know that I  
14 am aware of privacy laws under HIPAA, but my privacy on this matter is overruled by the  
15 necessity of justice for all of Portland's Police Officers and Portland Firefighters who suffer Line  
16 of Duty career ending injuries.  
17

18  
19 My AN has progressed to a point where it has all but stopped my digestive tract and only  
20 through massive amounts of prescription laxatives, seven (7) days a week, just to try and  
21 function as a normal human being which does not always work. The SN, which started with  
22 numb fingers and toes while I was working as a Portland Firefighter in 1999. The SN progressed  
23 to full-body stabbing and burning pains, on a relentless schedule that impacts my life on a 24-  
24 hour schedule seven (7) days a week. The SN progressed to a point that distresses all of my  
25 extremities, my full torso, my spine, my entire groin area, my head, face, including deep within  
26 my ears like constant earaches. Finally the SN progression affects my eyes with the stabbing  
27  
28

1 pains. The only relief is a cocktail of opioids starting with Fentanyl and Oxycodone. Added for  
2 pain are Lyrica and Cymbalta to assist the opioids. Then we add a supplement of side-effect  
3 medication and my myriad of medication is topped off with Provigil to keep me awake.

4 I am no longer a dedicated firefighter, with my Beloved PF&R, a fact which still hurts  
5 today. Over the last 15 plus years, it appeared to me, that the City of Portland, *et al.*, supported  
6 by Oregon PERS, *et al.*, was focused on me as a, "Weak link, as noted by my US DOL Civil  
7 Rights Complaint and the five (5) inch three-ring binder of Exhibits (Supplied at discovery) as it  
8 appealed to me that the city-wide policies for Disabled Police Officers and Firefighters were only  
9 attacking one person, me.

10 I was the only Disabled FPDR Firefighter that had the wrath of having their Disability  
11 Compensation frozen for life! After three years in court and three different Oregon Courts the  
12 judges agreed with me and stated that the city cannot freeze my Disability Compensation and  
13 that I was entitled to be compensated as per my last Rank and Position.

14 I was the respondent and after winning I was the defendant as the city sued as Disabled  
15 Firefighter, who suffered a Line of Duty career ending injury and finally that battle was over at  
16 the Oregon of Appeals due to procedures and the so the lower court ruling was upheld and in  
17 support of increase in compensation as per my last held Rank and Position and Portland's  
18 Charter.

19 A rationale person would think how could this occur as we usually hear on the news  
20 about a firefighter or police officer in the wrong but do we ever hear when the city is breaking  
21 their own rules or breaking state and federal laws that protect a Disabled Person, no not usually,  
22 as that would be a gross violation of the laws and we do not expect our civic leaders to act in  
23 such a manner but what I was is true and did get to a higher level of Discrimination.

1  
2 **SUMMARY OF MY FPDR DISABILITY TIMELINE AND CAREER END**

3 I retired from the City of Portland Fire & Rescue as a Fire Captain. My rank and last  
4 assignment, before going off on Injury Leave on December 28, 1999, was a Captain in the  
5 Marine Program. On the advice of my physicians, I left service to seek medical treatment for an  
6 autoimmune response to Hepatitis C (HCV), due to exposure in the Line of Duty exposure as a  
7 Portland Firefighter. The following time-line begins when I was deemed to be Permanently  
8 Disabled and progresses through time as the City of Portland's Fire and Police Disability,  
9 Retirement and Death Fund (FPDR) and the Bureau of Human Resources (BHR) change my  
10 status of Portland Firefighter to "Medical Layoff" to "Separated from Service and No Longer a  
11 City Employee" to "No Longer a Portland Firefighter" and finally, "retired."

12  
13 The exhibits (Shared at discovery) will support my claim that I was retired by the City of  
14 Portland through a Medical Layoff on May 27, 2010 and receiving 75% Disability  
15 Compensation, due to my declining health on Disability. BHR placed me on a Medical Layoff on  
16 May 27, 2005, as per the City of Portland Charter (City Charter), Administrative Rule # 7.09,  
17 which states after five (5) years on Medical Layoff employees are removed from service and no  
18 longer considered city employees. My Permanent Disability Status was endorsed by PF&R,  
19 BHR, my physicians, the State of Oregon Department of Public Safety Standards & Training,  
20 and by the United States Social Security Administration. Previous administrations of FPDR also  
21 supported my Permanent Disability Status, as evidenced in my exhibits and was fully aware of  
22 my Medical Layoff status and subsequent employment separation from the City of Portland.  
23 FPDR was involved at all levels of communication and correspondence associated to my status,  
24 before, during, and up the end of the five (5) year timeline referend to in Portland's Charter. A  
25 Disabled Portland Employee is still considered an employee but after the five-year period ends.  
26  
27  
28

1 FPDR also supported my Permanent Disability Status, as evidenced in my exhibits and was  
2 fully aware of my Medical Layoff status and subsequent employment separation from the  
3 City of Portland. FPDR was involved at all levels of communication and correspondence  
4 related to my status. After my Medical Layoff, FPDR never requested to have my Medical  
5 Layoff amended or rescinded as the BHR Director was also the FPDR Board Chair.  
6

7 As per City Charter, FPDR can only retire Portland Police Officers and Portland  
8 Firefighters. In 2015, I was still Permanently Disabled, separated from city service on  
9 FPDR Disability and no longer considered a city of Portland employee as of May 27, 2010,  
10 when Mr. Jam Hutchison, Director of FPDR, sent a certified letter stating that my current  
11 FPDR benefits are in jeopardy. The record will demonstrate that FPDR followed through,  
12 as per the director's letter, and on May 15, 2015 when I refused to sign the FPDR  
13 documents they stopped my current Harvoni- HCV life-saving medical treatment against  
14 my physicians' directives, stopped my daily medications for chronic pain and neuropathy  
15 and stopped my monthly FPDR disability. Being Permanently Disabled, and no longer a  
16 Portland Firefighter or a city employee, I should be afforded the protection of state and  
17 federal laws applicable to Americans with Disabilities.  
18

19  
20 June 11, 2002 - I finished my second HCV antiviral treatment, which was  
21 unsuccessful. My physician determined me to be Permanently Disabled. On my behalf  
22 Chief Ed Wilson, of PF&R, filed a Permanent Disability Claim through the State of  
23 Oregon's DPSST, with the support of FPDR, as documented in the correspondence and  
24 supporting documents.  
25

26 March 15, 2005 - I was instructed by then Fire Chief Ed Wilson to write a letter  
27 requesting to be placed on Medial Layoff, as per the needs of FPDR and BHR. Later, in  
28

1 speaking with other Disabled Firefighters, I discovered I was the only FPDR Disabled  
2 member that was required to write a letter requesting to be placed on Medical Layoff.

3 May 20, 2005 - I received a certified letter from the BHR Director, who was also the  
4 FPDR Chair, placing me on Medical Layoff effective May 27, 2005. Per City Charter,  
5 Administrative Rules 7.09, a Medical Layoff is for a maximum of five (5) years at which  
6 time the disabled employee is separated from city service and no longer considered a city  
7 employee. Also, for the second time, FPDR documents that I am, "Permanently Disabled,"  
8 which is supported by my primary physician and FPDR's Physical Capacity Test.

9 June 25, 2009 - To the best of my knowledge, I became the first FPDR Disabled  
10 member to receive a certified letter stating that my premium pay, pay associated with my  
11 Marine Program duties, would not be included in my monthly Disability Compensation  
12 and my monthly Disability Compensation was being frozen, for life.

13 July 1, 2009 - FPDR's action of freezing my Disability Compensation was a  
14 violation of City Charter and the Portland Fire Fighter Association (PFFA) Labor Contract.  
15 I filed an appeal, with PFFA support, against FPDR for freezing my Disability  
16 Compensation for life that led to the Oregon Office of Administrative Hearings (OAH),  
17 which is the legal forum to settle this type of dispute. The final OAH ruling stated that I  
18 should be compensated for the, "Rank and position held at the time of injury," and I shall  
19 receive a raise when my rank and position received a raise, as per the PFFA Labor  
20 Contracts. This ruling emulated FPDR's Charter but for some reason FPDR was attacking  
21 me and breaking their own rules! While I thought this was the final word, FPDR appealed  
22 and appealed which finally ended when they missed the filing deadline for the Oregon  
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24  
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28



1 Court of Appeals, who ordered that the lower court to reissue the circuit court ruling and  
2 this was in March of 2012.

3 May 27, 2010 – Five years had now passed since I was placed on Medical Layoff.  
4 Per City Charter, BHR Administrative Rules, I was separated from service and no longer  
5 an employee of the City of Portland. City Charter, FPDR Chapter 5, clearly allowed for  
6 Disability Retirement as I had 25 years of service, was removed from service and was no  
7 longer a city employee. Per Exhibit C, I was no longer considered for employment and  
8 was removed from the Medical Layoff List after five (5) years.  
9

10 March 2012 – As stated in the July 1, 2009 timeline above, FPDR's legal challenge  
11 against me finally ended, to my benefit, at the Oregon Court of Appeals. Therefore, as of  
12 May 27, 2010, per City Charter, I was separated from service, no longer a City of Portland  
13 employee and no longer a Portland Firefighter. My status was now a Disabled Oregonian  
14 and should be afforded the protection of city, state and federal laws under ADA. (Exhibit F)  
15

16 October 2012 – Since I was separated from service, no longer a City of Portland  
17 Employee and no longer a Portland Firefighter, I asked the PF&R Administration for my  
18 retirement payoffs, which included a percentage of accrued unused Sick Leave and "Bank  
19 Hours," or Final Paycheck (hours worked but never paid) and the earned benefit was  
20 approximately \$45,000.00 total. I felt I was entitled to my payoffs, as per the PFFA  
21 Contract, as Payoffs are paid at "Retirement or employment ending."  
22

23 August 2014 - After two (2) years of effort, yes after two years of calling,  
24 emailing and face to face meetings, I finally received a certified letter from James  
25 Fairchild of PF&R - BHR stating, "I was separated from city service on May 27, 2005,  
26 through Medical Layoff and was not currently an employee of the City of Portland," as  
27  
28

1 my employment ended other than retirement therefore, I was not entitled to any earned  
2 benefits / final paycheck, as they are for Pension Retirements, as per the PFFA Contract,  
3 and the city considered this matter closed.  
4

5 January 7, 2015, I received a letter from FPDR stating they planned to retire me  
6 in May 2015. I commented to FPDR staff (Transcripts provided upon request) that I was  
7 no longer considered a City of Portland Employee and no longer a Portland Firefighter, as  
8 per the August 2014 letter, received from Mr. James Fairchild referenced an Exhibit X.  
9 Again, FPDR is NOT my employer as per FPDR's legal documents and Portland Charter.  
10

11 March 24, 2015- My first appearance before the FPDR Board. I presented Mayor  
12 Hales, FPDR Chair, and the other FPDR Board Members, a copy of the certified letter I had  
13 received from Mr. Fairchild, BHR, which stated I had been separated from service, was no  
14 longer a city employee and was no longer a Portland Firefighter. I then asked, on the record,  
15 "How can you retire a person who does not work here or two (2) times or does not work  
16 here?" Mayor Hales stated, "He would get back to me." Not having heard back from the  
17 Mayor, I attempted to contact him, twice through his website and once directly through his  
18 staff for a total of three (3) times but never received a response. Please view the start of the  
19 FPDR Board meeting on the enclosed DVD or [https://www.youtube.com/watch?v=](https://www.youtube.com/watch?v=QdcVVQKeMI)  
20 [QdcVVQKeMI](https://www.youtube.com/watch?v=QdcVVQKeMI) .  
21

22 April 28, 2015 – This was my second appearance before the FPDR Board as the  
23 Mayor and FPDR Board NEVER responded to my March 24 questions. At the start of the  
24 meeting I questioned a major discrepancy in a recent FPDR Actuary Report, commissioned  
25 by the FPDR Board. The actuary firm was call Milliman. In their report Milliman referenced  
26 FPDR's Non-Service Connected Disability Pension as being very unique and FPDR was the  
27  
28

1 only fire or police agency that they could find that offered such a benefit. I commented that  
2 the Oregon Public Employee's Retirement System (PERS) also has a Non-Service  
3 Connected Disability Pension and the information is located on the PERS Website.

4 More importantly, I stated that FPDR Disability Pension is in, "Name Only," and does NOT  
5 meet the requirements set forth in Oregon laws: HB 2280 (2007 Legislation), Oregon  
6 Revised Statutes (ORS) 237 and Oregon Administrative Rule (OAR) 459 Division 30. In  
7 fact, as I stated to the FPDR Board, "Since 1948, when the FPDR system was created, it has  
8 NEVER had a Disability Pension that complied with state and federal laws."

9 After discussion, the FPDR Director stated, "I don't have to follow Oregon PERS, State  
10 Law, or Federal Law, I only have to follow the City Charter!" I commented, that State and  
11 Federal Disability Laws trump the Portland's City Charter. An FPDR Board supported my  
12 response to the FPDR Director. Please note, I exposed the fact that FPDR does NOT have a  
13 Disability Pension and has been issuing, "Disability Pensions," to Disabled Portland  
14 Police Officers and Firefighters since 1948, as evidenced by the attached FPDR Disability  
15 Retirement forms to Portland Firefighters and Police Officers, who suffered Line of Duty  
16 Injuries but never actually had a Disability Pension." The FPDR Director stated he would  
17 get back to me on this matter. My testimony runs from One (1) Hour and 50 minutes to 2  
18 hours and 15 minutes. The FPDR Board meeting is on the enclosed DVD or please view:  
19 <https://www.youtube.com/watch?v=QuKjZBHB5bM>.

20 April 30, 2015 – Two days (2) after I exposed publically, that FPDR does NOT have  
21 a Disability Pension, I received a certified letter, from FPDR Director Mr. Sam Hutchison,  
22 implying that effective May 15, 2015, unless I signed his FPDR Pension Retirement Forms  
23 at his office, I could jeopardize my current medical treatment (lifesaving Harvoni Anti-Viral  
24  
25  
26  
27  
28

1 Treatment), my Disability Compensation and in jeopardy of losing all FPDR benefits for  
2 life, thereby leaving me with nothing.

3 I believed the FPDR Director Hutchison's actions were in retaliation for me exposing the  
4 fact that FPDR does NOT have a Disability Pension for Portland Police Officers and  
5 Firefighters, who suffer career ending line of duty injuries and occupational disease  
6 disability, which is a violation of state, federal and IRS laws. Remember at the April 28  
7 FPDR Board meeting, I publicly corrected the FPDR Director when he stated, "He does not  
8 have to follow Oregon PERS, Oregon Law / Federal Law, as he only has to follow the City  
9 Charter." The certified letter was the first correspondence I received from FPDR Director  
10 Hutchison, all previous letters related to disability /retirement came from FPDR Staff.

13 May 8, 2015 -- FPDR's harassment continued with Ms. Beth Baisch (Now Lloyd),  
14 who normally sent letters, called my home at 5:10 pm. She stated I needed to come to  
15 FPDR's office, no later than Friday, May 15, to sign her FPDR Pension Retirement Forms,  
16 otherwise my FPDR Disability Compensation, current medical treatment and support, as  
17 well as my disability claim coverage, would stop. I expressed being stressed and unable to  
18 sleep due to the pressure applied to date from FPDR. Please note, I had received five (5)  
19 letters, two (2) of which were certified mail, and this phone call, so I did understand my  
20 position. (Transcripts available)

22 May 15, 2015 - I could not meet the FPDR Director's deadline, as my wife was out  
23 of town on a family emergency. In addition, I did not sleep all week due to the stress of the  
24 continued harassment and known FPDR "Bully behavior," (See Miller v. City of Portland)  
25 especially knowing they would stop my HCV- Harvoni medical treatment, my daily  
26 medications, and my FPDR Disability Compensation, as they demonstrated the same  
27  
28

1 behavior with Portland Firefighter Miller and others. My FPDR Disability Compensation  
2 continued for five (5) years after my employment ended as a Portland Firefighter and  
3 employee back in 2007.

4  
5 May 18, 2015 - I arrived at FPDR to find FPDR Director kept his word and stopped  
6 all my FPDR Disability Benefits. Please Note, when I arrived at FPDR's office I was under  
7 the impression and under Oregon law, believed that my interests were represented by an  
8 Oregon attorney<sup>2</sup> and that premise was confirmed a letter from said attorney, phone calls from  
9 said attorney and contact to Portland City Attorney's Office on my behalf.

10  
11 Immediately, I noticed that Ms. Nancy Hartline, FPDR Financial Director, had the FPDR  
12 Pension Forms which showed a "Minus" category. She explained that all my FPDR Benefits;  
13 FPDR Disability Compensation, medications and medical treatments were stopped on May  
14

15  
16  
17 <sup>2</sup> On or about, the week of May 10, 2015, I was introduced to, "Greg Hartman," a Portland  
18 attorney through a firefighter friend that knew Mr. Hartman. When introduced to Mr. Hartman,  
19 and explained the situation with FPDR he stated that he would represent me. I inquired as to the  
20 status of a, "Retainer," as I know from past experience with the murder of our daughter and only  
21 child, that without a retainer you are not represented. I questioned Mr. Hartman as the status of  
22 the retainer and he stated that, "He was doing this Pro Bono for me." Mr. Hartman called Ken  
23 McGair, Deputy City Attorney, City of Portland, and informed him that he (Mr. Hartman) was  
24 representing me. Mr. Hartman then emailed me a, "Letter of Legal Representation and stating  
25 that he was my attorney." Within in a week or so thereafter, signing the FPDR Service Pension  
26 forms, negating my Permanent Disability Status with FPDR, I received an email from Mr.  
27 McGair stating that, "He understands, as per Mr. Hartman's email to him, that he is not  
28 representing Mr. Gymkowski." Mr. McGair's email was the first notice and time that I did not  
have the, "Legal Representation of Mr. Hartman." To say I was shocked would be an  
understatement! On three (3) occasions I contacted Mr. and asked, "Why did you drop me as a  
client and why was I not notified? I received the same answer from Mr. Hartman as he stated,  
"My firm is looking into the matter." To ask a fourth time would be fruitless so I stopped  
inquiring as to, "Why." I met Mr. Hartman as numerous PERS Board meeting and I was always  
polite and courteous to him. I would like the Court to know that I informed Mr. Hartman that, "I  
am trusting you," and my statement was made from painful lessons from our daughter's murder  
trial.

1 15, 2015, as implied by FPDR Director Hutchison's April 30, 2015 certified letter. Three  
2 days of disability compensation (May 15, 16, 17) had already been deducted.

3 I was now without income and medical benefits for my Line of Duty disability and  
4 would be, according to Ms. Hartline, until I signed the Pension Retirement Forms, which in  
5 essence removed my Disability Status. According to FPDR, before I signed the document, I  
6 was considered "Totally Disabled," but after signing the documents I was no longer  
7 considered even "Partially Disabled," it's as if, with the scrawl of a pen, I'm cured! FPDR  
8 forced me to sign the Service Pension forms, I remember saying, "I do not believe I possess  
9 the authority to sign these forms, since I am no longer a City of Portland employee and no  
10 longer a Portland Firefighter. Please note, FPDR is NOT the employer and is associated with  
11 Portland Police Officers and Portland Firefighters Disability/Worker Compensation and  
12 Service Retirements. I lamented, "My signing is under duress and protest, to keep my  
13 current life-saving medical treatments, medications and post-medication treatment."

14 June 9, 2015 – The FPDR forms, I was forced to sign on May 18, 2015, state  
15 "Pension Retirement" but my follow-up letter from Ms. Baisch that states in the subject line  
16 – Application for Disability Pension. In the first sentence the wording changes, as now they  
17 want to discuss my application for a Disability Pension. My point is that FPDR seems to use  
18 the correct terms to avoid ADA Discrimination charges, as a few weeks earlier, on May 18,  
19 2015, all of FPDR's documentation referenced a Pension Retirement.

20 As you well know, the two systems: Disability Pensions and Service Pensions, are  
21 treated differently under Oregon State Law, US Federal Laws and IRS Regulations.

22 According to IRS, Police Officers and Firefighters, who suffer a Line of Duty Injury and  
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28

1 then retire on a Disability Pension, are exempt from taxation as they are complying with  
2 Worker Compensation Laws, or in FPDR's case, the Guise of Worker Compensation Laws.

3  
4 July 28, 2015 – The FPDR Director came to the FPDR Board seeking to change the  
5 Portland Charter, through Administrative Rules, which is a common practice. The FPDR  
6 Board had much discussion on this very important timeline as it affects the 2,000 working  
7 police officers and firefighters. The FPDR Director stated, "He wo Oregon Worker  
8 Compensation Laws," believing he had the ability to make any change necessary for FPDR.  
9 The FPDR Director wanted to minimize the timelines necessary to report a Line of Duty  
10 Injury for a police officer or a firefighter. One option he suggested was a 30-day timeline to  
11 report any injuries but any injured reported after this standard would be DENIED, as he has  
12 sole power over every injury claim.  
13

14 During the Public Comment Section, Nelson Hall, an attorney for Portland  
15 Firefighters and Portland Police Command Association, and speaking for the Portland  
16 Police Association's attorney who was not present, needed to set the record straight for the  
17 FPDR Director. Mr. Hall stated, "FPDR is the Worker Compensation System for Portland  
18 Police Officers and Portland Firefighters covered by FPDR." He continued by stating,  
19 "FPDR is ONLY allowed to exist due to Oregon's Worker Compensation Laws." Mr.  
20 Hall stated, "As per ORS 656. 027, Subsection 6 is FPDR **allows to function.** Please see  
21 DVD (2:10-2:30 Hr. or please visit this link:  
22

23 [https://www.youtube.com/watch?v=GnjJq6AnDoc&feature=player\\_embedded](https://www.youtube.com/watch?v=GnjJq6AnDoc&feature=player_embedded)  
24

25 PLEASE NOTE: FPDR's changes do not apply to any Portland Police Officer or  
26 Portland Firefighter covered by Oregon PERS Tier 1 and Tier 2, as they were hired by  
27 Annexations and Lateral Transfers –Police Only), and their injuries are covered by Portland's  
28

1 Risk Management and Oregon's Worker Compensation and have a PERS Service and  
2 Disability Pensions, with Post- Medical Benefits, all of which complies with recent Oregon  
3 Legislation, HB 2280.

4  
5 September 22, 2015 – The FPDR Board is constantly changing City Charter,  
6 Chapter 5- FPDR, through Administrative Rules, rules that are binding and affect every  
7 Portland Police Officer and Portland Firefighter, covered by FPDR. Director Hutchison  
8 testifies, in due diligence, on video when he states that, "He does not like the term  
9 “Disability Retirement.” He explains to the FPDR Board that, Resolution # 501, will be  
10 removing all references to a “Disability Retirement/Disability Pension” from FPDR’s  
11 Chapter 5 of the City Charter. As he stated, "FPDR does not have a “Disability  
12 Retirement/ Disability Pension.” He goes on to say, "FPDR has only one pension, a  
13 Service Pension, and two ways to get there." FPDR Board meeting enclosed on DVD @  
14 17 minutes to 35 minutes or please visit this link:  
15 [https://www.youtube.com/watch?v=i3T\\_gpSp5lY](https://www.youtube.com/watch?v=i3T_gpSp5lY)  
16  
17  
18

### 19 FINAL TIMELINE SUMMARY

20 Under ORS 237, all Oregon PERS Firefighters and Police Officers are required to be  
21 covered by a PERS Retirement and Disability benefits. Oregon Administrative Rule, under ORS  
22 237 and ORR 459-015-0000, Division 15 – Disability Retirement Allowances, have a Disability  
23 Retirement for injuries in the Line of Duty. There are exemptions to ORS 238 which allows  
24 agencies to be exempt from PERS but they have to provide benefits that are, "EQUAL TO OR  
25 BETTER." (ETOB) than benefits provided to PERS Police Officers and Firefighters.  
26  
27  
28



1 In 2007, Oregon House Bill 2280 (HB-2280) was signed into law, which is supported by  
2 ORS 459. The bill, which took effect on January 1, 2008, decreed that ETOB Benefits be  
3 compared to the respective PERS Tier 1, 2, and 3, employees. My benefits are required to be  
4 ETOB to PERS Tier 1, which are employees hired prior to January 1, 1996. PERS Tier 2 are  
5 employees hired January 1, 1996 through August 28, 2003 and Oregon Public Service Retirement  
6 Plan (OPSRP) Tier 3, employees are hired on or after August 29, 2003.

8 All PERS, Portland Police Officers and Firefighters that are under PERS Tier 1 and Tier  
9 2, comply with Oregon's HB 2280 and have Service Pension, Disability Pensions and have full  
10 Social Security Retirement, Disability and Medicare Benefits. FPDR Members are NOT  
11 covered under Social Security Retirement, Disability or Medicare. FPDR Members hired after  
12 1986 received Medicare.

14 Oregon PERS has a Disability Retirement Benefit (*Hoswer and Belyeu v. PERS, Case*  
15 *No: 05CI 254, Marian Co. Or. May 24, 2009*), including Post-Retirement Medical Care as per HB  
16 2280 and OAR 459. Again, Portland's FPDR does NOT have a Disability Retirement Plan, as per  
17 Director Hutchison at the September 22, 2015 FPDR Board meeting. The City of Portland and  
18 FPDR are required by law to provide benefits to FPDR Firefighters and Police Officers that are  
19 ETOB than those provided by PERS, despite the fraudulent ETOB Test FPDR used as evidence.  
20 The Portland Auditor published a report that states, "FPDR cannot be compared to PERS," as they  
21 are diametrically opposed but yet FPDR managed to get an ETOB exemption under false  
22 pretenses

25 Portland Office of Equity and Human Rights – I filed a Discrimination Complaint against  
26 FPDR for their May 15, 2015 actions of removing my Permanent Disability Status through the  
27 Office of Equity and Human Rights developed in 2012. The required forms were sent to their  
28

1 office by certified mail. I received a phone call from Ms. Danielle Brooks, on or about June 26,  
2 2015 acknowledging my ADA Discrimination Complaint against FPDR. Next, on July 6, 2015, a  
3 Ms. Tamara Larison, of the Office of Equity and Human Rights contacted me at my home and  
4 stated that she would be investigating the claim. Then Ms. Tamara Larison stated that she would  
5 be back to me, after her investigation, by Tuesday. Please know that was the last contact Ms.  
6 Brooks and Ms. Larison on this matter as they seemed to just drop my ADA complaint. Please  
7 note, that I was undergoing HCV anti-viral treatment for the third time and was affected by the  
8 side-effects of the treatment and the myriad of daily medications.

9  
10 Portland's FPDR has a habit of using, "Bully Behavior and Threats of Stopping your  
11 FPDR Disability Benefits," unless you follow their instructions. In addition, they have a history  
12 of making changes to City Charter, FPDR Chapter 5, through Administrative Rules, which are  
13 often for the benefit of FPDR and not for the benefit of FPDR Police Officers and Firefighters.  
14 Normally, the Portland Voter makes changes to the FPDR Charter. Despite that fact, many  
15 changes made by the FPDR Board are in conflict with Portland Police and Portland Fire Labor  
16 Contracts, as well as, state and federal laws, enacted to protect the same people FPDR is  
17 entrusted to protect, especially the Permanently Disabled Police Officers and Firefighters who  
18 suffered Line of Duty, career ending injuries. As an example: Several Disabled Portland  
19 Firefighters brought suit against FPDR, the suit was recently settled with the Firefighters  
20 receiving \$2,679,118.00 (Miller v. City of Portland, 356 Or. 402, 405, 338 P.3d 685, 687).

21  
22  
23  
24 Please know that I have experienced the, "Bully Behavior and Wrath of FPDR," numerous times  
25 since seeing physician advised, life-saving medical treatment in January of 2000. To the best of  
26 my knowledge, I was the only Permanently Disabled Firefighter and was:

- 27  
28 1) The only Portland Firefighter placed on a Medical Layoff due to my Disability Status.

1 2) The only FPDR Disabled employee to have their Disability Compensation FROZEN  
2 for life.

3 3) The only Portland Firefighter whose employment ended via a Medical Layoff.

4 4) The only Portland Employee who never received their Final Paycheck for hours  
5 worked.

6 5) The only Portland Firefighter who was denied their Sick Leave Payoff Benefit."

7 We met with FPDR on May 18, 2015 @ approximately 2:30 p.m. I discovered that the  
8 Bullying and Intimidating Behavior of Portland's FPDR came to a peak as they STOPPED all my  
9 lifesaving medications, my lifesaving medical treatments, and FPD Disability compensation as  
10 May 15, 2015. FPDR's Ms. Hartline stated that I was in a, "No Pay Status," therefor not entitled  
11 to any benefits. I asked the question, "If I get up and walk our now what FPDR benefits do I  
12 receive?" Mr. Hartline seemed very firm and that that I would not have any FPDR Disability  
13 benefits, that is, unless I signed FPDR's Service Pension Retirement Documents thereby, and,  
14 "Most importantly, negating my Permanent Disability Status with FPDR for life!"

15 When we met with FPDR on May 18, 2015 @ approximately 2:30 p.m. to discuss the  
16 FPDR Service Pension Retirements forms. Please note, this very important fact, FPDR did not  
17 restore my FPDR Service Pension until May 19, 2015.

18 FPDR's Ms. Hartline stated that I was in a, "No Pay Status," therefor not entitled to any  
19 benefits. As per FPDR's Charter we are guaranteed 60% Minimum Pension and Line of Duty  
20 Injuries are covered for life, as per the voter approved Portland Charter changes in 2007. My  
21 employment ended on Disability, May 27, 2010, through a Medical Layoff. FPDR had NO  
22 Legal Authority to retire me in 2015 as per Portland's Charter, Chapter 5 states, "FPDR has  
23 authority over sworn, Portland Police Officers and Firefighters.

1 I know for a FACT, that FPDR will STOP all of a Disabled Firefighters lifesaving  
2 medications, medical support and compensation as it occurred to me on May 15, 2015 @  
3 approximately 2:30 p.m., as they placed me in a, "No Pay Status," unless I sign their Pension  
4 Forms, thereby removing all references to my Line of Duty Injuries which are now at the mercy  
5 of the FPDR Director, as he has that power as per FPDR's Charter. Remember, FPDR is NOT  
6 the employer, as they only administer benefits for the city of Portland. I am one person who has  
7 been dealing with a life-threatening illness and at times I felt like David going up against Goliath  
8 armed only a sling and no rock. Sadly, the Portland City Council has the legal responsibility to  
9 solve this problem for all Line of Duty injuries career ending injuries, as per Portland's charter.  
10 This issue has been brought to the attention of Mayor Hales and the FPDR Board but has fallen  
11 upon my concerned ear.

#### 12 **ORAL ARGUMENTS WITH DEPOSITIONS**

13 I am requesting Oral Argument with depositions UNIFORM TRIAL COURT RULES. Including  
14 Amendments Effective August 1, 2016 (Including Out-of-Cycle Amendments to UTCR 5.100,  
15 UTCR Chapter 21 Title, UTCR 21.040, 21.060, 21.070, and 1.100)

#### 16 **COMPENSATION FOR DAMAGES AS PER ORS 30**

17 As a result of the, Oregon PERS Board, *et al.*, PERS Board members, John Thomas - Chair,  
18 Pat West- Vice-Chair, Krystal Gema, Lawrence J. Furnstahl, Stephen Buckley, PERS Director,  
19 *et al.*, PERS Director Steven Rodeman, PERS Board support staff, PERS itself, and all  
20 contractual agents' *et al.*, and the City of Portland, *et al.*, Portland's Fire and Police  
21 Disability, Retirement and Death Fund, *et al.*, Sam Hutchison, FDPR Director, Ms. Nancy  
22  
23  
24  
25  
26  
27  
28

1 Hartline, FPDR Financial Manager, Ms. Yvonne Deckard, FPDR Board Chair and Portland  
2 BPR Director (Retired) and Ms. Linda Jefferson, FPDR Director (Retired ), Mr. Dan Saltzman,  
3 PF&F Fire Commissioner, Ms. Erin Janssens, PF&R Chief (Retired), Mr. Jim Fairchild,  
4 PF&R HR Coordinator, Mr. Charlie Hales, FPDR Board Chair and Portland Mayor, (Retired),  
5 for their, "Failure to exercise the standard of care that a reasonable and prudent  
6 person would have exercised." It is alleged herein, that I have suffered economic and  
7 non-economic damages, economic damages in the form of loss of Disability Status, loss  
8 of Disability Compensation, past, current and future federal and state liabilities and  
9 subsequent liability on, as well as, non-economic damages in the form of physical, mental,  
10 and emotional pain and suffering and exacerbation of preexisting conditions in the maximum  
11 amount allowed by law against a public body and its individuals under ORS Chapter 30.

12  
13  
14 A claim for punitive damages is hereby asserted against each individual  
15 involved in this matter, including but not limited to Oregon PERS Board, *et al.*, PERS  
16 Board members, John Thomas - Chair, Pat West- Vice-Chair, Krystal Gema, Lawrence J.  
17 Furnstahl, Stephen Buckley, PERS Director, *et al.*, PERS Director Steven Rodeman,  
18 PERS Board support staff, PERS itself, and all contractual agents' *et al.*, related  
19 to Equal To Or Better than Oregon PERS and Portland's FPDR, as per ORS, OAR  
20 and HB 2280 (2007 legislation).

21  
22  
23 I am asking for my Permanent Disability status be returned by the City of  
24 Portland and FPDR, I am asking for my 75% Disability Status to be returned, as per  
25 the previous issued Oregon Office of Administrative Hearing and the Oregon Circuit  
26 Court for the 4<sup>th</sup> District in Multnomah County. Finally, I am asking for City of  
27 Portland Medical Benefits for my family as per was required in the 1993-1994  
28

1 Collaborative Bargaining process by the Big Group, which included all of the Bureau  
2 Directors, Portland City Council and Portland Mayor, and was written into the Police  
3 General Orders and required to be in the Portland Fire & Rescue General Orders, but  
4 somehow was hysterically removed from all Bureau publications, immediately after a  
5 Permanent Police Officer applied for the benefit as the Portland City Officials, stated  
6 that Chief Moose implicated that policy of his own but we possess the document that  
7 support my claim.  
8

9 In addition, should it become necessary for me to retain an attorney, I will seek  
10 reasonable pay for my attorneys' fees. Further, the PERS Board, PERS Director, PERS  
11 Board support staff, PERS itself, and all agents' *et al.*, should be enjoined from  
12 future violations.  
13

14 Thursday, May 18, 2017

15  
16 S/ Joseph John Gymkowski III

17  
18 Joseph John Gymkowski III  
19 35473 S. Dickey Prairie Road  
20 Molalla, OR 98038  
21 H# 503.829.3180  
22 F# 503.829.3180  
23 C# 503.799.4616  
24 [jomel@molalla.net](mailto:jomel@molalla.net)  
25

26 <sup>i</sup> Portland FPDR had, through annexation, under ORS 199, acquired Multnomah County Rural Fire District # 10  
27 Firefighters and Clackamas County Fire District # 1 and all members were under Oregon PERS Tier 1, thereby  
28 having full Social Security benefits and Medicare Benefits, which are superior to FPDR and lacking for most of  
Portland's FPDR Police Officers and Firefighters, as the Medicare was federal law as of March 31, 1986 for all new  
employees.

1  
2  
3  
4 ii Portland Firefighters Local #43 filed a Grievance against the City of Portland, as one again, I seem to be the target  
5 of FPDR and the City of Portland, why, just because I am seen as a weak link due to my declining health, first time,  
6 that our Union was aware, that a Portland Firefighter lost their Sick Leave Benefit. Please note, I have not received  
7 any official documentation from the City of Portland and PF&R.

8 iii Please note: The Public Officials listed above that are denying me the benefits under Oregon Disability Laws,  
9 thereby Federal Disability Laws, are ever injured on the job, which I hope never comes to fruition as they are, "NO  
10 Advantages," to being Disabled, but they will receive a Disability Pension, that is complaint with all State and  
11 Federal Disability Laws and full Social Security, as they are covered by Oregon PERS.  
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## **RESOLUTION NO. 501**

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, staff recommends amendments to Sections 5.3, 5.7, 5.8 and 5.9 to "clean up" and clarify the rules; and

WHEREAS, the amendments were provided to the representatives of the Police and Fire labor organizations and their attorneys; and

WHEREAS, the amendments were also posted on the FPDR website. No objections and/or comments have been submitted; and

WHEREAS, the Board has considered and recommends the "clean up" changes to Sections 5.3, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules as shown on Exhibit "A", attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendations of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Sections 5.3, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules be amended as shown on Exhibit "A".

ADOPTED by the Board of Trustees on the 22nd day of September, 2015.

  
Samuel Hutchison  
FPDR Director



## **Proposed FPDR Administrative Rule Changes CLEAN UP**

### **5.3.12 – NON-MILITARY LEAVE OF ABSENCE**

All Members granted a non-military leave of absence without pay by the Council of the City of Portland, Oregon, or the Commissioner in Charge of the bureau in which the Member is employed, shall have preserved under the Plan during such leave the following rights:

- (E) Right to benefits or pensions for injury, sickness or death occurring during said leave of absence if such disability is directly attributable to a former injury in line of duty or occupational disability for which the Member has received benefits or which the Board may otherwise recognize as pre-existing, provided such injury, sickness or death has not been caused by an aggravation of the pre-existing injury or sickness during said leave of absence.

#### **Proposed Change**

- (E) Right to benefits or pensions for injury, sickness or death occurring during said leave of absence if such disability is directly attributable to a former injury in line of duty or occupational disability for which the Member has received benefits or which the ~~Board~~ **Director** may otherwise recognize as pre-existing, provided such injury, sickness or death has not been caused by an aggravation of the pre-existing injury or sickness during said leave of absence.

### **5.7.03 – APPLICATION FOR BENEFITS**

- (G) All applications for service-connected injury/illness or occupational disability benefits shall contain a report of a superior officer, the signature of the chief of the bureau affected and a report of the Member's Attending Physician.

#### **Proposed Change**

- (G) All applications for service-connected injury/illness or occupational disability benefits shall contain a report of a superior officer ~~and/or the signature of the chief of the bureau affected~~ and a report of the Member's Attending Physician.

### **5.7.04 – CLAIM APPROVAL OR DENIAL**

- (A) Disability Claim applications fall into one of the following two categories:
  - (1) Service-Connected Disability Claims: Except for stress or mental disorder claims, the Director shall determine the existence of a disability and whether the preponderance of the evidence indicates it arises out of and in the course of the Member's employment.

A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to

the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure.

Stress or Mental Disorder Claims: The Director shall determine if each of the following elements exists:

- (a) the employment conditions producing the stress or mental disorder exist in a real and objective sense;
  - (b) the employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police and fire employment or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment;
  - (c) there is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community;
  - (d) there is clear and convincing evidence that the stress or mental disorder arose out of and in the course of employment as an Active Member; and
  - (e) the Member's employment conditions are the primary cause the stress or mental disorder.
- (2) Occupational Disability Claims: The Director shall presume a Member is eligible for an occupational disability enumerated in 5-306(d) of the City Charter unless the Director determines, by a preponderance of the evidence, the occupational disability was not contracted as a result of service as a police officer or fire fighter.

#### Proposed Change

(A) Disability Claim applications fall into one of the following ~~two~~ **three** categories:

- (1) Service-Connected Disability Claims: Except for stress or mental disorder claims, the Director shall determine the existence of a disability and whether the preponderance of the evidence indicates it arises out of and in the course of the Member's employment.

A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure.



Stress or Mental Disorder Claims: The Director shall determine if each of the following elements exists:

- (a) the employment conditions producing the stress or mental disorder exist in a real and objective sense;
  - (b) the employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police and fire employment or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment;
  - (c) there is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community;
  - (d) there is clear and convincing evidence that the stress or mental disorder arose out of and in the course of employment as an Active Member; and
  - (e) the Member's employment conditions are the primary cause the stress or mental disorder.
- (2) Occupational Disability Claims: The Director shall presume a Member is eligible for an occupational disability enumerated in 5-306(d) of the City Charter unless the Director determines, by a preponderance of the evidence, the occupational disability was not contracted as a result of service as a police officer or fire fighter.
- (3) *Firefighter Cancer Presumption Claims: The Director shall evaluate firefighter cancer presumption claims in accordance with ORS Section 656.802 (5)*

#### 5.8.01 – DEFINITIONS (Nonservice-Connected Disability Benefits)

"Date of Disability." The term "Date of Disability" means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.

#### Proposed Change

"Date of Disability." The term "Date of Disability" means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a **non**service-connected injury/illness ~~or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.~~

#### **5.9.10 – POST-RETIREMENT MEDICAL BENEFITS**

- (A) Disability Retirement: Medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable, if the Member's disability benefits continued until the Member reached Disability Retirement Age.
- (B) Service Retirement: For Members who are retired as of January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall not be reimbursable.
- (C) Service Retirement: For Members who are not retired before January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable.

#### **Proposed Change**

- (A) **Retirement from** Disability Retirement: Medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable, if the Member's disability benefits continued until the Member reached Disability Retirement Age.
- (B) **Retirement from active s**Service Retirement: For Members who are retired as of January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall not be reimbursable.
- (C) **Retirement from active s**Service Retirement: For Members who are not retired before January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable.

## 2.04.040 Submission of Measures to Voters.

### City Code Section

(Amended by Ordinances 177200 and [184947](#), effective November 18, 2011.)

#### A. Council Submission of Measures

1. A measure may be submitted to the legal voters of the City by resolution of the Council. No petition is required.
2. An advisory question, measure or proposition may be submitted to the voters by resolution of the Council. No petition is required. The vote shall not enact the matter into law, preclude the Council from adopting an ordinance enacting the matter into law, or require the Council to enact the measure into law.

#### B. Elector's Submission of Petition on Legislation

1. A petition initiating or referring city legislation may be submitted by electors. The petition shall comply with the requirements of Section 2.04.050 and meet the signature requirements of Section 2.04.090.

#### C. Charter Commission Measures

1. A measure proposing a charter amendment that is supported by an affirmative vote of at least 15 members of the Charter Commission after a public hearing process prescribed by the Council shall be submitted to the legal voters of the City in conformance with the Charter and this Chapter.

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# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 3

Overview of the FPDR Administrative Rule  
amendment process

# Board Policies

## Administrative Rules <sup>20 21</sup>

### Authority

The Board has the power to prescribe rules and regulations for the administration of Chapter 5 of the City Charter.

### Purpose

To carry out the rulemaking requirement of the Board and to provide for a process that is open and inclusive of all stakeholders. This process will be applicable to all provisions of these administrative rules.

### Duties of the Director

The Director will:

- A. Provide the Board of Trustees with the technical and staffing resources necessary for the rulemaking process;
- B. Develop rules and amendments for review and adoption by the Board of Trustees; and
- C. Produce, publish, and distribute proposed and adopted rules.

### Rulemaking Notices and Procedures

Any proposed change or addition to these rules must be referred to the Board. The Board will then consider the proposed change or addition.

The Director will provide notice of rulemaking to the Board of Trustees and known interested parties at least 30 days prior to the upcoming rulemaking session by email. The notice will include:

- A. A statement of the section of the rules to be reviewed.
- B. The date, time, and location of the Board's consideration of the proposed rule or amendment.
- C. Information on how to submit comments.

The Director will post the Notice of Rulemaking and draft copies of the proposed new or amended Administrative Rules on the FPDR website at least 30 days prior to the Board's review.

---

<sup>20</sup> Charter Chapter 5, Sections 5-202 (a). Powers of the Board and Fund Administration.

<sup>21</sup> FPDR Administrative Rules, Section 5.1 – Procedural Rules Governing Rulemaking

Interested parties may submit written testimony on the proposed rules to the Director or present oral testimony during the Board meeting when the Board considers the proposed administrative rules.

After posting the notice, the Director may hold a public Question and Answer (Q&A) session. The public is invited to the session to ask questions and make comments on the proposed administrative rules. The Q&A session is not a work session, bargaining session, or Board of Trustees meeting. No decisions or commitments will be made during the meeting. The Director will summarize the session to the Board of Trustees. The Q&A session is not a substitute for submitting written or oral testimony to the Board.

### **Adoption of Rules**

Upon completion of the processes outlined in this procedure, the Board of Trustees shall adopt, for implementation, these rules by section or in their entirety.

At Board meetings, when reviewing and voting on proposed rule changes, the Board may:

1. Move to adopt the proposed rule, or sections of rule, as proposed;
2. Amend the proposed rule and move to adopt the amended version of the original proposed rule;
3. Move a that modified version of the original proposed rule be considered at a later meeting after additional public testimony; or
- 4.
5. Take no action and withdraw the proposed rule altogether. The Board may reconsider the proposed rule in the future.

---

<sup>22</sup> Charter Chapter 5, Section 5-201 (e). Board of Trustees





# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 4

### Legislative Update



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



1800 SW First Ave., Suite 450, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166

Samuel Hutchison, Director

[fpdr@portlandoregon.gov](mailto:fpdr@portlandoregon.gov)

---

### **FPDR Legislative Review Criteria**

FPDR and the City of Portland monitor all bills proposed during an Oregon State legislative session to identify any that may impact the FPDR plan, benefits, members, or the fund today or in the future. The specific legislative topics of interest to FPDR are:

#### **FPDR Funding**

Identify any proposed legislation that could directly impact the funding of the Plan (e.g., property tax changes)

#### **FPDR Retirement Benefits (FPDR One and FPDR Two)**

Identify any proposed legislation that could directly impact FPDR One or FPDR Two pension benefits (e.g., alternate payee, tax remedy/tax offset).

#### **PERS**

How proposed PERS changes will impact employer and employee contributions and FPDR Three members' benefits.

#### **Workers' Compensation**

Identify any proposed legislation that could directly impact FPDR's disability plan (e.g., firefighter cancer and heart/lung presumptions). Also, look for trends.

#### **FPDR Director**

Look at how proposed PERS changes and other legislation may impact FPDR's ability to retain and attract new staff.

#### **Other**

Look for any other legislation that could impact the FPDR plan, benefits, members, or the fund today or in the future. (e.g., how public meetings are run, exception to public records)



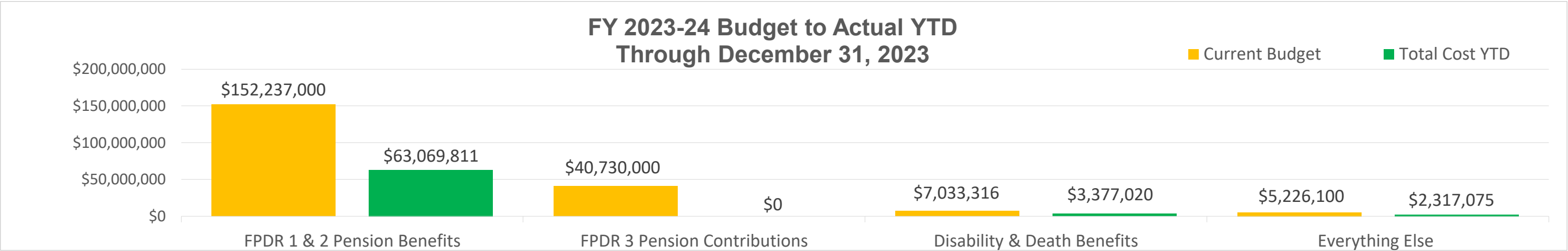
# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 5

## FPDR Summary of Expenditures



FY 2023-24 Budget to Actual YTD by Month									
Mid Level Classification	Detail Classification	Original Budget	July	August	September	October	November	December	YTD Total
Revenues	Taxes	\$193,701,162	-\$1,134,467	\$378,844	\$453,883	\$265,589	\$114,523,301	\$62,456,790	\$176,943,940
	Beginning fund balance	\$24,209,481	\$26,311,813	\$0	\$0	\$0	\$0	\$0	\$26,311,813
	Bond and note proceeds	\$38,000,000	\$0	\$32,565,839	\$0	\$0	\$0	\$0	\$32,565,839
	Miscellaneous Sources	\$1,980,800	-\$157,627	\$64,254	\$77,255	\$47,297	\$72,160	\$409,017	\$512,356
	Interfund Cash Transfer Revenues	\$750,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Interagency Revenues	\$445,500	\$0	\$656	\$1,313	\$0	\$656	\$656	\$3,282
Revenues Total		\$259,086,943	\$25,019,719	\$33,009,593	\$532,451	\$312,886	\$114,596,117	\$62,866,464	\$236,337,230
Personnel	Personnel	\$2,979,029	\$250,158	\$272,106	\$243,873	\$257,865	\$238,198	\$254,167	\$1,516,365
Personnel Total		\$2,979,029	\$250,158	\$272,106	\$243,873	\$257,865	\$238,198	\$254,167	\$1,516,365
External Materials & Services	Other External Materials & Services	\$790,639	-\$6,007	\$106,077	\$80,736	\$69,287	\$93,703	\$97,135	\$440,930
	FPDR 1 & 2 Pension Benefits	\$152,237,000	-\$1,212	\$12,610,392	\$25,211,936	\$17,568	\$12,619,783	\$12,611,343	\$63,069,811
	Disability & Death Benefits	\$7,033,316	\$236,140	\$676,245	\$539,524	\$544,733	\$833,249	\$547,129	\$3,377,020
External Materials & Services Total		\$160,060,955	\$228,921	\$13,392,714	\$25,832,196	\$631,589	\$13,546,734	\$13,255,607	\$66,887,760
Internal Materials & Services	Other Internal Materials & Services	\$906,539	\$56,115	\$59,056	\$58,841	\$67,554	\$49,505	\$58,698	\$349,770
	FPDR 3 Pension Contributions	\$40,730,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Return to Work/Light Duty	\$494,800	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Internal Materials & Services Total		\$42,131,339	\$56,115	\$59,056	\$58,841	\$67,554	\$49,505	\$58,698	\$349,770
Capital Outlay	Capital Outlay	\$55,093	-\$4,160	\$0	\$14,170	\$0	\$0	\$0	\$10,010
Capital Outlay Total		\$55,093	-\$4,160	\$0	\$14,170	\$0	\$0	\$0	\$10,010
Fund Expenses	Contingency	\$13,980,376	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Debt Retirement	\$38,978,478	\$0	\$5,374	\$24,243	\$18,398	\$0	\$0	\$48,016
	Interfund Cash Transfer Expenses	\$901,673	\$11,640	\$11,640	\$11,640	\$11,640	\$17,634	\$11,640	\$75,834
Fund Expenses Total		\$53,860,527	\$11,640	\$17,014	\$35,883	\$30,038	\$17,634	\$11,640	\$123,850



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 6

### FPDR Updates

There are no handouts for this information item



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



### Information Item No. 7

### Future Meeting Agenda Items



# **FIRE AND POLICE DISABILITY AND RETIREMENT**

## **City of Portland, Oregon**



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### **Future FPDR Board of Trustees Meeting Agenda Topics**

Updated after the FPDR Board of Trustees December 19, 2023, meeting

#### **March 19, 2024**

1. Action Items
  - a. Annual Adjustment Review (COLA)
  - b. Approval of FPDR Administrative Rule changes
2. Information Items
  - To be determined

#### **May 28, 2024**

1. Action Items
  - a. Annual Adjustment Review (COLA), if necessary
  - b. Tax Anticipation Notes (TANS)
2. Information Items
  - To be determined

#### **July 23, 2024**

1. Action Items
  - To be determined
2. Information Items
  - To be determined

#### **Future Meeting Topics**

1. FPDR Strategic Plan review
2. Discussion on forming a committee to review FPDR 2 Pension Plan
3. Discussion on soliciting a study to compare the FPDR Disability Program to the Oregon Workers' Comp Program
4. Board Handbook Review
5. Impact of unionization of FPDR staff