

**[THE FOLLOWING SUMMARIZED MINUTES WERE CONDUCTED IN PUBLIC SESSION. THE EXECUTIVE SESSION PORTIONS OF THE MINUTES ARE CONFIDENTIAL AND NOT INCLUDED]**

A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order on the 25<sup>th</sup> day of March 2014 at 1:05 p.m.

**Board Members Present Included:**

Mayor Charlie Hales, Chair  
Mr. Jason Lehman, Fire Trustee  
Mr. David Dougherty, Citizen Trustee  
Mr. Robert Foesch, Police Trustee

**Board Members Absent:**

Mr. Justin Delaney, Citizen Trustee

**Also Present Were:**

Mr. Samuel Hutchison, FPDR Director  
Ms. Kimberly Mitchell, FPDR Claims Manager  
Ms. Nancy Hartline, FPDR Finance Manager  
Ms. Derily Bechthold, Deputy City Attorney  
Mr. Alan Ferschweiler, President PFFA  
Mr. Nelson Hall, Attorney  
Ms. Julie Falender, Attorney  
Mr. Ty Walthers, Retired Fire Member  
Mr. Doug Paul, Retired Fire Member  
Mr. Hank Kaplan, Attorney  
Mr. Del Stevens, Retired Fire Member  
Mr. Lorne Dauenhauer, Outside Legal Counsel  
Mr. Gabe Sansone, Fire Liaison  
Mr. Henry Groepper, Retired Police Member  
Mr. Paul Corah, Retired Fire Member  
(Other unknown audience members)

Mayor Hales called the meeting to order and roll call of the trustees present was taken.

***Mr. Foesch made a motion, which was seconded by Mr. Lehman and passed by a roll call vote of 4-0 to approve the January 28, 2014 minutes. (Mr. Delaney was absent from the vote).***

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<i>Aye</i>	<i>Mr. Foesch, Mr. Lehman, Mr. Dougherty, Mayor Hales</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Delaney</i>

General Public Comment:

Mr. Del Stevens addressed the Board and asked about the status of an issue that he previously brought up regarding taxation of benefits when a disability benefit is converted to a retirement benefit. He stated that disability benefits are nontaxable benefits, but retirement benefits are and questioned why FPDR could not provide a nontaxable disability retirement benefit.

Mr. Hutchison explained that staff did research the issue and determined that the benefit structure of the FPDR plan would not meet the IRS criteria to allow retirement benefits to be tax-free. He added that the whole plan would need to be restructured and that would require a Charter amendment. He also discussed the differences with other states that may allow a tax-free disability retirement. Mr. Hutchison stated that a memorandum on the issue was provided at the September 2013 board meeting. Mayor Hales asked that a copy of the memorandum be provided to Mr. Stevens, as well as the Board, so they can all take another look at it. Ms. Bechthold explained that the benefits are clearly outlined in the Charter and in order to effect a proposal such as folding in disability benefits with retirement benefits, a Charter change would be required.

Mr. Stevens stated that a Charter change is not an insurmountable obstacle. He added that the Charter is amended regularly, usually for the advantage of the City, and maybe they can make a change for the advantage of the members in this case. Mr. Hutchison stated that he would have the September memorandum provided to Mr. Stevens.

**Action Item No. 1 – Resolution No. 485 (Stephens and Wurth Settlement and Mutual Release Agreement)**

Ms. Hartline went over the proposed settlement to the four cases concerning FPDR's decision in 2008 not to include the new apparatus premium pay in the current salary of a first class firefighter (which is used to determine the benefits of FPDR One Fire participants). She added that there are appeals pending on three of the cases and that in October the Multnomah County Circuit Court issued a Writ of Mandamus for FPDR to include apparatus operator pay in the calculation of perspective benefits for three FPDR One participants. Ms. Hartline went over the terms of the proposed settlement and stated that with the settlement, the FPDR will make payments of approximately \$2.25 million with 25 percent subtracted from that amount for legal fees. She explained that 470 class members will receive a total of \$1.68 million and prospective benefit payments will increase by about \$27,000 a month. She also added that by agreeing to the settlement,

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the FPDR does not have to pay the two percent apparatus operator pay that was in effect for fiscal year 2007/2008 so FPDR payments would be less than if they had included apparatus operator pay in the first class firefighter salary from the beginning. Ms. Hartline stated that FPDR also avoids the risk of a judgment that would award attorney fees and interest absent a settlement.

Public Comment:

Mr. Stevens addressed the Board, stated that he thought it was very appropriate to have the settlement, and was glad to see that the City was not going to appeal it any further.

Mr. Alan Ferschweiler addressed the Board and stated that one of the questions that has come up is whether the apparatus operator is true in terms of the current salary for the first class firefighter. He stated that neighboring departments normally pay their apparatus operators 12 percent to do that job and for years FPDR One members shared in that job responsibility without compensation. He added that three percent under the settlement is a modest amount of compensation for what they do for that work. Mr. Ferschweiler pointed out that 166 FPDR One members passed away before seeing the settlement come to fruition and encouraged the Board to approve the resolution before any more members pass away.

Mr. Lehman stated that one of the positives noted in the resolution is that the FPDR did not have to pay for the first year of increased pay; however, that is not how he looks at it. He stated that they need to pay attention to these situations when they come up and try to make the right decision at the beginning and not go right to litigation.

***Mr. Foesch made a motion which was seconded by Mr. Dougherty and passed by a roll call vote of 4-0 to approve Resolution No. 485. (Mr. Delaney was absent from the vote).***

<i>Aye</i>	<i>Mr. Lehman, Mr. Dougherty, Mayor Hales, Mr. Foesch</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Delaney</i>

**Action Item No. 2 – Resolution No. 486 – Administrative Rule Amendments**

Mr. Hutchison went over the rule amendments. He provided a bit of background on the rules and explained the three packets of amendments. He also stated that a public Q&A session to go over the rule amendments was held on February 14, 2014. Mr. Nelson Hall, Mr. Jason Lehman and Mr. Gabe Sansone participated in the Q&A session. He stated that the rules presented under Resolution No. 486 are primarily housekeeping changes. He also pointed out language in the resolutions that would allow staff permission to go through the rules and make any housekeeping changes (e.g. capitalization, pagination,

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cross-referencing, spelling and section lettering) that will not affect the meaning of the rules.

*Mr. Lehman made a motion which was seconded by Mr. Dougherty and passed by a roll call vote of 4-0 to approve Resolution No. 486. (Mr. Delaney was absent from the vote).*

<i>Aye</i>	<i>Mr. Dougherty, Mayor Hales, Mr. Foesch, Mr. Lehman</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Delaney</i>

**Action Item No. 3 – Resolution No. 487 – Administrative Rule Amendments**

Mr. Hutchison explained that the amendments under Resolution No. 487 revolve around offsets and some definitions that were added for clarification. He added that staff wants to recognize self-employment as a viable employment option. Mr. Hutchison also stated that he and the claims manager will be looking in detail at what to do about other income earned prior to disability and will come back to the Board at a later time to address concerns about it that came out of the public Q&A session. He also explained “Other Employment” and provided some background about the term. He went over the proposed wording under the Guidelines for Substantial Gainful Activity Wage Offset Administration that “The Director will initially estimate the Member’s Self-Employment wages as one-third of the Member’s Base Pay in Effect at Disability”. He also provided alternative wording if the Board wanted the member to have zero offset in the first six months after self-employment began. After discussion, consensus of the Board was to use the alternative wording.

**Public Comment:**

Mr. Nelson Hall addressed the Board and stated that he was speaking on behalf of the PPCOA, PPA and PFFA. He thanked staff and stated that working with Mr. Hutchison and Ms. Mitchell has been a pleasure. He stated that he was addressing Resolutions 487 and 488. He encouraged the Board to pull Other Employment, which includes Self Employment, from the resolution. He added that before the Board approves outside employment they need to come to an agreement about what outside employment will be.

Mr. Hutchison explained that he understands Mr. Hall’s concern, but given FPDR’s current practice, they do offset earnings in other employment before an injury. He stated that staff would do an investigation and come back to the Board to further define what Other Employment is and how they should treat earnings in other employment before injury.

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Mr. Hall asked that the definition of Other Employment or Outside Employment and the assumption for Self-Employment be tabled for further consideration. Mayor Hales asked Mr. Hall if he had an opinion regarding the alternative language and Mr. Hall stated that he would prefer seeing the zero estimate for the first six months.

Mr. Ferschweiler addressed the Board and stated that he was in agreement with Mr. Hall and possibly having a work session to deal with some of the issues regarding Outside Employment and Self-Employment.

Mr. Hutchison stated that the way Other Employment is defined matches the FPDR's present practice and whether it is left in or taken out, it is not going to make any different to the FPDR's present practice.

Mr. Ferschweiler asked that if the resolution is passed, there be a timeline set for looking at this issue again. Mr. Hutchison committed to bringing this matter back to the Board in September.

***Mr. Dougherty made a motion, which was seconded by Mr. Lehman and passed by a roll call vote of 4-0 to adopt Resolution No. 487 as amended with the alternative self-employment language. (Mr. Delaney was absent from the vote)***

<i>Aye</i>	<i>Mayor Hales, Mr. Foesch, Mr. Lehman, Mr. Dougherty</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Delaney</i>

**Action Item No. 4 – Resolution No. 488 – Administrative Rule Amendments**

Mr. Hutchison explained that the definitions they discussed are memorialized in Resolution No. 488. Mayor Hales reiterated that it was staff's recommendation to approve the Other Employment definition but that it will be revisited in September.

***Mr. Foesch made a motion, which was seconded by Mr. Dougherty and passed by a roll call vote of 4-0 to adopt Resolution No. 488. (Mr. Delaney was absent from the vote)***

<i>Aye</i>	<i>Mr. Foesch, Mr. Lehman, Mr. Dougherty, Mayor Hales</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Delaney</i>

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Mr. Hutchison stated that the Board had previously given him five directives to look at and he wanted to recap what they were. 1) Staff used the term "any other gathering" in Section 5.7.03. Staff decided to drop that term and did not go forward with that. 2) Off hours IME time. The wording that staff proposed already existed in another chapter so it is status quo on that issue. 3) Staff was asked to define "good cause". Staff elected not to define good cause. The FPDR has some good case law and guidelines set by the ALJs and that is what staff will use going forward when they do a good cause analysis. 4) Board recommended the Director not get "down in the weeds" and inadvertently dilute his authority on some of the rules. Therefore, some of the rules that staff originally proposed are not going to be proposed again as they were actually duplicated elsewhere in the rules. 5) IMEs for elective surgeries. Ms. Mitchell explained that members had raised concerns about the elective procedure in the administrative rules. She stated that it is not something new and presented information on what the FPDR has done to assist members in cases where treatment has been proposed and a provider has said that they wanted to hold the treatment in abeyance until FPDR made a decision. She explained the understandings FPDR has with MODA and Kaiser and their continued commitment for participation in their coordination of benefits policy. She added that the purpose of the coordination of benefits is if somebody needs elective surgery or other treatment that the FPDR would need time to evaluate to determine whether they are going to pay it on the claim, the treatment would continue so it would not be held up.

#### **Action Item No. 5 – Annual Adjustment Review**

Ms. Hartline went over her memorandum and explained that SB 861 was passed in the special session of the Legislature last fall and restricted the benefit adjustment the Board can authorize. She stated that it is staff's understanding that the Board can now authorize the percentage rate equal to or less than the maximum percentage rate used by PERS, which under SB 861 is 1.25 percent. Alternatively, the Board can choose to use the PERS tiered rate increase of 1.25 percent on the first \$60,000 of annual retirement allowance which would be a \$5,000 monthly base allowance and above \$60,000, 0.15 percent on those amounts.

#### **Public Comment:**

Mr. Doug Paul, retired Fire member, addressed the Board. He stated that the COLA issue has been going on for about three years and he wanted the Board to know that COLA is very important to retirees to keep up with rising prices. He added that he still strongly supports a two percent COLA but understood that it is not feasible until the court makes a decision on the issue.

Mr. Ty Walthers, retired Fire member, addressed the Board and stated that he would prefer the Board authorize a 1.25 benefit adjustment. He explained that one good reason is Social Security and he went over the federal legislation referred to as the "Windfall

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Act” that states that if you draw a majority of your pension from a plan where you did not pay into Social Security, even if you earned your Social Security quarters elsewhere, you will be penalized. He added that in most cases Social Security is a couple of thousand dollars or more. However, in his case, because he is penalized for not paying into Social Security, he receives only \$213.

Mr. Del Stevens, retired Fire member, addressed the Board and stated that he thought he understood the issues the Pension Board deals with. One of those being fiscally prudent and being ethical and fair with the retired members. He wondered if the Board realized that in 2013 the CPI change was 2.7 percent so even if they were to approve a 1.25 percent benefit adjustment, they are losing the difference from 1.25 to 2.7 percent. He added that translates to a retired member seeing the purchasing power of his or her pension decrease. He stated that he did not understand the philosophy that is going on in the State of Oregon that they want to focus on retired elderly people to increase the general fund. He hoped the Board wants to protect the retired members that protected the City of Portland.

Mr. Alan Ferschweiler addressed the Board and stated that health insurance rates are going up by 6.4 percent next year, which is about \$1200 a month for a retiree and spouse. He added that while he would love to see the Board return to a two percent benefit adjustment he understands the Supreme Court and SB 822 and SB 861 are handcuffing the Board right now. However, until that time, he would request the Board consider the 1.25 benefit adjustment and not the tiered rate.

Mayor Hales asked legal counsel even though the statute is constructed in such a way that PERS’ tiering could be construed to applying to the FPDR, whether the Board has the discretion to make either choice. Ms. Bechthold replied “yes” and stated that the City Attorney’s office has looked at the issue and believes the Board can do a 1.25 percent adjustment across the board or implement the tiered system.

Mayor Hales confirmed with Ms. Hartline that the difference in the annual cost or fiscal impact was a little over \$100,000 for the fiscal year. Mr. Foesch stated that a motion should be connected to the PERS coalition challenge of SB 822 and SB 861.

***Mr. Foesch made a motion which was seconded by Mr. Lehman and passed by a roll call vote of 4-0 that the FPDR Two 2014 benefit adjustment rate be 1.25 percent across the board with reconsideration for up to 2 percent if SB 822 and 861 are overturned. (Mr. Delaney was absent from the vote).***

Mayor Hales stated that the Board has discretion within the Charter and legal limits and it is the right call to make.

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<i>Aye</i>	<i>Mr. Lehman, Mr. Dougherty, Mayor Hales, Mr. Foesch</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>Mr. Delaney</i>

**Information Item No. 1 – Budget Update**

Ms. Hartline provided an update on the budget process. She stated that the FPDR budget had been based on an assumption of 1.8 percent, but the CPI used for the City's Collective Bargaining Agreements came in at 2.7 percent so that increase is going to require a \$330,000 increase in the FPDR budget. However, she added that the levy rate should remain the same. Ms. Hartline stated that staff would make the adjustment during the Mayor's proposed budget process.

**Information Item No. 2 – FPDR Director – Strategic Plan**

Mr. Hutchison explained his strategic direction for the FPDR. He stated that his goal is to leverage and integrate processes and technology to assure that FPDR can effectively and efficiently deliver on its mission.

**Information Item No. 3 – FPDR Updates**

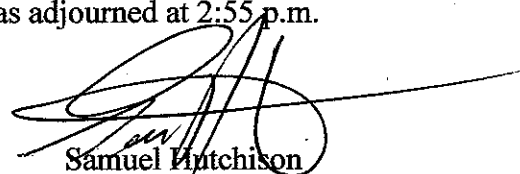
Mr. Hutchison provided an update on the RFP process for the disability audit and stated that the goal is to complete negotiations and have a contract ready for the Board to approve at the April meeting.

The next Board meeting is scheduled for April 22, 2014.

April agenda:

- 1) Tax Anticipation Notes
- 2) Disability Audit Contract
- 3) Mayor to address overpayment issue with Board

There being no further business, the meeting was adjourned at 2:55 p.m.

  
Samuel Hutchison  
Director