

# WHITE PAPER

## FIRE AND POLICE DISABILITY AND RETIREMENT (FPD&R) REFORMS

### Summary

City Council created a Fire and Police Disability and Retirement (FPD&R) Reforms Committee to make recommendations for changes to the current disability and pension system for police officers and firefighters. The Reform Committee issued a report, which outlines options for Council to consider. The options include:

- Pension System – Move all new hires to Oregon Public Service Retirement Plan (OPSRP) to begin pre-funding pension obligations. This would eliminate over time the current “pay-as-you-go” system, which has an unfunded liability of \$1.64 billion that is forecast to grow to \$8 billion in 40 years absent changes to the system. Pre-funding will reduce this liability after 30 years, when current enrollees have retired, but will result in increased costs for the taxpayer during that 30-year period to cover pre-funding OPSRP for new hires while continuing to pay pension benefits of current FPD&R members.
- Disability System – Two options have been forwarded to Council. The Reformed FPD&R Prototype appears to have momentum, as well as greater support from the unions.
  - Workers Compensation “Plus” – Makes new disability claims subject to Workers Compensation. This option also recommends including provisions Workers Compensation to recognize certain occupational illnesses available under FPD&R, as well as increasing the level of weekly pay available under the Workers Compensation system from 66% to 75% of salary for four years.
  - Reformed FPD&R Prototype – Makes changes to the composition of the Board of Trustees and the decision making structure of FPD&R. The Board is reduced from 11 to 5 members, with provisions that ensure the majority of the board is not a beneficiary of FPD&R. The Board of Trustees is removed from the decision making process on work related injury claims; instead, an independent administrator with disability experience will make decisions.

On June 14, Council voted to move ahead with the pension reform and the reformed FPD&R Prototype and instructed the City Attorney to draft the necessary amendments to the City Charter to put before voters on a November ballot.

### Background

FPD&R is the retirement and disability system available solely to Portland’s firefighters and police officers. The City’s Charter authorizes and establishes the structure, funding, benefits and governance of the Plan. FPD&R is the only “pay-as-you-go” retirement and disability system in the United States, paid for by a dedicated property tax levy. Because no assets have been set aside to pay pension and disability costs when due, the current unfunded liability for the FPD&R system is \$1.64 billion. This liability will grow to over \$8 billion in 40 years if no changes are made to the system.

There have been numerous studies of the FPD&R system over the years. Most recently, in February 2005, the Portland City Council created the Independent Review Committee (IRC) to oversee a comprehensive analysis of the FPD&R system. The IRC was directed determine the extent of the problems and make recommendations.

The IRC made the following recommendations:

- *Pension system* – newly hired public safety personnel should be placed in PERS/OPSRP. This will enable pre-funding and eventually result in lowering the unfunded liability.
- *Disability system* – new disability claims should be covered by the Workers Compensation system administered by the City’s Risk Management Office. Further, all open claims should also be transferred to the City’s Risk Management Office for administration.

The FPD&R Reform Committee was created by City Council in January 2006 with the charge to draft comprehensive reform recommendations addressing both the pension and disability programs of FPD&R, discussed separately below. The Council further directed the FPD&R Reform Committee to use the IRC Report as a basis for discussions. The Reform Committee recently released a report that outlines various options for changes to the system.

#### Pension System

The pension system makes up 95% of the unfunded liability of FPD&R, which is paid for by a floating property tax levy, meaning the tax rate is not fixed but determined annually by the FPD&R Board of Trustees. Importantly, the City Charter gives primacy to the FPD&R levy because the pension benefits are a contractual obligation. Therefore, as the unfunded liability continues to grow, the FPD&R levy will compress other levies, such as those approved by the voters for parks, libraries and the Children’s Investment Fund. Further, it is possible that the City’s general fund could be dipped into in order to pay for the pension obligation if the levy reaches its limit under Measure 5.

Pre-funding the pension system will reduce the unfunded liability after 30 years, but taxpayer costs and the risks of compression are exacerbated in the short term due to obligations associated with pre-funding new hires in OPSRP, as well as paying pensions for current members of FPD&R. The increased cost to the taxpayer will grow over a period of approximately 25 years, reaching a maximum of about \$149. After that, costs to the taxpayer will decline and by approximately year 32, the costs to taxpayers to fund pension obligations will be significantly lower than it is today.

#### Recommendation of the FPD&R Reform Committee

Similar to the IRC, the Reform Committee believes pre-funding the costs of pensions for new hires is a more fiscally prudent approach than the current pay-as-you-go system. Full pre-funding for all current members is too costly from the taxpayer

perspective. Pre-funding can be accomplished under the FPD&R system or by placing new hires in PERS/OPSRP; the committee did not reach consensus on which system to recommend. Either way, voters will have to vote on Charter changes to allow pre-funding, which will increase costs to taxpayers in the short term.

OPSRP, which has a successful investment system in place, is a less costly option than pre-funding the current FPD&R system for new hires. The current FPD&R system is a defined benefit system, meaning beneficiaries receive a guaranteed percentage of their salary once they reach retirement. OPSRP, however, uses a combination of defined benefit and defined contribution (a contribution into a supplemental account similar to a 401K whose rate of return is not guaranteed). The IRC recommended the City “pickup” the required member contribution as it does for other City employees.

Union representatives indicated a willingness to consider OPSRP if Social Security or a contribution to an Individual Account Portion (IAP) of OPSRP is given in addition to base pension benefits. The Reform Committee believes the IAP is a better option than Social Security. Historically, OPSRP provides benefits equal or better to FPD&R even without the IAP.

#### Disability System

The IRC report indicates that all comparable cities have police and fire employees in a state workers compensation program, rather than two disability systems in the same government. In addition, the IRC noted that the current FPD&R system has a much longer average claim length and much lower claim denial rate than the typical system. One of the major reasons for recommending a change to the current system is that final decision-making authority rests with the FPD&R Board of Trustees, an 11-member board that is dominated by police and fire interests. In other systems, an experienced disability staff makes the decision, which can be appealed to an administrative law judge with expertise in disability law.

#### Recommendation of the FPD&R Reform Committee

The Reform Committee forwarded two options to Council for consideration: (1) Workers Compensation “Plus” package, built on the recommendation of the IRC; and (2) a reformed FPD&R Prototype.

- Workers Compensation “Plus”

The Reform Committee identified two central issues related to this option. The first relates to the IRC recommendation to pick up the difference in disability benefits between workers compensation (66.66%) and FPD&R (75%). The second relates to whether occupational illnesses recognized under the current FPD&R system should be carried over to Workers Compensation “Plus.”

The Reform Committee recommended that Council offset the percentage of weekly pay a disabled member would receive under the workers compensation system for four years, similar to conditions provided for by the City Charter, as opposed to the one-year recommendation by the IRC. Further, the Reform

Committee recommended any Workers Compensation “Plus” package include certain occupational illnesses, subject to a rebuttable presumption, that are currently recognized in the FPD&R system.

The City Attorney prepared a memo outlining issues related to moving open claims, as well as new claims (as recommended by the IRC), to the workers compensation system. The legal memo indicates that the Workers Compensation “Plus” package may result in a dual system of disability coverage for work injury claims that have been accepted by FPD&R before the changeover date. Because there is no bright line as to what constitutes a new injury versus a recurrence under the Fund and workers’ compensation law, this could result in simultaneous payment of disability benefits.

The unions have serious concerns with the Workers Compensation system.

- Reformed FPD&R Prototype

Based on the IRC report which concluded that the major reason for change is the decision making process for disability claims, the Reform Committee advanced a new, reformed FPD&R disability system. The reforms focus on two main areas: (1) composition of the Board of Trustees and (2) the decision making structure.

Currently, the Board of Trustees has 11 members, the majority of which are closely tied to police and fire interests. Under the Prototype, the Board would be reduced to five members: one representative of the fire bureau, one representative of the police bureau, two citizen members with relevant experience, nominated by the Mayor and approved by Council, and one representative from the City that is either the Mayor or a representative of the Mayor. Under this composition, the citizen representatives and the City representative may not be active or past beneficiaries of FPD&R and may not have been employed as a police officer or firefighter.

The FPD&R Prototype significantly restructures the decision making process over disability claims. Under this proposal, neither the Board of Trustees nor beneficiaries are involved in claims decision making, as is the case in the current system. Instead, an experienced administrator decides whether to accept or deny a claim, which is similar to Workers Compensation. If there is an appeal, it goes to a Hearings Officer, then to the Circuit Court. This structure enables independent, knowledgeable and neutral parties with expertise in the field of disability and disability law to make decisions on claims. The Board of Trustees retains the authority to prescribe rules and regulations related to administration and the authority to establish rules of evidence and procedure for hearings.