Regular meeting on November 19, 2019 of the Board of Trustees
Fire & Police Disability and Retirement Fund
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Minutes – Summary

[The following summarized minutes were conducted in public session. There were no portions of
the minutes that were in Executive Session.]

A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund
was called to order on the 19th day of November at 1:32 p.m.

Board Members Present Included:

Josh Harwood, Chairperson
Jason Lehman, Fire Trustee
Catherine MacLeod, Citizen Trustee
Brian Hunzeker, Police Trustee
Elizabeth Fouts, Citizen Trustee

Also present were:

Samuel Hutchison, FPDR Director
Kimberly Mitchell, FPDR Claims Manager
Stacy Jones, FPDR Finance Manager
Julie Barber, FPDR Sr. Claims Analyst
Kimberly McLean, FPDR Sr. Claims Analyst
Julie Crisp, FPDR Business Systems Analyst
Rob Hutchens, FPDR Fire Liaison
Crystal Viuhkola, FPDR Police Liaison
Lorne Dauenhauer, FPDR Outside Legal Counsel
Franco Lucchin, Sr. Deputy City Attorney
Nelson Hall, Attorney
Don Porth, Retired Fire Member
Joe Gymkowski, Retired Fire Member
Dave Short, Retired Fire Member
Del Stevens, President, Portland Retired Firefighters and Widows Association
Henry Groepper, Retired Police Member
Kristin Johnson, Office of Commissioner Hardesty
Cari Guy, Moss Adams
Jim Lanzarotta, Moss Adams
Keith Simovic, Moss Adams
Regular meeting on November 19, 2019 of the Board of Trustees
Fire & Police Disability and Retirement Fund
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Minutes – Summary

[The following summarized minutes were conducted in public session. There were no portions of
the minutes that were in Executive Session.]

**Trustee Lehman made a motion that was seconded by Trustee Fouts and unanimously passed
to approve the September 24, 2019 minutes.**

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<th>Aye</th>
<th>Trustee Lehman, Trustee MacLeod, Trustee Harwood, Trustee Fouts, Trustee Hunzeker.</th>
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<td>Nay</td>
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<td>Abstain</td>
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Introductions of those present at the meeting were then made.

**General Public Comments:**

Joseph Gymkowski (“Joe”) appeared before the Board. Joe explained that they were asked to come back with a solution and thanked the board for allowing them to come back to speak before the board. Joe’s suggestion is what Joe states was suggested at a prior board meeting by Trustee Hunzeker and that is that a committee or task force be formed with stakeholders to look at the issues. Joe felt a resolution could be done that was fair and with minimal impact on everyone, especially the taxpayers. Joe added that the issue to start with would be disability retirement. Joe said, “it says we have disability retirement, but we don’t have disability retirement cause if we did, we would have never removed it from the Charter.” Joe added that then the next firefighter or police officer that gets hurt is covered and they will have what the law says they are entitled to have.

Trustee Fouts asked Joe if there were other issues that Joe would propose a task force consider or was it strictly disability retirement? Joe stated the main starting point would be disability retirement and then other issues can be discussed.

Del Stevens (“Del”) then addressed the Board. Del was a trustee on the board for three years and active on the board during the 1989 pension reform. The comments Del had were concerning revising, reforming and improving their pension. Del devoted about 30 years on improving the pension and the disability benefits of members with a mixed record of success, but no lack of belief in the merits of continuing the effort. Del explained that due to the constraints of the three-minute testimony time, there will be no time to comment on the many legal and human issues that are at the heart of the subject to show how they arrived at the juncture they now find themselves. Del added that without naming of some individuals responsible for creating and continuing the inequity
of the unfair and mostly not in conformity with the law benefits, it must be said that there is ample
evidence for this situation and it has been put aside for over 30 years by the people who were in
the position to make the necessary reforms. The people who risk their lives and health over long
careers to protect their fellow citizens likewise deserve the best benefits that can be provided with
for them and their families. Del believes there is a desire to look at this issue and as addressed at
the March meeting, request that a pension task force be created to compare existing benefits to see
if they are comparable.

Trustee MacLeod asked what is the appropriate mechanism for the board to discuss the issues
proposed and to decide whether they want to proceed? Trustee Harwood’s inclination was to let
the board digest the information, think about what the best way to go forward is, and have a public
discussion at the next board meeting. Trustee Harwood was not prepared to decide on the matter
at that time and would also be open to suggestions from FPDR staff on the best way to go about
it.

Joe stated that Trustee Hunzeker previously suggested a task force and also said if it was within
the powers of the board, that they can accomplish that. Trustee Hunzeker replied that there was
one specific task that they have not yet seen, and it was “what is the question” to the task force?
Trustee Hunzeker stated that they have had a lot of data and information given to them, but there
is so much of it that for them to form a task force just from that information does not give them a
goal or a guideline. The board has still not been given a specific goal or request and Trustee
Hunzeker would like to know what the question is before a decision about forming a task force
can be made.

Joe stated that his question would be to look at a disability retirement that complied with the law.
Trustee Hunzeker stated that they have talked about that before and understands Joe’s point of
view but what would Joe like a task force focus specifically and solely on. Trustee Hunzeker asked
whether it was about Joe’s prior comments on Equal to or Better. Joe stated that Equal to or Better
is not needed right now because it is lacking the components. Trustee Lehman tried to clarify that
Joe did not feel that they are complying with the law as far as having a disability retirement. Joe
stated that it was his observation. Trustee Lehman then told Joe that the board is going to ask their
legal counsel whether they are complying with the law by their disability system and that is
different than whether it is fair or if it is the right thing. Trustee Lehman asked Joe if the question
is whether what they are doing is legal or illegal.
Joe replied that if they did not have a disability retirement, the board would have never removed it with Resolution No. 501. Joe added that the law says you are supposed to have a disability retirement with post medical benefits. It does not say you have to have exactly what PERS is, but you are supposed to have that aspect of it.

Trustee Hunzeker verified that Joe was affirming Trustee Lehman’s framing of Joe’s question in that prior to a task force being formed, the board could ask their legal counsel to construct a presentation for the board and then they can move forward. Joe replied “sure”. Trustee Hunzeker asked Trustee Lehman to restate the question. Trustee Lehman stated what Joe is asking is for the board to show their opinion of why what they are doing is legal and the disability system is in line with the law in the State of Oregon. Trustee Fouts added as a board they don’t have a legal obligation to affirmatively prove that it is legal but what Trustee Fouts thinks they are being asked to do is to analyze whether the benefits still meet the Equal to or Better test given the absence of a disability retirement.

Joe stated that it is on the record that there is no disability retirement. Trustee Fouts stated so what they are saying is that as a board they need to consult with their outside counsel on that question. Director Hutchison then pointed out a couple of things. ETOB is different than whether or not they should by law be having a disability retirement. They are two different things. Director Hutchison asked Joe if looking at the PERS statutes and per the PERS statutes anyone who is offering a replacement of PERS has to have the same benefits that PERS offers? Joe stated that is what it says in the FPDR documents.

Trustee Fouts stated they can ask their outside counsel to advise the board on the relevant legal standards and how the FPDR program meets or doesn’t meet those standards. Director Hutchison suggested that the board could have a work session, much like City Council does, and come back with a response at the next board meeting.

Trustee MacLeod added that Del Stevens brought up other equity and compliance issues and asked Del to provide, in writing, a list of specific issues that he would like discussed by the task force. Del stated that Joe has really good recall and could put something together for the board.
Action Item No. 1 – Resolution No. 526 – Managed Health Northwest (MHN) Contract Amendment

FPDR Disability Manager Kim Mitchell (“Kim”) explained the Managed Health Northwest (MHN) contract amendment. Kim explained that MHN is one of two managed care organizations that FPDR contracts with to provide occupational health services and stated that the facilities that they use also allows FPDR to bill according to the Oregon fee schedule and allows FPDR to reduce the fees. Kim stated in addition to that they get additional reductions and explained that whatever that savings is, FPDR splits with MHN and that is where the funds are needed. FPDR is almost at the end of the balance of available funds on the existing contract so staff is asking for an amendment to be able to continue to pay MHN for the discount.

Director Hutchison gave an example of how the discount works and explained that it is not a fee for services arrangement. Director Hutchison explained that the challenge staff has is that the contract was written as a fee for services contract and it does not make sense because the more FPDR pays, the more FPDR saves.

Trustee MacLeod made a motion that was seconded by Trustee Lehman and unanimously passed to adopt Resolution No. 526.

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Information Item No. 1 – Financial Audit – Presentation by Moss Adams

Jim Lanzarotta (“Jim”) of Moss Adams went over nature of the services they provided, what was required and the new accounting standards. Jim stated that they also looked at and evaluated internal controls and did a technical review to make sure all the accounting standards of a financial audit were followed. Jim stated that they did the work and they were very pleased to tell the board that the financial statements are put together accurately, and they are issuing an unmodified opinion and that is the best you can get. It is a clean opinion. Jim stated that with regards to the
other areas regarding internal controls on the benefit payments to your retirees, they also found those controls to be effectively designed with clean results.

Keith Simovic ("Keith") of Moss Adams then went over how they went about the audit process, how they do their risk assessment, the significant areas, their procedures and results. Keith stated that FPDR has a very experienced, very knowledgeable staff with a high level of accuracy and so they were not finding a lot of adjustments or material errors. Keith added that through all of their levels of review they did not have any significant comments. It was a very clean result with no material weaknesses noted. Trustee Lehman asked Keith if they found a problem in any area during the audit and staff corrected it while they were there, would they still be reporting it to the board. Keith said if something is identified by them during the audit process, that is something they would bring to the board’s attention even if it was corrected. Trustee Lehman then commented that the audit shows staff is doing a good job to which Keith replied “absolutely”. Jim added that they have always appreciate a consultative nature of their clients and that is the way FPDR staff has always been. For example, Jim stated that there was a very big accounting change when GASB 67 and 68 came around and that really impacted the City and how the City reports their participation in the FPDR plan within their statements. But it also required a change in how the FPDR actuary does its work and Jim appreciated that FPDR staff was aware of the accounting change and worked with them to develop a plan to get those changes implemented. Jim stated that FPDR staff continues to be consultative with them even on minor changes so hats off to them for reaching out when they feel it is appropriate.

**Information Item No. 2 – Interim Disability Benefits Presentation**

Kim provided a presentation on interim disability benefits as a follow up to the board’s discussion from the September meeting. Kim explained that prior to January 2013, there were no interim disability benefits and members used accrued leave while their claim was being investigated. Upon claim approval, FPDR restored the member’s used leave. However, members with little or no accrued leave risked going without pay. Then after January 1, 2013, interim disability benefits were implemented and FPDR paid interim benefits upon receipt of a completed application for benefits, but if the claim was withdrawn or denied, the member had to repay the interim benefits. Kim went over the process for seeking recovery and pointed out Administrative Rule 5.7.14. Kim then stated that from January 1, 2013 – October 31, 2019 there were 1308 claims that were paid a disability benefit. From that total, 613 were interim benefits and of that 613, 569 claims were approved. Seven percent or 44 claims were required to pay the interim benefit back because the
claim was denied or withdrawn. Kim went over the range of benefits owed and stated the average was about $2,500.

Trustee Fouts asked about the repayment time periods to which Kim explained that the member has two times the number of weeks of benefits paid. Director Hutchison stated that the director has the authority to grant extensions for repayment for undue hardship. Trustee Harwood asked if the member has to pay any interest to which Director Hutchison stated that the member does not pay any interest on the repayment amount. Trustee Hunzeker asked whether there was a cap on interim benefits and gave an example of an injury that ended up requiring surgery, costing a lot of dollars and it is denied. Kim stated that they have not had any that were that extensive and added that they have not calculated what the highest earner would be at 90 days of interim benefits paid. Trustee Hunzeker asked about a situation where a member has to have some type of procedure and after the procedure it is determined that the injury was caused by something else. Kim stated that interim benefits are only for disability benefits and when a claim is pended, medical is covered under the member’s private health insurance and they have a coordination of benefits policy that they use with MODA Health, so the treatment is not an issue in that piece. It is just the disability benefit, the time loss benefit.

Trustee Lehman stated that he was involved in the discussions that implemented interim benefits. It was before the 2012 Charter change and they were in discussions and then they were out of discussions. While it is different from what they had before Trustee Lehman felt it was still strange and that it could be improved and would appreciate putting together a task force to look at this issue.

Public Comment:
Attorney Nelson Hall (“Attorney Hall”) addressed the board and encouraged the board to place this issue on the agenda of a task force. Attorney Hall had no qualms with the numbers that were presented and how the system of repayment works but commented on whether this is the system for interim benefits that the trustees want. Attorney Hall stated that interim benefits as adopted by the Charter and Rules is unique in workers’ compensation systems in the State of Oregon. Interim benefits in the rest of workers’ compensation are not repaid. They are a cost, a part of a workers’ compensation system. Attorney Hall stated in response to Trustee Hunzeker’s question of whether there was a cap on interim benefits, that the answer is “no” because the amount of the benefits to be repaid is reflective of how much time it took staff to make their decision to accept or deny the claim. Attorney Hall went on to state that issues that can come up for a task force is the notion of
collection. Using the statistics that were presented to the board, there were 36 claims that were under some repayment method and if they used the maximum in the $1-$5000 range, the question becomes philosophical, it becomes policy. Should that amount be collected or is it a cost of coverage as it is in the rest of workers’ compensation. When they go back to the discussions in 2012, the notion of repayment was purely policy and something which the board may want to revisit.

**Information Item No. 3 – Restrictions on Political Campaigning by Public Employees**

Senior Deputy City Attorney Franco Lucchin ("Attorney Lucchin") addressed the board about political campaigning. Attorney Lucchin referenced an August 21, 2019 memorandum from City Attorney Tracy Reeves that outlines rules that apply to City employees and officials. In essence, Attorney Lucchin stated the board needs to be careful not to campaign for measures or for or against political parties while acting in their capacity as board members and added there is potential for personal liability for violation of state law.

Trustee Fouts asked Attorney Lucchin to send the link to the City Attorney opinion to Director Hutchison to provide to the board.

**Information Item No. 4 – Board Handbook Updates**

Director Hutchison went over the Board Handbook update and wanted the board to understand that discussions the board may have outside of a formal meeting could be considered a public meeting if three or more trustees are present. Director Hutchison also explained that the same thing applies with telephone conversations, texts, and emails.

**Information Item No. 5 – FPDR Expenditures**

FPDR Finance Manager Stacy Jones ("Stacy") went over the expenditure summary and stated there was nothing exciting to report.

**Information Item No. 6 – FPDR Updates**

Director Hutchison explained that the Disability Program slide from the State of FPDR presentation was updated and provided in the board packet.
There were no revisions or changes to the proposed Board Meeting Schedule. Staff will finalize the meeting schedule and provide the board with the finalized version.

Director Hutchison stated that Trustee MacLeod’s term as a board trustee was ending at the end of 2019. However, that Trustee MacLeod has agreed to extend her term. Director Hutchison added Trustee MacLeod’s reappointment by Mayor Wheeler for another three-year term was being heard by City Council at their November 20, 2019 Council meeting.

**Information Item No. 7 – Future Meeting Agenda Items**

Director Hutchison stated that the January agenda will include the FPDR budget and a legislative session update.

Director Hutchison added that there are three or four initiatives that deal with PERS, all in very initial stages. One in particular that would be extremely detrimental to FPDR and they are watching it very carefully and if it gains speed Director Hutchison will update the board.

There being no further business, Trustee Fouts made a motion which was seconded by Trustee MacLeod to adjourn the meeting.

The meeting was adjourned at 3:09 p.m.

Samuel Hutchison
Director

/kk