City of Portland, Oregon

BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT

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Statement of Rulemaking Need and Fiscal Impact

Purpose of Administrative Rule Amendment Recommendations – Staff proposes FPDR Administrative Rule amendments when it is deemed essential to providing clarity, consistency of application of Chapter 5 provisions, and full disclosure to all stakeholders.

Summary of Amendments:

FPDR Staff recommends amending Section 5.8, Nonservice-connected Disability Benefits for Plan Two and Three, as follows:

Issues:

#1 Amends Section 5.8.01 – "Definitions"
- Adds Doctor of Podiatry to definition of Attending Physician.
- Deletes language that has been relocated to Section 5.8.10 "Recipient of Disability Benefits."
- Amends Date of Disability to provide greater clarity.
- Adds the term Documented Absence to clarify the type of scheduled time away required to request payment of a disability benefit.
- Adds the term Required Duties to define the type of work a Member must be incapable of performing in order to be eligible for disability benefits.
- Makes housekeeping changes.

#2 Amends Section 5.8.02 – "Disability Benefits Generally"
- Makes housekeeping changes.

#3 Amends Section 5.8.03 – "Application for Benefits"
- Amends timelines for making application for disability benefits to include applications for reimbursement of lost wages or leave restoration.
- Deletes language that is addressed in another section of the rules.
- Makes housekeeping changes.

#4 Amends Section 5.8.04 – "Eligibility"
- Makes housekeeping changes.

#5 Amends Section 5.8.05 – "Claim Approval or Denial"
- Makes housekeeping changes.

#6 Amends Section 5.8.06 – “Amount of Benefits”

- Adds language to paragraph covering incarcerated Member and FPDR’s right to recover overpaid amounts.

#7 Amends Section 5.8.07 – “Form of Benefits”

- Cites Section 5.8.16 for information on Disability Retirement Age.

#8 Amends Section 5.8.08 – “Transitional Duty Program”

- Adds the term “or designee” as it is the Bureau Chiefs’ designee who most often is involved in this process.
- Makes housekeeping changes.

#9 Amends Section 5.8.10 – “Recipient of Disability Benefits”

- Adds language concerning requirement of period examination.

#10 Amends Section 5.8.11 – “Independent Medical Examinations”

- Corrects language to ensure a consistent process and rule application in all sections of the Administrative Rules.
- Makes housekeeping changes.

#11 Amends Section 5.8.12 – “Suspension, Reduction or Termination of Benefits”

- Deletes the first paragraph as statement is made in other sections of the administrative rules.
- Adds Member’s noncooperation in vocational rehabilitation as one of the reasons that may cause the Director to suspend, reduce or terminate disability benefits.
- Adds language concerning the procedure that is followed when the Director makes a determination to suspend, reduce or terminate benefits.
- Makes housekeeping changes.

#12 Amends Section 5.8.13 – “Offset to Service-Connected and Occupational Disability Benefits Payable”

- Adds language on procedure for Members who are self-employed.
- Makes housekeeping changes.

#13 Amends Section 5.8.14 – “PERS Offset”

- Makes housekeeping changes.

NOTE: Housekeeping changes consist primarily of typographical and grammatical corrections.

Desired Outcome:

Board adopts amendments as recommended by staff.

Fiscal Impact Statement

FPDR finance staff has reviewed the proposed rules changes for fiscal impact:

No impact anticipated.

City of Portland, Oregon

FIRE AND POLICE DISABILITY, RETIREMENT

AND DEATH BENEFIT PLAN

Administrative Rules

FPDR TWO AND THREE BENEFITS

SECTION 5.8 – NONSERVICE-CONNECTED DISABILITY BENEFITS

Page

5.8.01 Definitions……3

5.8.02 Disability Benefits Generally……...4

5.8.03 Application for Benefits……4

5.8.04 Eligibility……5

5.8.05 Claim Approval or Denial……*.6*

5.8.06 Amount of Benefits..……..……6

5.8.07 Form of Benefits…..……...7

5.8.08 Transitional Duty Program……..……7

5.8.09 Authorized Health Care Provider*s*……7

5.8.10 Recipient of Disability Benefits……..…7

5.8.11 Independent Medical Examinations……..7

DRAFT

5.8.12 Suspension, Reduction or Termination of Benefits……... 8

5.8.13 Offsets to Nonservice–Connected Disability Benefits Payable ~~Under Article 3 of the Plan~~ …… 9

5.8.14 PERS Offset…….. 10

5.8.15 Recovery of Overpayments……...10

5.8.16 Disability Retirement Age……11

Adopted November 12, 1991

Effective February 1, 1992

As Amended by:

Resolution No. 287 on August 8, 1995, Resolution No. 288 on September 12, 1995, Resolution No. 298 on October 14, 1997, Resolution No. 320 on December 14, 1999, Resolution No. 323 on April 11, 2000, Resolution No.332 on April 17, 2001, Resolution No. 335 on August 14, 2001, Resolution No. 338 on December 11, 2001, Resolution No. 340 on January 15, 2002, Resolution No. 345 on April 9, 2002, Resolution No. 349 on August 13, 2002, Resolution No. 350 on August 13, 2002, Resolution No. 351 on September 10, 2002, Resolution No. 352 on October 8, 2002, Resolution No. 365 on August 12, 2003, Resolution No. 372 on February 10, 2004, Resolution No. 381 on August 10, 2004, Resolution Nos. 388, 389 and 390 on June 14, 2005, Resolution No. 392 on November 8, 2005, Resolution No. 393 on December 13, 2005, Resolution No. 405 on May 9, 2006, Resolution No. 419 on March 13, 2007; Resolution 423 on November 27, 2007; Resolution No. 439 on May 26, 2009; Resolution No. 462 on June 28, 2011; and Resolution 472 on November 27, 2012

DRAFT

5.8.01 – DEFINITIONS

"Attending Physician." The term "Attending Physician" means:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the ~~Board of Medical Examiners for the State of Oregon or a similarly licensed doctor in any~~ ***Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any*** country or in any state, territory or possession of the United States, or

(B) For a period of 30 days from the first visit on the initial Claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States.

"Base Pay." The term "Base Pay" means the base pay of the FPDR Two or FPDR Three Member's position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of his or her regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member's regular work schedule shall be included in Base Pay.

"Base Pay in Effect at Disability." The term "Base Pay in Effect at Disability" means the Member's Base Pay amount at the time the disability payment is due.

"Claim." The term "Claim" means a written request to FPDR for a retirement, disability or death benefit and may be filed by an active ~~m~~***M***ember, his/her representative or legal beneficiary, or surviving spouse or other legal representative of a deceased ~~m~~ ***M***ember. This term may be used synonymously with the term "application."

"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 ~~r~~***R***equired ~~d~~***D***uties because of an injury or illness that does not qualify as service-connected or an occupational disability.

"Director." The term "Director" where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or his or her designee.

"Documented Absence." The term "Documented Absence" means the time missed from a scheduled work shift for which the Member submits to the Director documentation that he or she was not paid by the Bureau of Fire or Police for the time during which a disability benefit is sought.

DRAFT

"Monthly Disability Benefits." The term "Monthly Disability Benefits" means benefits payable once per month on approved ~~non service~~ ***nonservice***-connected disability Claims.

"Required Duties." The term "Required Duties" means the essential work functions that are assigned to the Member by the Bureau of Police or Fire.

"Specialty Physician." The term "Specialty Physician" means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member's "Attending Physician" on an approved Claim.

"Substantial Gainful Activity." The term "Substantial Gainful Activity" means the Member is 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~~ ***in Effect at Disability***.

"Suspension of Benefits." The term "Suspension of Benefits" means disability benefits are stopped by the Director for the period ~~of suspension when~~ ***during which*** the Member has failed to comply with the provisions of Chapter 5 of the City Charter, or with a particular FPDR Administrative Rule provision.

"Years of Service." The term "Years of Service" of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

5.8.02 – <u>DISABILITY BENEFITS GENERALLY</u>

(A) Payment of Disability Benefits - Disability benefits will be paid to a Member only during such time as the Member is unable to perform his or her ~~r~~***R***equired ~~d~~***D***uties in the Bureau of Fire ~~and Rescue~~ or Bureau of Police. Thus, the disability benefits being paid to a Member shall cease when the Member is capable of performing the duties required of him or her.

A Member who is unable to perform his or her ~~r~~***R***equired ~~d~~***D***uties but is able to do other work to which the Member may be assigned in his or her respective Bureau, is ineligible for disability benefits if such a job is available to the Member. For example, a police officer whose injury prevents him or her from performing police duties in the field will be ineligible for disability benefits if the officer is capable of performing more sedentary duties and such sedentary position is available to the officer.

(B) Changes ~~in~~ ***Related to Member*** Employment Status While on Disability

(1) If Member is demoted during the time that he/she is receiving disability benefits, his/her disability benefit will be based on the Base Pay of the position held at the time the Member first became disabled on the Claim.

(2) If Member is demoted and is not receiving disability benefits at the time of demotion, and later begins receiving disability benefits, said benefits will be based on the reduced base wage of the new classification.

(3) If Member is promoted during the time that he/she is receiving disability benefits,

DRAFT

his/her disability benefit will be based on the Base Pay of the Member's new position.

5.8.03 – APPLICATION FOR BENEFITS

(A) No disability benefits shall be paid to a Member unless the Member files with the Director a complete and timely application requesting such benefits***, including but not limited to applications for reimbursement of wages or restoration of leave accrual***. ***Applications for disability benefits must be submitted to the Director no later than 30 days after the Member is injured or experiences an illness or occupational disability, unless the Member establishes good cause for failing to do so. Failure to file an application within the time specified bars a Claim for disability benefits***.

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(B) Applications shall be made on forms prescribed by the Director. The Director may require the Member to provide any information that ~~it~~ ***the Director*** deems necessary to carry out FPDR's duties.

(C) Application for disability benefits may be made by the Member, or the Member's authorized representative. A representative shall submit to the Director written proof of the representative's authority.

~~(D) Applications for disability benefits must be submitted to the Director not later than 30 days from the date of lost wages due to a Member's nonservice-connected injury or illness unless the Member establishes good cause for failing to do so. Failure to file an application within the time specified bars a Claim for disability benefits.~~

~~(E)~~***(D)*** By making application for disability benefits, each applicant thereby authorizes the Director to request and obtain from any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, government agency, institution or any other person or organization, any information within any of their records or knowledge regarding the applicant's health, income and employment which in any way relates to the applicant's Claim of disability and/or capacity to engage in Substantial Gainful Activity.

The applicant thereby also authorizes all such physicians, practitioners, hospitals, clinics, pharmacies, employers, employment agencies, governmental agencies, institutions, persons, and organizations to furnish such medical, health, employment and income information to the Director upon request. The applicant recognizes that the information disclosed may contain information that is protected by federal and state law, and by filing an application for disability benefits, specifically consents to the disclosure of such information. All applications for disability benefits shall contain a form to be signed by the applicant authorizing the release of the foregoing information to the Director or the Director's authorized representatives.

~~(F)~~***(E)*** All applications for nonservice-connected disability benefit shall contain a report of the Member's Attending Physician.

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~~(G)~~***(F)*** Although information comes from many sources, Claim ~~assessment~~ ***evaluation*** is frequently based in part on information provided by the Fire and Police Bureaus. If the ~~B~~***b***ureau designates a process for requesting documents, then ~~the Fund~~ ***FPDR*** staff will comply with that process. With the exception of attorney-client privileged documents,

DRAFT

all information gathered and made part of the Claim file will be accessible to the Member, ***or the Member's authorized representative,*** upon the Member's request. If a ~~B~~***b***ureau deems some records as privileged, it is that ~~B~~***b***ureau's responsibility to identify what information is privileged and to withhold the information.

~~(H)~~***(G)*** A Member is required to cooperate with FPDR staff in the investigation of an application for benefits. This includes submitting for and cooperating with personal or telephone interviews and gathering of information. Failure to cooperate with this rule in an initial Claim for benefits may delay a compensability determination or result in a Claim denial. Failure to cooperate with this rule on any application for benefits subsequent to approval of the initial Claim may result in a suspension of benefits.

5.8.04 <u>ELIGIBILITY</u>

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 ~~r~~***R***equired ~~d~~***D***uties because of an injury or illness that does not qualify as ***a*** service-connected ***injury/illness*** or ***an*** occupational ***disability*** under subsection 5-306(a), (b) or (c) of Chapter 5 of the City Charter.

5.8.05 <u>CLAIM APPROVAL OR DENIAL</u>

(A) No Member shall receive nonservice-connected disability benefits for disabilities resulting from the following:

(1) Willful injuries;

(2) Injuries sustained while, or illness contracted as a result of, willfully doing an unlawful act; or

(3) 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) The Director shall provide written notification of Claim approval or Claim denial to the Member or the Member's representative, and the Member's ~~a~~***A***ttending ~~p~~***P***hysician within sixty (60) days of the Director's receipt of a written application for benefits. This applies to the initial Claim for benefits and subsequent Claims for recurrence or aggravation benefits.

(1) Notice of Approval – A Notice of Approval shall be addressed to the Member and include the mailing date of the notice, and the statement that the ~~N~~***n***onservice-connected disability claim has been approved.

(2) Notice of Denial – A Notice of Denial shall be addressed to the Member and include the mailing date of the notice, and be sent via certified mail. The notice also shall include the factual and legal reasons for the denial, and a statement on the Member's right to appeal the denial to an independent hearings officer for review.

(C) If sufficient information is not available within sixty (60) days of the Director's receipt of a written application for benefits, FPDR will provide a written notice to the Member on the status of the review. If a Notice of Approval or Notice of Denial issues more than 90 days

DRAFT

from of the Director's receipt of a written application for benefits, then the Claim will be deemed denied and the Member may file a written request for hearing with the Director.

5.8.06 AMOUNT OF BENEFITS

(A) The benefit shall be 50 percent of the Member's Base Pay ***in Effect*** at ~~d~~***D***isability, reduced by 50 percent of any wages the Member earns in other employment during the period the benefit is payable. The Director may reduce, suspend 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.

(B) Notwithstanding any other provision of the Chapter or the City Charter, a disabled Member receiving or eligible to receive ~~N~~***n***onservice-~~C~~***c***onnected ~~D~~***d***isability ~~B~~***b***enefits 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. ***FPDR reserves the right to recover overpaid amounts in situations where a Member has been incarcerated for a period of time prior to conviction of a crime and the sentence is for time served.***

5.8.07 FORM OF BENEFITS

The nonservice-connected disability benefit shall be payable monthly from the Date of Disability. The Director may pay this benefit in some other form as deemed appropriate, but no less frequently than monthly. 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) ***and Section 5.8.16 of this Administrative Rule***.

5.8.08 – TRANSITIONAL DUTY PROGRAM

Whenever the Director has medical evidence that a Member who is receiving disability benefits is capable of performing limited transitional duty the Director shall notify the Member's Bureau Chief or designee of that fact. Included in the notification will be a report of the ~~m~~***M***ember's limitations and a request that the Bureau Chief ***or designee*** provide the Member with a job that is compatible with the Member's limitations. Members' cooperation with the return to work program is a requirement of the ~~Non-Service~~ ***nonservice-connected disability*** benefits program. Refer to Section 5.10 of these Administrative Rules for additional information on this program.

5.8.09 – AUTHORIZED HEALTH CARE PROVIDERS

(A) All Members drawing disability benefits, of whatever nature shall identify an Attending Physician, as defined by these Administrative Rules and who will be responsible for directing the Member's medical care.

(B) Disability authorization is limited to the Member's Attending or Specialty Physician as defined in and under the conditions prescribed for under "Attending Physician" and "Specialty Physician" in Section 5.8.01 of this Administrative Rule. Authorization from an inpatient or outpatient hospital physician (emergency room physician or hospitalist) will be considered on a case-by-case basis.

DRAFT

5.8.10 – RECIPIENT OF DISABILITY BENEFITS

(A) All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified Attending Physician or an Attending Physician appointed by the Director, unless otherwise determined by the Director. ***The purpose of the examination will be to determine if the Member's approved nonservice-connected injury/illness condition(s) continue to prevent the member from performing the Member's*** ~~r~~***R***equired ~~d~~***D***uties ***in the Fire or Police Bureau.***

(B) Any Member receiving disability benefits under the Plan shall file with the Director a certificate from the Member's Attending or Specialty Physician of the Member's continued disability for each ***disability*** pay period, unless otherwise waived by the Director.

~~(C) A Member receiving nonservice-connected injury/illness benefits, under Article 3 of the Plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the bureau, shall pursue other employment within the Member's restrictions. Pursue other employment means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.~~

5.8.11 – INDEPENDENT MEDICAL EXAMINATIONS

(A) If requested by the Director, any Member ***potentially*** eligible to receive benefits under this program is required to undergo a***n independent*** medical examination ***(IME)*** by one or more licensed physician***s*** or psychologist***s***. Should the Member fail to submit to the examination, or obstructs the same, the Member's rights to benefits may be suspended or reduced by the Director until the exam has taken place.

(B) The Director is not required to schedule an IME appointment during Member's work hours. Members will be required to attend an IME during off work hours, as well as work hours, if so scheduled~~, and unless there is good cause for not attending the IME. An IME scheduled during a Member's off work hours is not considered good cause, of and by itself, for not attending an IME.~~

~~(B)~~***(C)*** FPDR will mail a written notice to the Member by certified and regular mail at least 14 calendar days prior to the IME appointment date. If the Member has an attorney, the Member's attorney shall be simultaneously notified in writing of a scheduled medical examination under these Administrative Rules. ***FPDR may provide fewer than 14 days notice if the Member agrees.***

~~FPDR shall provide fewer than 14 days notice if the Member agrees.~~

(D) The Member's notification of the medical examination shall include the following information:

(1) The name of the examiner or facility;

DRAFT

(2) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;

(3) The date, time and place of the examination; and

(4) The first and last name of the Member's Attending Physician and verification that the Member's Attending Physician was informed of the examination.

(E) The Member may request a change in the appointment date, time or place ~~for good cause~~. With the approval of the director, attempts will be made to reschedule the IME. Until a new IME appointment is scheduled and approved by the director, the member is required to attend the original IME appointment.

~~(C)~~***(F)*** When necessary, the following expenses associated with the Member's attending the medical examination will be considered by the Director:

(1) Reimbursement of reasonable cost of public transportation or use of a private vehicle; and

(2) Reimbursement of reasonable cost of child care, meals, lodging and other related services.

~~(D)~~***(G)*** Requests for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely review and consideration prior to the date of the examination. Mileage reimbursement will be based on City of Portland rates in effect at the time of incurred expense.

(H) The Member must cooperate with a scheduled IME by arriving at the date and time of the scheduled appointment and cooperating with the examination and IME Physician ~~unless the Member can show good cause for noncooperation~~.

(I) Suspension or reduction of benefits may result from noncooperation in participation with an IME.

5.8.12 – SUSPENSION, REDUCTION OR TERMINATION OF BENEFITS

~~(A) Non-cooperation in vocational rehabilitation or failure to pursue other employment. For nonservice-connected disability benefits under Article 3, if the Director obtains evidence that the Member is not cooperating in vocational rehabilitation, including participating in a Suitable Gainful Activity Assessment, or is not pursuing other employment, the Director shall notify Member of the Director's determination to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the decision is based. The Member will have 14 days to provide a written response for the Director's consideration. Regarding non-service connected disability benefits the Director may reduce, suspend or terminate benefits. The Member shall also be notified of the rights under Charter Section 5-202(h) of the right to~~

~~appeal for a Hearing. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.~~

~~(B)~~***(A)*** The Director may determine to suspend, reduce or terminate benefits for nonservice-connected disability benefits under Article 3 of the Charter, if the Director obtains evidence that:

(1) The Member is not cooperating in treatment;

(2) The Member is not cooperating in a designated examination under Charter Section 5-202(a);

(3) The Member is not cooperating in the administration of the ~~c~~***C***laim and/or fulfilling the Member's duties and obligations under the Charter and the ***FPDR*** ~~a~~***A***dministrative ~~r~~***R***ules;

(4) The Member is no longer disabled or eligible;

(5) The Member has engaged in fraud or a material misrepresentation;

(6) The Member has failed to seek other employment once he/she has been deemed capable of ~~s~~***S***ubstantial ~~g~~***G***ainful ~~a~~***A***ctivity, or has achieved his/her vocational rehabilitation goals;

(7) The Member has failed to provide notification and request approval to engage in other employment within the specified ~~time frame~~ ***timeframe***;

(8) The Member has failed to provide other/outside wage information to allow for wage offset purposes within the specified ~~time frame~~ ***timeframe***; or

~~(9) The Member has failed to participate in an Independent Medical Examination or other Director arranged medical or mental examination.~~

(10)***(9)*** ***The Member is not cooperating in vocational rehabilitation, including participating in a Substantial Gainful Activity assessment.***

(B) The Director shall notify Member of the Director's determination to suspend, reduce or terminate benefits. A summary of the evidence and the decision shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the nonprivileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written request for the Director's reconsideration. The Member shall also be notified of the rights under Charter Section 5-202(h) to appeal the decision as provided for in Section 5.6 of the FPDR Administrative Rules. Any such written request must be filed with the Director within 60 days after the date of the decision being appealed.

5.8.13 – <u>OFFSETS TO NONSERVICE-CONNECTED DISABILITY BENEFITS PAYABLE</u> ~~UNDER ARTICLE 3 OF THE PLAN~~

(A) A Member eligible for nonservice-connected disability benefits ~~under Article 3 of the Plan~~

shall receive a benefit equal to 50 percent of the Member's Base Pay ***in Effect at Disability*** reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term "wages earned in other employment" as defined subsection (D) (5)~~,~~ below. ~~The notification procedure described paragraph (D) below, Guidelines for Wage Offset Administration, shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of "wages earned in other employment."~~

(B) A Member receiving nonservice-connected disability benefits ~~under Article 3 of the Plan~~, who is released to modified duty and capable of Substantial Gainful Activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: "an active, serious, and continuing effort to seek full-time work each week that the Member Claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or resumes.

(C) A Member's failure to pursue other employment may result in a reduction or termination of benefits.

(D) Guidelines for Wage Offset Administration

(1) A Member must complete the "Outside Employment" section of the "Nonservice***-connected*** Disability Report" at the time of Claim filing. The FPDR ***Director*** may require update on the Member's outside employment status periodically throughout the Member's course of disability.

(2) If at ~~anytime~~ ***any time*** during the Member's disability he/she has or wishes to engage in outside employment, the Member will be required to submit a completed "Request to Engage in Outside Employment" form for the Director's approval. Failure to do so may result in a reduction or Suspension of Benefits.

(3) Once the Request to Engage in Outside Employment has been approved by the Director, the Member will be required to submit a report of his/her outside earnings upon the request of and at intervals determined by the Director.

(4) ***A*** Report of ~~e~~***E***arnings ***From Outside Employment*** ~~report~~ will be returned with proper documentation within time frame stated in the request. Failure to do so may result in a reduction or Suspension of Benefits.

(5) The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer ~~other than the Bureau of Fire or Bureau of Police~~. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and

DRAFT

capital gains. However, if ~~you~~ ***the Member*** own***s*** a rental(s) and the IRS requires ~~you to report your~~ ***the*** rental income ***be reported*** as self-employment income, y~~our~~ ***such*** rental income is considered "outside wages" and is subject to the wage offset.

(5) Documentation acceptable for reporting outside employment wages include valid copies of payroll records, pay stubs, W-2 and income tax returns.

(6) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue self-employment rather than seek employment, FPDR will impute earnings to the Member of one-third of the Member's Base Pay in Effect at Disability. The Member will be required to submit his/her tax returns, etc. and, if his/her tax returns show more in earnings than one-third of base pay, the difference will also be imputed as earnings to the Member. ~~If the SGA shows the Member capable of earning more than one-third of base pay, the SGA analysis percentage would be used.~~

5.8.14 – <u>PERS OFFSET</u>

FPDR Disability benefits will be offset by ***Public Employees Retirement System (***PERS***)*** ~~D~~***d***isability ~~B~~***b***enefits pursuant to Chapter 5 of the City Charter.

5.8.15 – <u>RECOVERY OF OVERPAYMENTS</u>

The Director shall recover overpayments of disability benefits paid to the Member. Recovery may be made by offsetting an amount of any future payment until the overpayment is recovered in full.

5.8.16 – <u>DISABILITY RETIREMENT AGE</u>

(A) 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 up to 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.

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

DRAFT