

**City of Portland Bureau of Fire and Police Disability and Retirement  
Agenda for Regular Meeting – Board of Trustees**

City Council Chambers – City Hall  
1221 SW Fourth Avenue, 2<sup>nd</sup> Floor, Portland, Oregon 97204  
Tuesday, June 25, 2013 – 1:00 p.m.

**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 – May 28, 2013, Meeting

**INTRODUCTION OF VISITORS**

**PUBLIC COMMENT PERIOD**

*A sign up sheet for members of the public wishing to make public comments will be available at the meeting. The public comment period will not exceed 30 minutes. Therefore, the Board may limit individual comments to three minutes per person. In addition, a sign up sheet will be available prior to the meeting to allow public members the opportunity to sign up for an agenda item which they wish to provide comment on. When discussion on a specific agenda item is to begin, the public member will be allowed three minutes to provide comments, unless additional time is allowed by the Board.*

**ACTION ITEMS**

- 1 Fund Administrator (FPDR Director) Position – The Board makes a motion to approve the Mayor's appointment if the appointment has been made at the time of the meeting.

**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 State of FPDR Presentation
- 2 FPDR Updates
- 3 Future Meeting Agenda Items:
  - o Administrative Rule Updates
  - o Legal Update
  - o Trustee Code of Ethics

*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.portlandonline.com](http://www.portlandonline.com) or at the FPDR offices located at: 1800 SW First Avenue, Suite 450, 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.*

**\*denotes items will be in Executive Session pursuant to ORS 192.660(2)(f) and not open to the public**  
**#denotes items will be in Executive Session pursuant to ORS 192.660(2)(h) and not open to the public**

**[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 the 28th day of May, 2013 at 1:05 p.m.

Board Members Present Included:

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

Also Present Were:

Ms. Linda Jefferson, FPDR Director  
Ms. Kimberly Mitchell, FPDR Claims Manager  
Ms. Nancy Hartline, FPDR Finance Manager  
Mr. Kenneth A. McGair, Deputy City Attorney  
Ms. Derily Bechthold, Deputy City Attorney  
Mr. Lorne Dauenhauer, Outside Legal Counsel  
Mr. Gabe Sansone, Fire Liaison  
Mr. Alan Ferschweiler, President, PFFA  
Mr. Daryl Turner, President, PPA  
Mr. Kevin Keaney, Attorney  
Mr. Nelson Hall, Attorney  
Mr. Doug Paul, Retiree  
Mr. Dave Short, Retiree  
Mr. Del Stevens, Retiree  
Mr. Ty Walthers, Retiree  
Other Audience Members

Mayor Hales called the meeting to order. Roll call of the Board members present was taken. ***Mr. Delaney made a motion which was seconded by Mr. Dougherty and unanimously passed to approve the March 26, 2013 minutes.***

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

Commissioner Saltzman addressed the Board and stated that he wanted to say a few words to honor Director Linda Jefferson who will be retiring soon. He stated that he has enjoyed working with Ms. Jefferson and that under her leadership she helped the FPDR

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become a professional and responsive system. He also stated that Ms. Jefferson has embraced mentoring people in the organization and attracted good people to the organization. He added that she has truly embraced the vision of providing the best services to the members of the Fund, thanked her, and said that she will truly be missed.

General Public Comment:

Mr. Dave Short addressed the Board and commented on the Milliman presentation that was provided to the Board in April with regard to: 1) 2011 Administrative Rule change to have the Board annually review FPDR Two adjustments. Mr. Short asked why the Board could not change the administrative rule back and get on with the 2 percent adjustment; 2) Fiscal Sustainability. Mr. Short stated that the presentation stated that for the FY 2013-2014 budget, it includes 1.5 million for FPDR Two pension benefit adjustments assuming a 2 percent increase. He also provided the Board with a handout he got offline that looks at that issue; and 3) Equal to or Better Test (ETOB). Mr. Short stated that the Milliman report states that there were no member contributions for FPDR Two benefits. He added that prior to the 70's, members paid in 7 percent. He also raised a point about the benefit multiplier with minimum survivor benefit comparisons between PERS Tier One/Two and FPDR Two. One final thing Mr. Short raised was regarding a comment ("it's all in the same pot") that he heard in previous discussions of financial issues before the Board. In reaction to that comment, he stated that the FPDR was created by firefighters and police officers and voted into by the citizens and the 2.8 mills were especially set aside from the General Fund and should not be considered "it's all in the same pot". [Handouts provided by Mr. Short will be filed with the minutes].

Mr. Kevin Keaney addressed the Board and stated that he regularly represents police officers and PPA members in FPDR disability cases. He provided the Board with a letter and stated that he was a little bit out of order due to a time constraint and appreciated being able to address the Board. He stated that he was before the Board on Action Item No. 3 regarding the agreement with the Office of Administrative Hearings (OAH). He briefly went over the points he raised in his letter and stated that 1) Resolution 477, in his opinion, does not comply with the City Charter. He added that the resolution and supporting documents do not have any information regarding training and experience of the hearings officers and appellate panel members, nor does it provide for the appointment of appellate panel members in sequential fashion as required by the Charter; 2) Mr. Keaney also stated that he has not seen anything the FPDR has done to investigate any alternatives to the OAH; 3) Suggested an analysis or study with appropriate input from stakeholders to see if OAH is serving the members' needs; 4) He also stated that the agreement does not allow for recusals of hearings officers or appellate panel members who are perceived to have a bias, and he referenced an Oregon Administrative Rule that does allow OAH recusals or changes of administrative law judges in another setting in which it conducts hearings. He added that, at a minimum, he would like to see some kind

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of amendment made to the process for recusal of hearings officers or appellate panel members.

Ms. Jefferson explained that staff had done a fairly extensive review of alternate resources that would be able to do a review of board hearings and appellate-level review. She added that she spoke with an individual at the Workers' Compensation Board and also with several other individuals who provide private mediation-type services, but their services were outside the nature of what the FPDR hearings are. She went on to say that the Workers' Compensation Board and the OAH were the only two organizations that have resources that are consistent with what is required, i.e., members who are members of the Oregon State Bar and have relevant disability training and experience. She also stated that there is some statutory restriction from the Workers' Compensation Board with their administrative law judges hearing cases outside of workers' compensation law. Ms. Jefferson stated that was considered in 2007 and in 2012 when staff did another complete evaluation and concluded that OAH is the best resource available in order to comply with what staff believes is the intent of the Charter. She also stated that she has had numerous discussions with the OAH throughout the course of the past six years whenever there have been any questions or concerns presented and staff truly believes that it is in the best interest of the system as a whole to not delay this issue because the contract does expire on June 30, 2013. An additional point Ms. Jefferson shared was that the OAH has three levels of administrative law judges (ALJ 1, 2 and 3) and only ALJ 3's are assigned to FPDR cases and they are the individuals that have the greater expertise in this particular area and, of course, their fees are greater.

Mr. Foesch expressed concern about negative stories he hears from members that they do not feel like they are receiving due process and that it is almost impossible to prevail in any of the hearings. He added that while he does not know everything that goes into a disability hearing, he felt they need to evaluate what is the best fit for the FPDR.

The Board decided to resume further discussion on this matter in the order of the agenda items.

#### **Action No. 1 – Annual Adjustment Review.**

Ms. Hartline explained that the two pieces (FPDR Two benefit adjustment and the additional tax offset benefit) that tie FPDR to PERS have been resolved for now with the signing of Senate Bill 822. She stated that SB 822 limits PERS and, by extension, FPDR through Charter Section 5-312 to a 2013 benefit adjustment for most FPDR Two benefits of no more than 1.5 percent. She added that beyond 2013, the PERS adjustment will be a tier of base benefit amounts and percentages with the highest percentage being 2 percent so she thinks this year is the only year where the Board is constrained to something below 2 percent as an adjustment. Ms. Hartline also stated that, if the Board agrees, staff can bring back Administrative Rule 5.4 to consider deletion of the language that refers to the

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CPI bank because that section no longer has any ties to the Oregon statutes with the changes made to SB 822.

Mr. Lehman stated that the bank language is retained in Section 1 of the bill and felt it was important to keep that language in the administrative rule because, as he reads the Charter, he is led to understand that the Board is able to give an adjustment that is less than the cost of living change. He added that the bank language defines why they would give someone up to a certain amount or more than what the cost of living is. Ms. Hartline stated that the bank language is deleted after 2013. She added that she can bring that matter back to the board this summer or next year when they have the discussion about 2014. Mr. Foesch wanted to confirm that FPDR is not linked to SB 822 in getting rid of the bank to which Ms. Hartline stated "yes". Mr. Delaney stated that he was not sure he agreed with that. He added that the Charter states that they cannot exceed the annual PERS limit. Ms. Hartline agreed but stated that how the Board chooses to determine a benefit adjustment within that limit is the Board's discretion.

Mr. Delaney stated that the Charter simply states that the benefit adjustment shall not exceed the percentage rate applied, not the highest or lowest, and he felt the Board needs to set a rule around that now that they are going to be presented with a tiered COLA from PERS. He suggested coming back this summer to start that discussion. He also stated that it would be nice if legal counsel would give the Board a summary of SB 822 and any other PERS legislation that passes.

Mr. Lehman asked about litigation on SB 822 and what happens if it gets overturned. Mr. Foesch stated that he has talked with several labor attorneys who say there is very strong legal argument. He wondered if it would be wise to authorize 2 percent and pay the 1.5 percent now and bank the .5 percent. Mr. McGair stated that the Board has to operate now with the presumption that the bill is law and that the Charter limits the Board to the percentage rate applied to officers and firefighters in the PERS system and he did not think the Board could give FPDR Two retirees 2 percent this year. The Board discussed moving monies to contingency due to the risk of litigation on SB 822. Mayor Hales stated that the law is in effect and the Board should plan and budget accordingly and have a strategy for what happens if the law is overturned. He added that they should not budget in fear of a lawsuit. Mr. Dougherty stated that it seems to him that the Board at the present time has no authority to go beyond 1.5 percent and he would propose they do that with the agreement that should it change to 2 percent the Board would discuss the additional .5 percent in another meeting.

Public Comment was then taken:

Mr. Dave Short addressed the Board and stated that his testimony was to give the Board members an idea of what retirees and widows are saying about the proposed reduction to the annual 2 percent cost of living adjustment. He concluded by asking the Board to go

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forward with approving a 2 percent COLA. [Testimony and handouts provided by Mr. Short will be filed with the minutes].

Mr. Doug Paul stated that he retired from the Fire Bureau in 1995. He stated that COLA is very important to the retirees and stressed that they are not PERS. He added that they do not have many extras and they did not pay into social security. He also referred to the high cost of medical insurance. He closed by saying he would like to see a 2 percent benefit adjustment.

Mr. Ty Walthers stated that he retired in 2005 after 31 1/2 years of service. He offered special congratulations to Mayor Hales. He also stated that one of his last assignments was as a Chief Safety Officer and in that capacity had the pleasure of working with Linda Jefferson and wished her well in retirement. Regarding any changes the Board may be contemplating on COLA, he stated he has one comment: "don't do it". He went on to say that there is no certainty that lessening their COLA to below 2 percent is even legal. He stated that the PERS reductions are based on an economic necessity brought about by billion dollar shortfalls in the PERS system. He added that when the FPDR system was revised and it was tied to PERS he did not think it was contemplated that at some point PERS might become insolvent and that might, in turn, reduce the FPDR Two cost of living adjustment. In any case, he stated that the FPDR has been deemed actuarially sound by the FPDR actuary and would recommend the Board allow any legal challenges to the PERS COLA changes to play out before making any decisions. He also raised questions regarding the tax offset overpayment and equal to or better than.

Mr. Del Stevens stated that he was a board member in the past and passed out a "certificate" received when he was a board member. He stated that he spent 35 years with the City and retired in 2002. Mr. Stevens stated that the issue he is addressing the Board about is an agreement that was bargained, brokered and approved. He explained that when the new pension system came about he made the motion to have the same COLA mechanism as PERS, including the banking system. He added that he felt to be tied to the largest pension system in the state was wise, politically and for the members. He stated that for 22 years it worked fine and he did not understand the frenzy to take away from public employees to put the money in other places. Mr. Stevens also asked the Board to change the format of the public comment period. He stated he would like to be able to comment at the end of the Board's discussion of an issue, as well as before the Board makes a decision. He then raised questions about the Milliman report. He also explained how the reform of the FPDR system came about in 1989. He said he and others have faithfully served the City and do not understand the initiative to reduce their benefit. In conclusion, he read an excerpt from a speech by President Obama.

Mr. Alan Fershweiler, President Portland Fire Fighters Association, wanted to address a couple of things about SB 822: 1) With regards to deleting the CPI bank language from the administrative rules, he asked the Board to delay doing so until they know more about

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the legality of SB 822. He felt that changing the administrative rule to address SB 822 would be premature at this time; and 2) With regards to the tax offset benefit for participants who are not Oregon residents, he stated that was also tied to SB 822 in terms of legality. He felt that making a decision about that would also be premature. He added that he would like to see the Board adjust the COLA rate to 2 percent and, if not, he would like to see the Board move \$1 million dollars to contingency as noted in Ms. Hartline's memo.

Mr. Daryl Turner, President Portland Police Association, started by stating that some of the men who addressed the Board have put in over 25 years each with the City. He went on to say that both men and women when they retired expect the promise that was made to them of a 2 percent COLA. He stated that retirees depend on the 2 percent to live every day and asked the Board to provide the 2 percent and wait to see what the litigation brings out in the next year.

Mr. Nelson Hall, Attorney, stated that he was asked to address the trustees on behalf of the associations. He started by telling the trustees that the challenge to SB 822 will be filed within 60 days of the May 6 enactment. He added that as Ms. Hartline relates in her last paragraph of her memo to hold money in contingency, he states that is a policy decision for the Board to make in terms of smart banking. Mr. Hall also stated that he make be mistaken but he understood that there will be some retirees even under SB 822 who will receive 2 percent and if so, then the Charter certainly allows the Board to approve a 2 percent increase this year. He also stated that he noticed a comment by Trustee Delaney that there is an underlying debate as to what, within the Board's discretion, the COLA should be and 1.5 percent ends the debate and that again is a policy decision. He stated that the members he represents would love to hear the explanation as to why the trustees would do anything less than 2 percent if the Charter and the state law allow you to do 2 percent. About the bank issue, he felt it was a non-issue for now as Mr. Fershweiler indicated. He also stated that the bank piece is not tied to PERS so the Board is free to maintain that. Mr. Hall also wanted to congratulate Ms. Jefferson on her retirement.

Ms. Jefferson passed out a summary of SB 822 from PERS. Mayor Hale confirmed that under SB 822 COLA is capped at 1.5 percent for all benefit recipients in 2013. In addition, he stated that the law deletes CPI bank language that is now being removed from statute, therefore PERS will not operate with an assumption of a CPI bank. Ms. Hartline stated that PERS will have flat percentage rates based on the amount of their base benefit. Mr. McGair stated that PERS is not even tying it to CPI anymore. He added that FPDR's interaction with PERS is tied to the maximum percentage applied in this system and the Board has the discretion in Charter Section 5-312 to set the adjustment at whatever they want not to exceed the maximum rate applied in the PERS system. He also added that FPDR is not prohibited from having a CPI bank.

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Mr. Dougherty asked how the bank language got into the administrative rules. Ms. Hartline stated that in 2011, when the rules were changed from saying essentially “do what PERS does” to restating the Charter language that the Board has discretion up to the PERS limit, they also added language about how the Board may consider the CPI banking as part of its decision in setting the FPDR Two benefit adjustment. Mr. Delaney stated to Mr. Dougherty that in years past there was no discretion exercised by the Board. The Board then had further discussion with regard to a contingency fund.

***Mr. Foesch made a motion which was seconded by Mr. Lehman and passed by a unanimous roll call vote that the FPDR COLA for 2013 be authorized at 1.5 percent and if SB 822 or no other legislation comes through that would modify the COLA, if it goes up to 2 percent or higher, the Board will authorize a 2 percent COLA for the retirees for 2013.***

<i>Aye</i>	<i>Mr. Delaney, 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>None</i>

***Mayor Hale then took a voice vote on Action Item No. 1 – Benefit Adjustment as amended. There were no objections to the vote.***

Mayor Hales commented that this issue is going to be a difficult issue and the Board is going to have to deal with more of these kinds of issues and the Board will need to continue to have discussions with the retirees, unions and managers.

Mr. McGair explained that the tax offset benefit provision eliminates the supplemental tax remedy benefits for benefit recipients that do not pay state income taxes in Oregon because they do not live in Oregon. He added that it is a benefit provided by statute and is not in the Charter. Ms. Hartline stated that it is effective immediately for any new retirees and staff will be working with the Department of Revenue to determine who of current retirees are subject to Oregon personal income tax based on their 2012 tax returns and those adjustments, if necessary, will be made on January 1, 2014.

Mr. Delaney stated that his intent is that the Board did not do anything except follow the law with their decision today. He added that interest should not be accrued and payable even if the Board were to pay the COLA out five years from now. He stated that it not fair to assume that taxpayers should make up the gap.

Discussions regarding the 2014 COLA will be resumed in the fall when the Board should have a notion of what lawsuits have been filed.



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**Action Item No. 2 – Resolution No. 476 (Tax Anticipation Notes).**

Ms. Hartline explained that Resolution No. 476 would authorize the borrowing of sufficient monies for the FPDR to meet its obligations until tax monies become available.

***Mr. Delaney made a motion which was seconded by Mr. Dougherty and passed by a unanimous roll call vote to approve Resolution No. 476.***

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

**Action Item No. 3 – Resolution No. 477 (State of Oregon, Office of Administrative Hearings/Employment Department Intergovernmental Agreement).**

The Board discussed Mr. Keaney's request for recusal. Mr. Delaney stated that he is not adverse to Mr. Keaney's suggestion about recusal, but that they only have a limited number of hearings officers. However, he added that he would not be adverse to amending Resolution No. 477 to include the right of either party to request of the head ALJ the removal of one of the hearings officers for good cause as defined in OAR 471-060-0005(2)(b). He stated that the burden should be on the party making the request. Mr. Foesch added that he did not know of any PPA member that has prevailed and that they do not feel it is a legitimate process.

***Mr. Delaney then made a motion that was seconded by Mr. Dougherty and passed by a roll call vote of 4-1 to approve Resolution No. 477, as amended. Mayor Hale added if for some reason the Office of Administrative Hearings rejects the recusal suggestion, the Board will move forward with the original version of the Resolution and discuss the issue further. (Mr. Foesch opposed the motion)***

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

Mr. Lehman asked if staff and perhaps legal counsel could address Mr. Keaney's letter about non-compliance with the Charter and report back to the Board. Ms. Jefferson stated that staff will report back to the Board on this matter.

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**Information Item No. 1.**

Ms. Hartline went over the HEART Act Plan change and stated that staff will bring back Administrative Rule 5.5 at a later date to reflect the Article I amendment.

**Information Item No. 2.**

Ms. Jefferson reported that there were no new legislative updates. She added that the City's proposed change to PECBA "died on the vine".

**Information Item No. 3.**

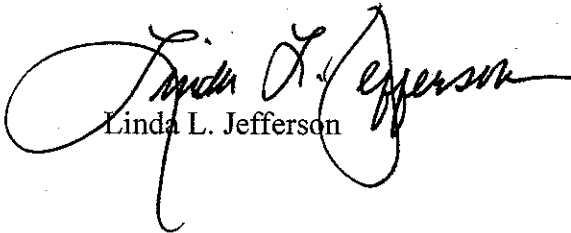
Ms. Jefferson reported that FPDR is fully staffed and vacancies caused by recent retirements were filled.

**Information Item No. 4.**

Ms. Jefferson went over future agenda items and stated that she is finalizing the State of FPDR presentation which will be presented at the next Board meeting. She also stated that she will be bringing administrative rules to the Board in July.

The next meeting is scheduled for June 25, 2013.

There being no further business, the meeting was adjourned at 3:30 p.m.

  
Linda L. Jefferson