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. Introduction of Mayor’s Designee/Board Chairperson – Josh Harwood

2. Approval of Minutes – May 28, 2019 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. Resolution No. 525 – Administrative Rule Amendment to Section 5.7
   - Issue: Amendments to Section 5.7 to comply with ORS 656.802(7)(a)-(e).
   - Expected Outcome: Board adopts amendments as proposed by staff.
   - [THIS ACTION ITEM WILL BE PRESENTED AFTER LEGISLATIVE UPDATES - Information Item No. 3]

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. Request of Joseph Gymkowski to Address the Board of Trustees
2. State of FPDR Presentation
3. Legislative Updates
   - PERS Reform
   - SB 507 (Post-Traumatic Stress Disorder/Acute Stress Disorder Presumptions)
     - Presentation by Sam Hutchison
     - Administrative Rule Amendment
     - City Council Ordinance – Amendment to Charter
4. Board Handbook Updates
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 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)(h) and not open to the public
A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order on the 28th day of May 2019 at 1:06 p.m.

Board Members Present Included:

- Jason Lehman, Chair Pro Tempore
- Catherine MacLeod, Trustee
- Brian Hunzeker, Police Trustee
- Elizabeth Fouts, Trustee

Also present were:

- Samuel Hutchison, FPDR Director
- Kimberly Mitchell, FPDR Claims Manager
- Stacy Jones, FPDR Finance Manager
- Frank Del Carlo, FPDR Fire Liaison
- Crystal Viuhkola, FPDR Police Liaison
- Hank Kaplan, Attorney, Bennett Hartman Morris & Kaplan
- Anil Karia, Attorney, Public Safety Labor Group
- Lorne Dauenhauer, FPDR Outside Legal Counsel
- Franco Lucchin, Sr. Deputy City Attorney
- Mark Amberg, Sr. Deputy City Attorney
- Dave Short, Retired Fire Member
- Del Stevens, President, Portland Retired Firefighters and Widows Association
- Joe Gymkowski, Retired Fire Member
- Henry Groepper, Retired Police Member
- Al Freauff, President, Portland Retired Police and Widows Association
- Kristin Johnson, Office of Commissioner Hardesty
- Josh Harwood, City Economist

Trustee Lehman called the meeting to order and a roll call of the trustees was taken. Director Hutchison explained that the Mayor’s designee, Jennifer Cooperman, had resigned from the board. The Mayor’s office is working on another designee for the Mayor, but the appointment will need to be confirmed by City Council. Trustee Lehman was designated Chair Pro Tempore for the meeting.
Minutes – Summary

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

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

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Introductions of those present at the meeting were then made.

**General Public Comments:**
Trustee Lehman welcomed Joe Gymkowski (“Joe”) and explained that public comments were limited to three minutes. Joe addressed the board and thanked the board for the opportunity to speak to them and stated that it was a difficult process to get before the board. Joe apologized for missing the January meeting and also explained the inability to attend the March meeting. Joe then officially asked to be put on the board’s July meeting agenda to respond to the questions that were asked at the November board meeting. Joe stated two questions were never answered and if the board wanted an answer to those questions, Joe would come back to answer them. Joe stated that it would take about 10 minutes to answer those questions.

**Trustee Hunzeker made a motion that was seconded by Trustee Fouts and unanimously passed to allow Joe Gymkowski to be placed on the July agenda.**

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Joe will be back for the July meeting with some handouts and stated that it will take about 10 to 15 minutes to give the board details of what was asked at the November meeting. Trustee Lehman stated that the board had nothing on the July agenda at the present time and asked Joe if there would be a problem if Joe was placed on the September agenda to which Joe replied that it would not be a problem. Joe has material from over five years of research and just wants to present those facts to the board, especially the new members. Joe also added that this year PERS is expanding the police and fire classification and explained that a dog catcher will now get a fire and police pension under PERS. Joe asked about their own members and why don’t they get the benefits that
the law requires. All Joe is asking for is what the law requires and appreciates the board’s willingness to listen and also stated that there is a workable solution.

Trustee Hunzeker asked if Joe wanted to have a test under a format that Joe would describe as different than the format that has been used in the past. Joe stated that the request was that the facts that were presented in the prior PERS test were not valid. Trustee Hunzeker clarified that if they had the same test done and the facts that Joe was speaking of were added or subtracted into the same test under a preliminary audit, whether that would satisfy Joe’s question, and would Joe accept whatever answer comes back from that test. Joe agreed and stated that as long as it complied with the law. Trustee Hunzeker then asked that Joe provide a very succinct request on what Joe is asking the board to evaluate and test against and provide it to the trustees prior to the July or September meeting. Joe will provide the board with what the test is supposed to be, the process and what the law says. Trustee Hunzeker reiterated that Joe provide clear and succinct information and felt it was the board’s responsibility to at least listen to Joe’s concerns, but that Joe would also need to understand the board’s position as well. Trustee Lehman asked Joe how much time he would need to present the information to the board. Joe replied 10-15 minutes. Trustee Lehman directed staff to have Joe placed on the next regular board meeting agenda for 15 minutes.

Del Stevens (“Del”) then addressed the board. Del wanted to express the fact that there are a lot of retired firefighters and police who have the same concerns that Joe has about their benefits and the comparison to the PERS benefits. Del added that it is appropriate to occasionally review those and look back to see if the tests that have been done in the past were done correctly and if the standards that were used were properly applied. Del stated that there is nothing wrong with making sure that they are in conformity with the law. Del went on to state that in 1990 the FPDR pension was reformed and the intention of the reform was to make it as good or better than PERS. At the time they went through the process, Del didn’t feel that they met the standard but reluctantly voted for the change. Del stated that after it was passed by the members of fire and police and the voters, it turned out that the new pension did not meet the standard, it did not pass. Del stated that what was done at that time was an exemption was given so that Portland did not have to conform to the law if they gave future benefits that PERS would give in conforming to meet the law. Since then PERS has made several changes and FPDR has not responded in kind and added the same benefits. Del added that this is a matter of concern to all of the retired members and Joe has done a lot of research and compiled a lot of information, so the board should give it the attention that it deserves.

Trustee Hunzeker asked if Del would be willing to come in for some sort of work session and focus solely on that specific topic. Del added that it was an excellent idea and stated that the Retired Police Association should also be included. Trustee Hunzeker stated that time doesn’t cost
any money and felt that the board should cost themselves a little bit of time and energy instead of investing funds into research and things of that effect on something they are not yet clear about.

**Action Item No. 1 – Tax Anticipation Notes**

Stacy Jones (“Stacy”), FPDR Finance Manager, went over the resolution to authorize staff to issue tax anticipation notes (TANs) which are short term municipal bonds backed by anticipated property tax receipts. Stacy explained that 98 percent of FPDR spending is funded with property tax revenue, but because most property tax revenue comes in in the middle of November and the fiscal year starts July 1, cash is needed to take FPDR from July 1 to mid-November. Stacy added that staff comes to the board every year to authorize the TANs issuance and that City Council also has to authorize the bonds. Staff was asking the board to authorize the full budgeted amount, which this year is $52.9 million, but will finalize the actual amount over the next month or so.

Trustee Lehman posed a question from a retiree who asked if 1) there was a way to increase the levy one year and carry a balance so they did not have to have TANs issued every year and 2) does the Fund always make money. Stacy stated that the first part of the question was legal, and they have never pursued the legal question because the answer to the second question is so clear. They continue to do it the way they do because there is a financial benefit and there has always been a positive interest spread. Could that flip on FPDR at some point, yes, but Stacy’s opinion is that it is unlikely that it would flip for more than a year or two. Stacy felt that as long as they maintain their credit worthiness they are going to pay less overall on TANs than they are going to earn in the treasury pool. Stacy stated that it would be less financially advantageous to build up the fund balance and also there is the legal question of whether the Charter would allow that since the Charter specifically says that they can only raise the funds they need. Trustee Hunzeker stated that it might be a question they want answered before they run into the negative. Stacy stated that if they ran into the negative, it would be during the fiscal year and they would have time to look into it before it came back to the board. Stacy also stated that staff can tell you the interest rate being paid on TANs as soon as it is issued, but the interest rate that they are going to earn on the City treasury pool won’t be known until the end of the next fiscal year for the overall year.
Trustee Fouts asked how the $52 million not to exceed number on the resolution was reached. Stacy explained that the number is four and a half months of expenses, less beginning fund balance and it is done when staff budgets in January. Stacy went on to explain that there is a timing and methodology difference when that budget number is determined, but it has been historic practice to ask the board to authorize that number. However, when staff does the actual cash flow analysis several months later, the amount is typically less. Staff will also ask City Council to authorize the same amount, $52.9 million, but staff does need to be careful to stay within the IRS arbitrage rebate limits. Stacy stated that is the answer to the other question of why not issue for as much as possible and make even more money, but they can make only so much money and not get into trouble with the IRS.

Chair Lehman asked whether in the future some language can be added in the resolution that explains that the amount actually used for TANs will only be the amount actually needed, not the not to exceed amount. Stacy stated that they will add wording to that effect for the resolution next year.

Trustee MacLeod asked for some clarification on the IRS limit. Stacy explained that they use the working capital definition which means that the low point in the cash balance has to be five percent or less of the prior year operating expenses because they have to qualify for an exception. The exception rules are that you have to be using the money for local governmental purposes. Stacy went on to say that five percent of the current year expenditures will be $7.5 million and if they have more than $7.5 million at the very low point then the FPDR is in trouble with the IRS. However, staff is excessively careful not to hit that number and Debt Management is always very careful taking a second look at FPDR’s numbers.

Public Comment:
Joe addressed the board and asked a question about bonds. Joe was reading about FPDR bonds through Moody’s and came across a five-year bond issued by FPDR for PERS members post medical benefits. Joe asked if someone either on the board or administration can answer whether FPDR bonds are being floated for additional benefits for PERS members post medical benefits. Trustee Lehman asked Joe to provide staff with the information Joe was referring to before the next board meeting so staff can look into it.

Al Freauff (“Al”) addressed the board and stated that Trustee Lehman had already presented the questions Al had and felt the questions were answered by Stacy.
Trustee MacLeod made a motion that was seconded by Trustee Fouts and unanimously passed to adopt Resolution No. 524.

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**Action Item No. 2 – Annual Adjustment Review**

Trustee Lehman explained that for the annual adjustment review there will be a presentation by staff and then the board will go into Executive Session to hear from legal counsel and then will go back to the regular order of business to hear any comments. Director Hutchison clarified everyone’s role on this matter and stated that the board is the decision maker and staff will be the information givers/clarifiers and will implement whatever decision the board makes.

Stacy explained that at the March meeting, the board deferred making a decision on the July 1 COLA for FPDR Two beneficiaries so staff could bring back some additional information on the two percent COLA limit that the Charter allows. Stacy then went over the slide presentation and stated that the first five slides of the presentation attempt to summarize the additional information about the two percent option and compare it to the FPDR Two COLA method which is the blended PERS method that FPDR has been using for the last three years. Stacy stated the next five slides were prepared by Milliman and give a little more detail about some of the information that Stacy summarized on the slides.

Stacy recapped that the FPDR Two COLA method typically gives up to 2.0 percent on the percent of service that occurred before 2013 and 1.25 percent on the percent of service that occurred after 2013 and is modified from the PERS methodology. Stacy stated that if you just look at one year, the impact between a 2.0 percent COLA versus the FPDR Two COLA method is not very different and that is because 85 percent of the current FPDR Two beneficiaries are going to get 2.0 percent either way because all of their service was before October of 2013 and at least 1.9 percent for the vast majority of current retirees. Where they start to look different is when it gets out into the future where the difference between the two approaches emerges over time. Stacy also stated that the Charter is written to require the sequential stand-alone individual year decisions on the COLA, which is kind of a strange way to approach a COLA methodology but felt that in recognition of that strangeness the board has historically prioritized consistency by trying to use a consistent COLA approach while still exercising their responsibility to make a decision every year and
consider the options every year. Stacy also stated that consistency is a value for both the members who are trying to plan for their retirements and also for the FPDR in terms of managing its finances. Stacy then went over the long-term impact of the FPDR Two COLA method and the 2.0 percent method and added that the FPDR’s current inflation assumption is 2.75 percent.

Trustee Lehman asked where the 2.75 percent number comes from. Stacy explained that the number comes from Milliman. Trustee MacLeod explained that when you’re preparing the actual valuation you need to make projections in the very long term about inflation as both the component of the discount rate that they use to value liability, salary increases, etc., not just COLA, so a variety of things come into play so Milliman is just making an assumption that the long term cost of living increase is going to be 2.75 percent per year which is separate from the Plan’s definition of COLA for benefit purposes. Trustee Lehman asked how Milliman comes up with that number. Trustee MacLeod replied that every actuary will have their own methodology, but there is information available. Before coming to the meeting, Trustee MacLeod took a look at what CPI-Urban rates have been and stated that it looks like over the past ten years inflation has been about 1.5 percent per year, but historically over 30+ years, it may be 2.0 to 2.5 percent. Stacy added that there is a variety of methodologies and a variety of models and nobody knows exactly what long term inflation is going to look like and 2.75 percent is reasonable.

Trustee Lehman stated that it is denoting pension maintenance over 30 years and wondered if the number affects the rest of the table. Stacy replied that it does and added that until very recently the City used three percent as a long-term assumption, but on the advice of Milliman FPDR dropped it. Stacy added that they need to understand that it is an assumption. Going over the tables, Stacy explained that the reason 30 years was used was because that is the average length of time between retiring and death.

Stacy then explained that staff had Milliman rerun the numbers from their latest calculation of the plan liability using a 2.0 percent COLA and Milliman and came up with a $3.39 billion plan liability which is about $65 million more than what they presented at the January board meeting. Stacy added that at the 20th year of the analysis (2038), the real market value property tax levy rate is slightly higher with the 2.0 percent COLA method and the likelihood of exceeding the FPDR’s RMV cap of $2.80 is just a tiny bit higher. The assessed value property tax rate which is what taxpayers’ property tax payments are based on is also slightly higher.

Trustee Hunzeker asked if they went back 20 years, whether they would still be at the 2.75 inflation rate. Stacy stated that they were lucky to have the City Economist in the room and the City Economist ran the numbers and it is 2.25 percent over the last 20 years. So, the number is lower
than the 2.75 percent inflation assumption that staff has assumed going forward and it was 80 percent pension maintenance at 2.75 percent inflation. If inflation is less than that, it is going to be more, maybe 90 percent pension maintenance. If inflation is higher than that over the long run it is going to be less, maybe 75 percent pension maintenance. Stacy stated that if the board just wants to think of this as a one-year decision, they are not talking about big differences. The differences emerge over time.

Trustee MacLeod stated that the COLA adjustment is a one-year decision and asked if the board decided to leave it as modified PERS today and a year from now went to 2.0 percent, what would be the impact on an individual; would they always be somewhat less than someone who had 2.0 percent all along because they are building from the benefit that they had the year before. Stacy explained that everyone that is a current retiree gets that COLA so if the board said they want to stick with the modified methodology this year but want to go to 2.0 percent next year, then every single beneficiary of the plan next July 1 is going to get 2.0 percent regardless of when they retire and regardless of how their service is split out. Trustee MacLeod clarified, and Stacy agreed, that likewise if the board were to make a change to 2.0 percent this year and go back to the modified methodology in the future, a similar thing would happen. Whatever benefit they were at, at the present, the then applicable COLA would be applied to them.

At 2:16 P.M. THE BOARD WENT INTO EXECUTIVE SESSION PURSUANT TO ORS 192.660(2)(h). AT 2:46 P.M. THE BOARD CAME OUT OF EXECUTIVE SESSION AND RESUMED THEIR REGULAR ORDER OF BUSINESS.

Public Comment:
Attorney Hank Kaplan (“Hank”) addressed the board. Hank was present on behalf of the Portland Fire Fighters Association Local 43 and did not have much to add to the discussion but had one question. Hank stated that this matter is a policy issue, not a legal one and it is a question of whether or not and to what extent the board is determined to maintain purchasing power for FPDR Two members. The question Hank had was that in the past three or four years that this issue has come up, there has never been a question or an answer to the question of what happens if the rate of inflation is below 1.25 percent. Under PERS, if the rate remained flat for a long period of time, after you’ve caught up with your lost purchasing power through their bank system then the rate can drop below that 1.25 percent. Hank added that FPDR used to have a banking system as well to keep track of lost purchasing power. Hank stated that there is no possible scenario in which they can actually catch up with lost purchasing power regardless of what the inflation rates do. Stacy stated that staff’s understanding of the PERS method is that 1.25 percent is 1.25 percent irrespective of inflation. Stacy stated that they do not work for PERS but believes that what PERS
does is take the percent of service that occurred before 2013 and apply that to the old PERS method which could be less than 2.0 percent for a newly retired person because they are still employing the COLA banking on that old method. Stacy stated that FPDR has been applying the COLA banking, but only to the application to service before 2013. The 1.25 percent is to the percent of service after 2013 and just is 1.25 percent irrespective of inflation.

Trustee Fouts asked about the risks of moving away from their prior methods and managing of the Fund long term. Stacy would not characterize it as a risk, but as something the board needs to consider as part of their fiduciary responsibility. Stacy added that it is going to cost about $65 million over the life of the plan if the board adopted a 2.0 percent COLA path, but if it is a one-year decision, the cost is about a couple hundred thousand dollars. Stacy also stated that there is no greater risk of Fund insolvency.

Trustee Hunzeker made a motion “that the Board has understood its discretionary abilities on a year-to-year basis and on a non-precedent setting type of future outlook on the Fund and given the unusual circumstances of the current economy, the current growth, I would make a motion that we step away for a minimum of this current year from the modified PERS to a just flat 2.0 percent pay raise to be effective July 1 or the next fiscal year. Again, using the board’s discretion of having a year-to-year analysis of the growth of the Fund, the growth of the economy and for the benefit of the members in the current unusual economy. So, I would make a motion of a 2.0 percent raise effective July 1”. Trustee Fouts provided a second to the motion with the “understanding that our formula, our modified PERS formula, has worked well for us in the past and that this is an exercise of discretion just for one year. I second the motion for a 2.0 percent increase.”

Trustee MacLeod concurred with Trustee Fouts and Trustee Hunzeker’s comments and stated that “this is in reflection of the unusually high inflation relative to recent prior years that we want to just make this move without really throwing the modified PERS methodology out in perpetuity. We just want to consider this change for this year.” Trustee Lehman stated, “I agree this is our duty to address this every year and I believe that due to inflation this year that the 2.0 percent would be appropriate.”

A roll call vote was then taken:
Trustee Fouts: Aye
Trustee Hunzeker: Aye
Trustee Lehman: Aye
Trustee MacLeod: Aye
The motion was unanimously passed by a roll call vote of 4-0.

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Trustee MacLeod stated that the next time they review this subject if they could circle back to a discussion on a minimum aggregate COLA for any particular participant. Trustee Hunzeker agreed and would love to have a work session on that. Trustee Lehman asked that staff follow up on it and decide maybe next winter or spring to have a work session and discuss this with all the players and see if the board wants to move forward or not with possibly a Charter change or what they can do within the rules.

Director Hutchison stated that they normally start the COLA discussion in March and can make it part of a board meeting or a work session. Director Hutchison added that staff will work with whomever the board chair is at that time and work out a process. Trustee MacLeod was not necessarily pursuing a Charter change so much as working into the subsequent years motion, to have as part of the discretion of the board, whether or not they would like to have a minimum COLA applicable to any affected participant that would not be less than perhaps 1.5 percent as opposed to just letting the formula work any way that it might. Stacy clarified whether it would be accurate to say that next year the board would want to look at the 2.0 percent option again, the blended COLA method that has been used in the three years before that, and the blended COLA method with a floor to which Trustee MacLeod replied “yes”.

Information Item No. 1 – FPDR Summary of Expenditures

Stacy updated the board on the budget and stated that there were tiny changes to the budget, mostly for the internal service funds. In addition, staff shifted $500,000 out of the FPDR interagency agreement budget to the Police Bureau for PERS contributions because they are continuing to have very high end police officer vacancy rates and the Police Bureau has not been able to hire as many people as they projected in the current year and, in fact, City Council sort of pre-captured some of those vacancy savings from the police budget for next year. In order to make all that work in terms of balancing the budget across the whole City, FPDR dropped that budget by $500,000 and shifted that money into the pension budget. Stacy added that it is what they have to do to make budgets work across the whole City and the way FPDR’s budget intersects with the Police Bureau budget.
Stacy then went over the expenditure report and pointed out that because of timing, neither Police nor Fire got their third quarter billings to FPDR in time before staff closed out April. Stacy also pointed out the higher fund balance and explained that it is mostly because of the Comcast payment that she previously went over with the board. Trustee Lehman asked whether the lower disability number was because of a billing issue or were disability benefits dropping. Stacy explained that disability benefits are running low and there are some billing issues but thought that disability benefits will come in under budget and that was the case last year as well.

**Information Item No. 2 – Update to Board Handbook**

Director Hutchison stated that this item will be deferred to the next board meeting. There will be more clarification on what constitutes a board meeting and what constitutes a quorum.

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

Director Hutchison stated that Senate Bill 507 (PTSD presumption) passed the Senate and it is currently sitting in the House. Director Hutchison felt there is a high probability it will pass through the House as well. In addition, there is a PERS bill (Senate Bill 1049) that is designed to lower employer contribution that will impact PERS benefits for some people. Director Hutchison will discuss the bill further with the board if it passes the House.

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

Director Hutchison stated that the Mayor’s office is looking for a new designee for the Mayor. Once that designee is identified that person’s appointment will have to be approved by City Council. Director Hutchison will notify the board when the appointment is made.

**Information Item No. 4 – Future Meeting Agenda Items**

Director Hutchison stated that there are no agenda items for July. For the September meeting, the agenda items are State of FPDR, legislative bills, board handbook and request by Joe Gymkowski. Director Hutchison will notify the board by the end of June about cancelling the July meeting.

Trustee Fouts asked about the status of training for the board members. Director Hutchison stated that staff is working on that and hopes to get the classes set in the next few months.
Trustee Hunzeker brought up the State of FPDR and stated that staff provides information on statistics of claims brought to FPDR, i.e., claims approved and denied. Trustee Hunzeker did a little history checking and understood that there was a board agreement with FPDR that timeliness would not be an issue with claims filed. Trustee Hunzeker wanted to make sure that claims are not being denied solely on timeliness issues. Director Hutchison stated that staff will talk about that and if there is more specific information in the State of FPDR that the board would like, staff will incorporate that in.

There being no further business, the meeting was adjourned at 3:10 pm.

______________________________
Samuel Hutchison
Director
RESOLUTION NO. 525

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, Senate Bill 507 (2019) requires that FPDR apply the provisions of ORS 656.802(7)(a)-(e) when processing claims for firefighters and police officers covered under Chapter 5 of the Charter of the City of Portland; and

WHEREAS, Chapter 5 of the Charter of the City of Portland is being amended by City Council in order to comply with ORS 656.802(7); and

WHEREAS, staff recommends amendments to Section 5.7.04 to incorporate the PTSD/ASO presumptions as provided under 656.802(7) on relevant occupational disability claims of eligible firefighters and police officers; and

WHEREAS, the proposed amendments to Section 5.7.04 were also posted on the FPDR website on August 20, 2019; and

WHEREAS, the Board has considered and recommends the amendments to Section 5.7.04 of the FPDR Administrative Rules as shown on Exhibit “A”, attached hereto and by this reference made a part hereof; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Section 5.7.04 of the FPDR Administrative Rules be amended as shown on Exhibit “A”.

ADOPTED by the Board of Trustees on the 24th day of September 2019.

Samuel Hutchison
FPDR Director
5.7.04 – CLAIM APPROVAL OR DENIAL

(A) Disability Claim applications fall into one of the following 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).

(4) Post-Traumatic Stress Disorder (PTSD) and Acute Stress Disorder Claims: The
Director shall evaluate PTSD and Acute Stress Disorder claims in accordance with ORS
Section 656.802(7).
August 22, 2019

Samuel Hutchison
FPDR
1800 SW First
Suite 450
Portland, OR 97201

RE: Notice of Rulemaking and Request for Comments

Dear Mr. Hutchison:

This letter is submitted on behalf of the Portland Police Association (PPA) and Portland Fire Fighters, IAFF Local 43, in response to your August 20, 2019, Notice of Rule Making and request for comments regarding the proposed rule amendments.

We endorse the simple, direct nature of the proposed rule consistent with the statutory directive. We do, however, request that the words “and process” be added. The statutory mandate is not limited to the “evaluation” of a claim under the new presumption but includes the requirement that the claim be processed consistent with the new statutory presumption. Our proposed edit to your draft rule would thereby read:

“(4) Post-Traumatic Stress Disorder (PTSD) and Acute Stress Disorder Claims: The Director shall evaluate and process PTSD and Acute Stress Disorder claims in accordance with ORS Section 656.802(7).”

This occasion for rule making should also serve as the opportunity to amend 5.7.04(3) to add the words “and process” such that (3) would be consistent with the statutory mandate and consistent with the (4) proposal.
Thank you for your consideration.

Very truly yours,

[Nelson R. Hall's signature]

NRH/mm
5.7.04 – CLAIM APPROVAL OR DENIAL

(A) Disability Claim applications fall into one of the following 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).

(4) Post-Traumatic Stress Disorder (PTSD) and Acute Stress Disorder Claims: The Director shall evaluate and process PTSD and Acute Stress Disorder claims in accordance with ORS Section 656.802(7).

Recommended change, Nelson Hall
State of FPDR
Fiscal Year 2018 - 19

Fire and Police Disability and Retirement
September 24, 2019

We 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.
What Happened Last Year

- New Board Chair
- Two 27 pay date windows
  - Retired 64 members, the most since FY 2011-12
- Issued a second round of PFFA retroactive payments, following second arbitrator’s ruling related to new contract
  - Paid 279 members within weeks of ruling
- New City budget process (program budgeting) and new budget software
What’s Happening This Year

- Implementation of new PTSD presumption
- Retirement of long-tenured FPDR business system analyst
  - Among other things, manages the custom database used to track member data, manage claims, and make most payments
  - New hire planned for this fall, with enough time for overlap
- Roll out of Updated FPDR website
  - Part of the City POWR project
- Reducing paper and moving to toward paperless files
- Continue investing in staff
  - Alternate work schedules
  - Encouraging teleworking
Key Performance Measures

Percent of Workforce on Disability at June 30

- FY 09-10: 6.4%
- FY 10-11: 5.3%
- FY 11-12: 3.9%
- FY 12-13: 4.1%
- FY 13-14: 4.6%
- FY 14-15: 4.2%
- FY 15-16: 3.4%
- FY 16-17: 3.3%
- FY 17-18: 3.5%
- FY 18-19: 3.3%
Key Performance Measures

FPDR 2 Retirements & FPDR 3 Percent of Workforce

FPDR 3 members comprise a growing percent of the workforce as FPDR 2 members retire.
Key Performance Measures

Rate capped at $2.80 per City Charter

Rate per $1,000 Value

FY 14-15: $1.48
FY 15-16: $1.30
FY 16-17: $1.14
FY 17-18: $1.13
FY 18-19: $1.09
FY 19-20: $1.09
FY 20-21: $1.16
FY 21-22: $1.16
FY 22-23: $1.21
FY 23-24: $1.20
FY 24-25: $1.24
FY 25-26: $1.24
FY 26-27: $1.26
FY 27-28: $1.32
FY 28-29: $1.31
FY 29-30: $1.29
FY 30-31: $1.32
FY 31-32: $1.29
FY 32-33: $1.18
FY 33-34: $1.15
FY 34-35: $1.02
FY 35-36: $0.75
FY 36-37: $1.00
FY 37-38: $1.25
FY 38-39: $1.50
FY 39-40: $1.75
FY 40-41: $2.00
FY 41-42: $2.25
FY 42-43: $2.50
FY 43-44: $2.75
FY 44-45: $3.00
Key Performance Measures

Administrative Cost as Percent of Operating Budget and Per Participant

- FY 09-10: $470, 1.74%
- FY 10-11: $529, 1.89%
- FY 11-12: $588, 1.90%
- FY 12-13: $676, 1.80%
- FY 13-14: $774, 2.20%
- FY 14-15: $608, 1.57%
- FY 15-16: $593, 1.61%
- FY 16-17: $594, 1.41%
- FY 17-18: $601, 1.49%
- FY 18-19: $643, 1.52%

Per Participant: Purple bars
Percent of Budget: Green line
Pension Program

Pension Counts * as of June 30 Each Year

<table>
<thead>
<tr>
<th>Year</th>
<th>FY 09-10</th>
<th>FY 10-11</th>
<th>FY 11-12</th>
<th>FY 12-13</th>
<th>FY 13-14</th>
<th>FY 14-15</th>
<th>FY 15-16</th>
<th>FY 16-17</th>
<th>FY 17-18</th>
<th>FY 18-19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>1,741</td>
<td>1,733</td>
<td>1,798</td>
<td>1,795</td>
<td>1,776</td>
<td>1,789</td>
<td>1,814</td>
<td>1,846</td>
<td>1,857</td>
<td>1,878</td>
</tr>
</tbody>
</table>

*Members, Survivors and Alternate Payees
Pension Program

Active Members as of June 30 Each Fiscal Year

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>FPDR 2</th>
<th>FPDR 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 09-10</td>
<td>1,366</td>
<td>279</td>
</tr>
<tr>
<td>FY 10-11</td>
<td>1,337</td>
<td>337</td>
</tr>
<tr>
<td>FY 11-12</td>
<td>1,254</td>
<td>362</td>
</tr>
<tr>
<td>FY 12-13</td>
<td>1,208</td>
<td>386</td>
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<tr>
<td>FY 13-14</td>
<td>1,173</td>
<td>388</td>
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<tr>
<td>FY 14-15</td>
<td>1,124</td>
<td>422</td>
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<tr>
<td>FY 15-16</td>
<td>1,055</td>
<td>464</td>
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<tr>
<td>FY 16-17</td>
<td>989</td>
<td>535</td>
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<tr>
<td>FY 17-18</td>
<td>932</td>
<td>606</td>
</tr>
<tr>
<td>FY 18-19</td>
<td>863</td>
<td>647</td>
</tr>
</tbody>
</table>

OPSRP Contributions are Paid on FPDR 3 Member Wages
Pension Program

Pension Costs by Fiscal Year ($ Millions)

- FY 09-10: $89.0
- FY 10-11: $90.5
- FY 11-12: $94.7
- FY 12-13: $99.4
- FY 14-15: $103.4
- FY 15-16: $107.1
- FY 16-17: $113.8
- FY 17-18: $119.6
- FY 18-19: $124.1

- Pension Benefits (FPDR 1 & 2)
- OPSRP Contributions (FPDR 3)
Pension Program

Retroactive Pension and Disability Payments

- Have become a regular occurrence for FPDR members
  - Last two PFFA contracts not settled before expiration of prior contract
  - 27 pay date grievances and Council amendments to final pay definition in Charter

- Likely that there will another round of PFFA retroactive payments this fiscal year – contract expired June 30, successor contract not yet ratified

<table>
<thead>
<tr>
<th>Retroactive Pension and Disability Payments by Fiscal Year</th>
<th>FY 2016-17</th>
<th>FY 2017-18</th>
<th>FY 2018-19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Members Receiving</td>
<td>79</td>
<td>454</td>
<td>279</td>
</tr>
<tr>
<td>Total Amount</td>
<td>$172,885</td>
<td>$285,661</td>
<td>$176,609</td>
</tr>
</tbody>
</table>
STAFFING
- Filled vacant Senior Analyst Position
- Team now fully staffed

FORMS PROJECT (INJURED WORKER PACKETS)
- Informative & Educational
- Improve claim filing process

MEDICAL MANAGEMENT
- Catastrophic injury management, customer service focus

PROTEST PREP
- Nationally recognized event
- Lessons from the past – Occupy Portland
- Prepared to handle injuries

NEW PTSD/ASD BENEFIT
- Effective 9/29/19
- Staff prepared to handle expanded benefit
- Compassion for member experience
Disability Program

Number of Claims Filed Per Fiscal Year

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>FY 09-10</th>
<th>FY 10-11</th>
<th>FY 11-12</th>
<th>FY 12-13</th>
<th>FY 13-14</th>
<th>FY 14-15</th>
<th>FY 15-16</th>
<th>FY 16-17</th>
<th>FY 17-18</th>
<th>FY 18-19</th>
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<tbody>
<tr>
<td>Fire</td>
<td>130</td>
<td>138</td>
<td>126</td>
<td>144</td>
<td>169</td>
<td>175</td>
<td>168</td>
<td>151</td>
<td>147</td>
<td>157</td>
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<tr>
<td>Police</td>
<td>216</td>
<td>179</td>
<td>166</td>
<td>169</td>
<td>175</td>
<td>167</td>
<td>193</td>
<td>228</td>
<td>197</td>
<td>183</td>
</tr>
<tr>
<td>Total</td>
<td>346</td>
<td>317</td>
<td>292</td>
<td>313</td>
<td>343</td>
<td>360</td>
<td>379</td>
<td>344</td>
<td>340</td>
<td>298</td>
</tr>
</tbody>
</table>

Total Active Members: 1645, 1674, 1616, 1594, 1561, 1575, 1541, 1541, 1555, 1510
Disability Program

<table>
<thead>
<tr>
<th></th>
<th>Approved</th>
<th>Denied</th>
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<tbody>
<tr>
<td>FY 18-19</td>
<td>84%</td>
<td>4%</td>
</tr>
<tr>
<td>FY 17-18</td>
<td>89%</td>
<td>6%</td>
</tr>
<tr>
<td>FY 16-17</td>
<td>91%</td>
<td>6%</td>
</tr>
<tr>
<td>FY 15-16</td>
<td>93%</td>
<td>3%</td>
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<tr>
<td>FY 14-15</td>
<td>92%</td>
<td>7%</td>
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<tr>
<td>FY 13-14</td>
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<td>4%</td>
</tr>
<tr>
<td>FY 12-13</td>
<td>91%</td>
<td>5%</td>
</tr>
<tr>
<td>FY 11-12</td>
<td>91%</td>
<td>7%</td>
</tr>
<tr>
<td>FY 10-11</td>
<td>86%</td>
<td>9%</td>
</tr>
<tr>
<td>FY 09-10</td>
<td>89%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Remaining percentage represents claims that were incomplete or withdrawn by the member after filing.
Disability Program

Days to Claim Decision by Fiscal Year

- 1-30 days
- 31 - 60 days
- 61 - 90 days
- Over 90 days

Fiscal Years:
- FY 09-10
- FY 10-11
- FY 11-12
- FY 12-13
- FY 13-14
- FY 14-15
- FY 15-16
- FY 16-17
- FY 17-18
- FY 18-19
Disability Program

Disability Costs by Fiscal Year ($ Millions)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Medical</th>
<th>Time Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 09-10</td>
<td>$5.54</td>
<td>$3.15</td>
</tr>
<tr>
<td>FY 10-11</td>
<td>$5.22</td>
<td>$2.32</td>
</tr>
<tr>
<td>FY 11-12</td>
<td>$4.48</td>
<td>$2.21</td>
</tr>
<tr>
<td>FY 12-13</td>
<td>$3.87</td>
<td>$2.52</td>
</tr>
<tr>
<td>FY 13-14</td>
<td>$4.16</td>
<td>$2.98</td>
</tr>
<tr>
<td>FY 14-15</td>
<td>$3.90</td>
<td>$2.13</td>
</tr>
<tr>
<td>FY 15-16</td>
<td>$4.04</td>
<td>$2.22</td>
</tr>
<tr>
<td>FY 16-17</td>
<td>$3.53</td>
<td>$2.85</td>
</tr>
<tr>
<td>FY 17-18</td>
<td>$3.18</td>
<td>$2.76</td>
</tr>
<tr>
<td>FY 18-19</td>
<td>$3.39</td>
<td>$3.07</td>
</tr>
</tbody>
</table>
Disability Program

Time Loss Components by Fiscal Year

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Biweekly</th>
<th>Return to Work</th>
<th>Monthly Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 09-10</td>
<td>$1.50</td>
<td>$0.20</td>
<td>$0.50</td>
</tr>
<tr>
<td>FY 10-11</td>
<td>$1.25</td>
<td>$0.15</td>
<td>$0.40</td>
</tr>
<tr>
<td>FY 11-12</td>
<td>$1.00</td>
<td>$0.10</td>
<td>$0.30</td>
</tr>
<tr>
<td>FY 12-13</td>
<td>$0.75</td>
<td>$0.05</td>
<td>$0.20</td>
</tr>
<tr>
<td>FY 13-14</td>
<td>$0.50</td>
<td>$0.00</td>
<td>$0.10</td>
</tr>
<tr>
<td>FY 14-15</td>
<td>$0.25</td>
<td>$0.00</td>
<td>$0.05</td>
</tr>
<tr>
<td>FY 15-16</td>
<td>$0.10</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>FY 16-17</td>
<td>$0.05</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>FY 17-18</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>FY 18-19</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>
Disability Program

Savings

Medical Savings Since FY 12-13

- Total Billed
- Total Paid
- Savings
Disability Program

124 Approved Police Claims in Fiscal Year 2018-19

**Injury Cause**
- Assault by Human: 54%
- Motor Vehicle Accidents: 19%
- Slip/Trip: 13%
- Over-Exertion: 7%
- Others: 7%

**Body Part**
- Multiple Parts: 45%
- Hand: 23%
- Finger(s): 11%
- Knee: 12%
- Others: 9%

**Injury Location**
- At Scene of Fire or Call: 57%
- In Vehicle (In Transit): 14%
- Training Site: 11%
- Multiple Locations: 6%
- Others: 12%
Disability Program

129 Approved Fire Claims in Fiscal Year 2018-19

**Injury Cause**
- In Lifting: 47%
- In Pulling or Pushing: 27%
- Over-Exertion: 9%
- Slip/Trip (No Fall): 7%
- Others: 10%

**Body Part**
- Back: 40%
- Shoulder(s): 30%
- Multiple Parts: 7%
- Finger(s): 7%
- Others: 16%

**Injury Location**
- At Scene of Fire or Call: 60%
- Precinct/Station: 26%
- Training Site: 6%
- Nonservice: 3%
- Others: 5%
Modernization and Efficiency Achievements: FY 2018-19

- All master files for FPDR Three members (members hired 2007 or later) converted to electronic-only
- Began making monthly disability payments, plus first and final pension payments, on the same day each month
  - More efficient
  - Improves wage offset reporting and documentation for FPDR 2 monthly disability payments
- Automated the final pay calculation for most new retirees
- New interagency agreement with OMF Accounting to use their software and expertise for audit publication
- Contracted with new death audit service, to take advantage of a larger firm
  - Expanded search capabilities
  - Gold standard security for member’s data
  - Better business continuity
Customer Service

Other

- Redesigned all pension and claim forms
  - Easier to read and use
  - Consistent format and design
  - Fillable online, most can be submitted online as well

- All staff attended one-day customer service training retreat, designed especially for FPDR purposes

- Monthly Liaison Meetings
- Member concerns
- Program feedback
Labor Comments
Questions
A-Engrossed

Senate Bill 507

Ordered by the Senate May 13
Including Senate Amendments dated May 13

Sponsored by Senator MANNING JR, Representative HOLVEY, Senator BEYER; Senators DEMBROW, FREDERICK, GELSER, MONNES ANDERSON, RILEY, STEINER HAYWARD, TAYLOR, WAGNER, Representatives ALONSO LEON, DOHERTY, EVANS, GOMBERG, GORSEK, MEEK, NOSSE, PILUSO, SALINAS, SMITH DB, SMITH G, ZIKA (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Specifies certain presumptions as to [cause of] compensability of covered employee's claim of benefits under workers' compensation law for death, disability or impairment of health of fire service professional, public safety personnel or employee of public or private safety agency with duties related to firefighting, police, ambulance or emergency medical services in claim for benefits related to occupational disease under workers' compensation law. Specifies standard of evidence necessary for rebuttal of presumption. Provides that insurer or self-insured employer may later deny compensability of claim if exposure to trauma ceases being of real importance or great consequence in causing disability, impairment of health or need for treatment. Defines “covered employee.”

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to occupational diseases for purposes of workers' compensation for certain workers; creating new provisions; amending ORS 656.802; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 656.802 is amended to read:

656.802. (1)(a) As used in this chapter, “occupational disease” means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

(b) As used in this chapter, “mental disorder” includes any physical disorder caused or worsened by mental stress.

(2)(a) The worker must prove that employment conditions were the major contributing cause of the disease.

(b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.
(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7).

(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section.

(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

(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 mental disorder arose out of and in the course of employment.

(4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an “occupational disease.” Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter’s employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter’s employment.

(5)(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a political division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter is an occupational disease if the death, disability or impairment of health:

(A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin’s lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer or leukemia;

(B) Results from the firefighter’s employment as a nonvolunteer firefighter; and

(C) Is first diagnosed by a physician after July 1, 2009.

(b) Any condition or impairment of health arising under this subsection is presumed to result from the firefighter’s employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the condition or impairment was not caused or contributed to in material part by the firefighter’s employment.

(c) Notwithstanding paragraph (b) of this subsection, the presumption established under paragraph (b) of this subsection may be rebutted by clear and convincing evidence that the use of tobacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

(d) The presumption established under paragraph (b) of this subsection does not apply to prostate cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age
of 55. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of prostate cancer without benefit of the presumption.

(e) The presumption established under paragraph (b) of this subsection does not apply to claims filed more than 84 months following the termination of the nonvolunteer firefighter's employment as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of the cancer without benefit of the presumption.

(f) The presumption established under paragraph (b) of this subsection does not apply to volunteer firefighters.

(g) Nothing in this subsection affects the provisions of subsection (4) of this section.

(h) For purposes of this subsection, “nonvolunteer firefighter” means a firefighter who performs firefighting services and receives salary, hourly wages equal to or greater than the state minimum wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimbursement for expenses or nominal payments for time and travel, regardless of whether any such compensation is subject to federal, state or local taxation. “Nominal payments for time and travel” includes, but is not limited to, payments for on-call time or time spent responding to a call or similar noncash benefits.

(6) Notwithstanding ORS 656.027 (6), any city providing a disability and retirement system by ordinance or charter for firefighters and police officers not subject to this chapter shall apply the presumptions established under subsection (5) of this section when processing claims for firefighters covered by the system.

(7)(a) As used in this subsection:

(A) “Acute stress disorder” has the meaning given that term in the DSM-5.

(B) “Covered employee” means an individual who, on the date a claim is filed under this chapter:

(i) Was employed for at least five years by, or experienced a single traumatic event that satisfies the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while employed by, the state, a political subdivision of the state, a special government body, as defined in ORS 174.117, or a public agency in any of these occupations:

(I) A full-time paid firefighter;

(II) A full-time paid emergency medical services provider;

(III) A full-time paid police officer;

(IV) A full-time paid corrections officer or youth correction officer;

(V) A full-time paid parole and probation officer; or

(VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator; and

(ii) Remains employed in an occupation listed in sub-subparagraph (i) of this subparagraph or separated from employment in the occupation not more than seven years previously.

(C) “DSM-5” means the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(D) “Post-traumatic stress disorder” has the meaning given that term in the DSM-5.

(E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board has licensed and certified as eligible to diagnose the conditions described in this subsection.

(F) “Psychologist” means a licensed psychologist, as defined in ORS 675.010, whom the Oregon Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.
(b) Notwithstanding subsections (2) and (3) of this section, if a covered employee establishes through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that the covered employee has more likely than not satisfied the diagnostic criteria in the DSM-5 for post-traumatic stress disorder or acute stress disorder, any resulting death, disability or impairment of health of the covered employee shall be presumed to be compensable as an occupational disease. An insurer or self-insured employer may rebut the presumption only by establishing through clear and convincing medical evidence that duties as a covered employee were not of real importance or great consequence in causing the diagnosed condition.

(c) An insurer's or self-insured employer's acceptance of a claim of post-traumatic stress disorder or acute stress disorder under this subsection, whether the acceptance was voluntary or was a result of a judgment or order, does not preclude the insurer or the self-insured employer from later denying the current compensability of the claim if exposure as a covered employee to trauma that meets the diagnostic criteria set forth as Criterion A in the DSM-5 for post-traumatic stress disorder or acute stress disorder ceases being of real importance or great consequence in causing the disability, impairment of health or a need for treatment.

(d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection only on the basis of clear and convincing medical evidence.

(e) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters and police officers covered by the disability or retirement system, shall apply:

(A) The provisions of this subsection; and

(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in ORS 656.807 (1) and (2).

SECTION 2. The amendments to ORS 656.802 by section 1 of this 2019 Act apply only to claims for benefits that are filed on or after the effective date of this 2019 Act.

SECTION 3. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.
Post-Traumatic Stress Disorder and Acute Stress Disorder Presumption

ORS 656.802 (7)
Effective September 29, 2019
Purpose

Under ORS 656.802 (7), any covered employee diagnosed with Post-Traumatic Stress Disorder (PTSD) or Acute Stress Disorder shall be presumed to have a compensable occupational disease.
Who is covered

Full time paid:

- **Firefighter**
- **Police officer**
- Emergency dispatcher or 9-1-1 emergency operator
- Emergency medical services provider
- Corrections officer or youth correction officer
What conditions are covered

PTSD and Acute Stress Disorder as defined in the DSM-5
Who can diagnose PTSD and Acute Stress Disorder

For the presumption to apply, only an Oregon licensed psychiatrist or psychologist can diagnose PTSD or Acute Stress Disorder. The opinions of other medical professionals do not trigger the presumption.
When does the presumption apply

- Cumulative trauma – when a covered employee has been employed for at least five years
- Single traumatic event – immediately, no length of service required
- Remains employed in covered occupation or separated from employment for not more than seven years previously
Must the employee establish they have PTSD or Acute Stress Disorder

YES

The employee must establish through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that they have more likely than not satisfied the diagnostic criteria in the DSM-5 for PTSD or acute stress disorder.
Can FPDR challenge the PTSD or Acute Stress Disorder diagnosis

YES

Based on the medical or psychological evidence available in an employee’s claim, including IME reports and other information FPDR has gathered, FPDR may conclude the employee does not suffer from PTSD or Acute Stress Disorder

➢ If FPDR refutes the diagnosis, we must evaluate the claim under Section 5-306

➢ The employee may appeal our decision
What Happens after the claimant establishes they have PTSD or Acute Stress Disorder

Once the PTSD or Acute Stress Disorder diagnosis has been confirmed, the employee’s claim shall be presumed to be compensable as an occupational disease
Is the presumption rebuttable

YES

FPDR may rebut the presumption only by establishing through clear and convincing medical evidence that duties as a covered employee were not of real importance or great consequence in causing the diagnosed condition
Estimated Future Claims and Costs

Estimating the number of PTSD claims filed annually, the number of approved claims and cost of those claims is not possible with any certainty.

- **Claims Filed Annually:** ~10
- **Approved:** 90%
- **Cost per claim:**
  - **Short Duration (most claims):** $25,000 - $75,000 per claim
  - **Long Duration:** $750,000 - $1,000,000 per claim
Questions
ORDINANCE NO.

*Extend benefits currently provided to eligible members of the Fire and Police Disability, Retirement and Death Benefit Plan. (Ordinance)

The City of Portland ordains:

Section 1. The City Council finds:

1. That the Fire and Police Disability and Retirement Fund (‘FPDR”) currently provides Occupational Disability benefits to eligible members of the Bureau of Fire and Rescue and the Bureau of Police.

2. That Enrolled Senate Bill 507 of the 80th Oregon Legislative Session – 2019 Regular Session requires that FPDR apply the provisions of Oregon Revised Statutes 656.802(7)(a) – (e) when processing claims for firefighters and police officers covered under Chapter 5 of the Charter of the City of Portland (“Charter”).

3. That ORS 656.802(7)(a) – (e) provides that FPDR shall presume a firefighter or police Member who has at least five years of service as a full-time paid firefighter or police officer or experienced a single traumatic event that satisfies the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while employed by the Bureau of Fire and Rescue or Bureau of Police and remains employed as a firefighter or police officer or is separated from such employment not more than seven years previously is eligible for Occupational Disability benefits under the Fire and Police Disability, Retirement and Death Benefit Plan as stated in ORS 656.802(7).

4. That currently, Chapter 5 of the Charter does not provide that disability or impairment under ORS 656.802(7) is presumptively an Occupational Disability.

5. That pursuant to Portland City Charter Section 5-403(a), the Council may provide by ordinance for additional benefits to be paid from FPDR if the City of Portland is required by law to extend to members such additional benefits.

NOW, THEREFORE, the Council directs:

a. That the FPDR extend to eligible firefighters and police officers the post-traumatic stress disorder/acute stress disorder presumptions as provided under 656.802(7) and as outlined below, on relevant occupational disability claims of eligible firefighters and police officers.
b. That in doing so, FPDR utilize the criteria for post-traumatic stress disorder/acute stress disorder presumptions as set forth in ORS 656.802(7)(a)-(e) when processing claims for firefighters and police officers covered under Chapter 5 of the Charter.

c. That the provisions in Exhibit “A” attached hereto be made a part of Chapter 5 of the Charter of the City of Portland effective September 29, 2019 and that the Board of Trustees have authority to prescribe rules and regulations for its administration.

d. This ordinance is binding City policy.

Section 2. The City Council declares that an emergency exists in order that the amendments described in Section 1 hereof may be implemented without undue delay; therefore, this ordinance shall be in full force and effect from and after its passage by the City Council.

Passed by the City Council:

Commissioner: Jo Ann Hardesty
Prepared by: Sam Hutchison
Date Prepared: July 2, 2019

Mary Hull Cabellero
Auditor of the City of Portland
By

Deputy
EXHIBIT “A”

AMENDMENT

TO

FIRE AND POLICE DISABILITY, RETIREMENT
AND DEATH BENEFIT PLAN

In order to comply with Section 656.802(7)(a)-(e) of the Oregon Revised Statutes, Laws relating to Workers’ Compensation and Safe Employment in Oregon, the City of Portland’s Fire and Police Disability, Retirement and Death Benefit Plan, set out in Chapter 5 of the City Charter, is amended by ordinance as follows:

The Council of the City of Portland directs:

1. The Bureau of Fire and Police Disability and Retirement extend eligible firefighters and police officers the Post Traumatic Stress Disorder/Acute Stress Disorder presumptions as provided under Oregon Workers’ Compensation Law.

2. That in doing so, effective September 19, 2019, FPDR utilize the criteria for Post Traumatic Stress Disorder/Acute Stress Disorder presumptions when processing claims filed on or after September 19, 2019 for firefighters and police officers covered under Chapter 5 of the Portland Charter as follows:

ORS Section 656.802

(7)(a) As used in this subsection:

(A) “Acute stress disorder” has the meaning given that term in the DSM-5.

(B) “Covered employee” means an individual who, on the date a claim is filed under this chapter:

(i) Was employed for at least five years by, or experienced a single traumatic event that satisfies the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while employed by, the state, a political subdivision of the state, a special government body, as defined in ORS 174.117, or a public agency in any of these occupations:

(I) A full-time paid firefighter;

(II) A full-time paid emergency medical services provider;

(III) A full-time paid police officer;

(IV) A full-time paid corrections officer or youth correction officer;

(V) A full-time paid parole and probation officer; or

(VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator; and

(ii) Remains employed in an occupation listed in sub-subparagraph (i) of this subparagraph or separated from employment in the occupation not more than seven years previously.

(C) “DSM-5” means the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(D) “Post-traumatic stress disorder” has the meaning given that term in the DSM-5.
(E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board has licensed and certified as eligible to diagnose the conditions described in this subsection.

(F) “Psychologist” means a licensed psychologist, as defined in ORS 675.010, whom the Oregon Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.

(b) Notwithstanding subsections (2) and (3) of this section, if a covered employee establishes through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that the covered employee has more likely than not satisfied the diagnostic criteria in the DSM-5 for post-traumatic stress disorder or acute stress disorder, any resulting death, disability or impairment of health of the covered employee shall be presumed to be compensable as an occupational disease. An insurer or self-insured employer may rebut the presumption only by establishing through clear and convincing medical evidence that duties as a covered employee were not of real importance or great consequence in causing the diagnosed condition.

(c) An insurer’s or self-insured employer’s acceptance of a claim of post-traumatic stress disorder or acute stress disorder under this subsection, whether the acceptance was voluntary or was a result of a judgment or order, does not preclude the insurer or the self-insured employer from later denying the current compensability of the claim if exposure as a covered employee to trauma that meets the diagnostic criteria set forth as Criterion A in the DSM-5 for post-traumatic stress disorder or acute stress disorder ceases being of real importance or great consequence in causing the disability, impairment of health or a need for treatment.

(d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection only on the basis of clear and convincing medical evidence.

(e) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters and police officers covered by the disability or retirement system, shall apply:

(A) The provisions of this subsection;

(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in ORS 656.807 (1) and (2).
New Sections Added:

**Quorum**¹

At least three trustees must be present in order to constitute a quorum. An affirmative vote of at least three members of the Board shall constitute an action of the Board.

**Discussions and Deliberations Outside of Regular or Special Board Meetings**²

Any meeting or gathering of three or more trustees (a quorum) where board business is discussed or deliberated on is a meeting governed by the Oregon Public Meetings Law. This is true even if the meeting is held outside of a regular or special board meeting. Any discussions or deliberations regarding board business between board members via telephone, email and text may also constitute a meeting.

Per the Oregon Public Meetings Law, these meetings must be announced in advance, open to the public, have an agenda and minutes taken.

Telephone conversations, emails, texts or in-person conversations between two trustees are not subject to public meeting laws. However, successive telephone conversations, emails, texts and in-person conversations with other trustees may constitute a meeting.

Exchange of information, as opposed to discussion and deliberation on board business, between trustees or between trustees and FPDR staff is not subject to public meeting laws.

**Meetings by Means of Telephone or Electronic Communication**³

Any meeting, including an executive session which is held through the use of telephone or other electronic communication, such as text or email, shall be conducted in accordance with Oregon Public Meetings Law.

When telephone or other electronic means of communication is used, and the meeting is not an executive session, the Board shall make available to the public at least one place where, or at least one electronic means by which, the public can listen to the communication at the time it occurs. A place provided may be a place where no member of the Board is present.

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¹ Charter Chapter 5, Section 5-201 (a). Board of Trustees
² Oregon Public Meetings Law, ORS 192.610 to 192.690
³ Oregon Public Meeting Law, ORS 192.670
FY 2018-19 Budget to Actual YTD by Month

**Revenues**
- Beginning fund balance: $12,179,404
- Taxes: $151,442,839
- Bond and note proceeds: $57,700,000
- Miscellaneous Sources: $1,143,400
- Interfund Cash Transfer Revenues: $750,000
- Interagency Revenues: $1,290,000

**Expenses Total**:
- Capital Outlay: $126,918,681
- FPDR 1 & 2 Pension Benefits: $124,145,878
- FPDR 3 Pension Contributions: $16,287,257
- Disability & Death Benefits: $15,515,328
- Interfund Reimbursements: $6,802,200
- Other External Materials & Services: $6,278,129
- Personnel: $4,211,149
- Other Funds: $3,898,455

**Mid Level Classification**
- Capital Outlay
- Personnel
- External Services
- Internal Services
- Internal Reimbursements

**Budget**
- FY 2018-19 Budget to Actual YTD by Month

**Expenses Total**:
- $224,505,643
- $234,627
- $21,275,720
- $713,165
- $12,884,036
- $23,031,787
- $1,113,394
- $12,887,034
- $14,947,147
- $11,407,538
- $23,654,226
- $54,085,929
- $187,165,983

**FY 2018-19 Reconciliation (Unaudited)**
- Beginning Fund Balance 7/1/2018: $11,852,569
- Additions: $7,720,639
- Ending Fund Balance 6/30/2019: $19,573,208
## FY 2019-20 Budget to Actual YTD
Through July 31, 2019

### Mid Level Classification

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<th>Current Budget</th>
<th>July</th>
<th>YTD Total</th>
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### FY 2019-20 Budget to Actual YTD by Month

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<th>July</th>
<th>YTD Total</th>
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<td>FPDR 1 &amp; 2 Pension Benefits</td>
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