

CHAPTER 5.

FIRE AND POLICE DISABILITY, RETIREMENT AND DEATH BENEFIT PLAN

Note

[Chapter 5 am. June 2, 1913; am. June 2, 1914; am. June 7, 1915; am. Nov. 5, 1918; 1928 pub.; am. Nov. 6, 1928; am. Nov. 5, 1940; 1942 recod.; am. Nov. 2, 1948; am. Nov. 7, 1950; am. Nov. 2, 1954; am. May 18, 1962; rev. Nov. 3, 1964; am. May 20, 1986; amended and restated Nov. 7, 1989, effective July 1, 1990; amended and restated November 7, 2000, effective July 1, 2001.]

ARTICLE 1. FUNDING

Section 5-101. Creation of Fund. ~~There is hereby created and established a~~The Fire and Police Disability and Retirement Fund originally created and established for the benefit of the Members employed by sworn employees of the Bureau of Fire, Rescue and Emergency Services or by (hereinafter Bureau of Fire) and the Bureau of Police of the City of Portland (hereinafter Bureau of Police) and for the benefit of the Surviving Spouses and Dependent Minor Children of deceased Members sworn employees, by this Chapter on March 11, 1942 and revised in part by subsequent amendments through November 7, 2000 is hereby amended effective January 1, 2007 for the benefit of sworn employees of the Bureau of Fire and Police and their Surviving Spouses and Dependent Minor Children.

When used alone in this Chapter, the word "Fund" shall mean the Fire and Police Disability and Retirement Fund. References in this Chapter to the "Bureau of Fire" shall mean the Bureau of Fire, Rescue and Emergency Services or any bureau, department or agency, howsoever designated, hereafter succeeding to the functions of the Bureau of Fire, Rescue and Emergency Services. References in this Chapter to the "Bureau of Police" shall mean the Bureau of Police or any bureau, department or agency, howsoever designated, hereafter succeeding to the functions of the Bureau of Police.

Beginning January 1, 2007, the Fund shall have three programs.

- (a) FPDR One consists of those sworn employees of the Bureau of Fire and Bureau of Police who pursuant to Section 5-401(b) and (c) of this Chapter receive benefits under Sections 5-113 through 5-123 and 5-126 of this Chapter.
- (b) FPDR Two consists of sworn employees of the Bureau of Fire and Bureau of Police who are not FPDR One Members and were sworn before January 1, 2007, except as specifically excluded in Section 5-301. FPDR Two Members shall have retirement benefits as provided in Article 3 of this Chapter; service connected and occupational disability benefits as provided in Sections 5-306 and 5-308 of this Chapter; and non-service

connected disability benefits as provided in Sections 5-307 and 5-309 of this Chapter.

- (c)** FPDR Three consists of sworn employees of the Bureau of Fire and Bureau of Police first sworn on or after January 1, 2007. Notwithstanding any other provision of this Chapter, FPDR Three Members shall have the following benefits: FPDR Three Members shall be enrolled in the Public Employees Retirement System of the State of Oregon (PERS) and shall have benefits as provided by PERS or any successor state program; service connected and occupational disability benefits as provided in Sections 5-306 and 5-308 of this Chapter; and non-service connected disability benefits as provided in Sections 5-307 and 5-309 of this Chapter. Employee contributions, employer contributions, payroll taxes, benefit payments and other costs of the retirement and disability plan provided to FPDR Three Members shall be paid from the Fund. Such costs shall be requirements levied under Section 5-103.
- (d)** Unless otherwise specified, the term Member in Articles 1, 2, 3, and 4 refers to members of FPDR One, FPDR Two and FPDR Three.

Section 5-102. Sources of Fund. The Fund shall consist of the following:

- (a)** Existing Fund. All moneys, property and investments held in the Fire and Police Disability and Retirement Fund under the provisions of the Charter of the City of Portland, as in effect prior to the amendments ~~enacted effective in 1989,~~ January 1, 2007, and all moneys hereafter earned by or paid into the Fund in accordance with Sections 5-103 and ~~7-407.~~ 110(5).
- (b)** Member Contributions. Compulsory contribution to the Fund from each FPDR One Member who, as a result of Section 5-401, is subject to the provisions of Sections 5-113 through 5-123 and 5-126 of this Chapter, set out in Article 5, amounting to seven percent of such Member's then current salary but not to exceed seven percent of the then current salary of a First Class Fire Fighter, or whatever name said position shall hereafter bear, for Members employed in the Bureau of Fire, and not to exceed seven percent of the then current salary of a First Class Police Officer, or whatever name said position shall hereafter bear, for

Members employed in the Bureau of Police and the contribution required by the Supplementary Retirement Program described in ~~Subsection~~subsection 5-401(d) from Members described in that ~~Subsection~~subsection.

- (c) Extraordinary Amounts. All bequests, fees, gifts or other emoluments paid or given on account of any extraordinary service of any Member

(except when specifically allowed to be retained by such Member by the Council.)
- (d) Other Moneys. All other moneys herein made available and all other moneys which may be hereafter made available by law, including loans from the General Fund and advances from the Reserve Fund created in this Article.

Section 5-103. Levy by Council.

- (a) Statement by Board. The Board of Trustees created in Article 2 shall annually, on or before the date set for such purpose by the Council, prepare and transmit to the Council a statement containing the following items:
 - 1. The amount of money required for the next succeeding fiscal year to pay and discharge all requirements of the Fund ~~for such succeeding fiscal year except, including employee contributions, employer contributions, payroll taxes, benefit payments, repayment of authorized loans and advances, and other costs, for such succeeding fiscal year.~~
 - 2. The estimated revenue to the Fund during the next succeeding fiscal year from all sources except the levy in this Section provided plus the estimated balance in the Fund at the beginning of said year.
 - 3. A statement of all payments made and estimated to be made from the Fund during the current fiscal year.
 - 4. The total amount paid into and estimated to be paid into the Fund from all sources except loans from the General Fund and advances from the Reserve Fund created by Section 5-104 of this Article, during the current fiscal year plus the balance in the Fund at the beginning of said year.
 - 5. A statement setting forth in dollars and cents the total amount of money required by the Fund to discharge its requirements, including employee contributions, employer contributions, payroll

taxes, benefit payments, and other costs for the next succeeding fiscal year and the current fiscal year. This amount of money shall be computed by adding the amount that item 1 exceeds item 2, if any, to the amount that item 3 exceeds item 4, if any.

- (b) Levy. The Council shall levy each year, at the same time and in the same manner that other taxes are levied, a tax upon all taxable property within the City of Portland not exempt from taxation, not to exceed two and one-half (2-1/2) mills on each dollar valuation plus that amount provided under Chapter 7-110(5), sufficient to produce and provide a sum equal to said required amounts so prepared and transmitted by the Board.
- (c) Minimum Levy. Said levy shall in no event be less than one (1) mill on said dollar valuation, unless the Reserve Fund created in the following Section will as a result of said minimum levy exceed seven hundred- fifty thousand dollars (\$750,000) in which event said levy shall only be sufficient to provide the amount required and to maintain said Reserve Fund at seven hundred-fifty thousand dollars (\$750,000).
- (d) Status and Use of Levy. The additional tax herein provided for hereby is specifically authorized and shall not be computed as a part of the revenue raised by taxation which is subject to the tax limitation of Section 11, Article XI of the Constitution of the State of Oregon, and said tax levy hereby authorized shall be in addition to all other taxes which may be levied according to law. The proceeds of said tax levy to the extent of the amount required by the Fund shall be paid into the Fund. Any balance shall be paid into the Reserve Fund created in Section 5-104.

Section 5-104. Reserve Fund. There is hereby created and established a Reserve Fund which shall consist of all moneys paid into it as provided in Section 5-103. Advances may be made by the Board of Trustees hereinafter created from said Reserve Fund to the Fire and Police Disability and Retirement Fund in cases where said Fund is depleted to the extent that it cannot meet its current obligations. The City Treasurer shall have the same powers of investment of the Reserve Fund that such officer has with the Fire and Police Disability and Retirement Fund. If the balance in the Reserve Fund exceeds \$750,000, the excess shall be transferred to the Fire and Police Disability and Retirement Fund.

Section 5-105. Salary Deductions. It shall be the duty of the City officer responsible for accounting, in making out regular salary warrants or checks, to deduct and withhold from the salary of each Member described in ~~Subsection~~subsection 5-102(b) the amount provided during all the time such Member may be in the employ of the Bureau of Fire or the Bureau of Police. It shall be the duty of the City officer responsible for accounting to draw a warrant or check for the total amount so withheld, payable to the Fund at the times regular salaries are paid.

Section 5-106. Investments. The assets of the Fund shall be deposited with the City Treasurer. The City Treasurer shall invest the Fund and the Reserve Fund in such investments as are lawful for the investment of public funds of cities in the State of Oregon.

ARTICLE 2. ADMINISTRATION

Section 5-201. ~~BOARD OF TRUSTEES~~Board of Trustees.

- (a) Composition. This Chapter shall be administered by a Board of Trustees, which also shall supervise and control the Fire and Police Disability and Retirement Fund and the Reserve Fund. The terms of the existing eleven-member Board shall terminate on December 31, 2006, but members shall remain in office until the new Board is sworn in. Beginning January 1, 2007, the Board of Trustees shall be composed of ~~eleven~~five members who shall be the following: The Mayor or the Mayor's designee approved by the City Council (who shall act as Chairperson); ~~the City Treasurer (who shall act as Treasurer); the City Auditor (who shall act as Secretary); one position to be shared by the Chief Engineer of the Bureau of Fire (Chief of the Bureau of Fire) and the Chief of Police on a rotating basis as established by rule; two Active Members serving in the Bureau of Fire, to be elected to the Board by all Active Members in the Bureau of Fire; two Active Members serving in the Bureau of Police, to be elected to the Board by all Active Members in the Bureau of Police and threeone Active Member serving in the Bureau of Fire, to be elected to the Board by the Active Members in the Bureau of Fire; one Active Member serving in the Bureau of Police, to be elected to the Board by the Active Members in the Bureau of Police, and two citizens of the City of Portland who are ~~not active or past members of the Fire and Police Disability and Retirement Fund and have not been employed as a City of Portland firefighter or police officer. One citizen who shall not be a member of any public pension fund shall have relevant experience in pension or disability matters and shall be nominated by the Mayor and appointed by the Council, one citizen shall be appointed by the elected Board members of the Bureau of Police and the Bureau of Fire, and one citizen shall be appointed by a majority of the members of the Board. In the absence of the Mayor, the City Treasurer and/or City Auditor, the following persons shall be entitled to be substituted on the Board of Trustees to all intents and purposes as if the named officer were present: Whoever is empowered to act in such officer's absence in the respective office; or whoever is designated from such office to serve regularly on the Board in such officer's place; or any Council member designated by the Mayor to serve for the Mayor. In the absence of the Mayor, whoever is empowered to serve for the Mayor shall serve as Chairperson Pro Temporeapproved by the City Council. Neither the Mayor nor the Mayor's designee nor either of the citizen members~~~~

shall be an active or past Member or a beneficiary of the Fund or have been employed by the City of Portland Bureau of Fire or Bureau of Police. Notwithstanding the change in Board memberships, the Board of the Fund shall continue in existence without interruption. All members of the Board shall receive orientation to the Board and serve without compensation. References in this Chapter to the "Board" shall mean the Board of Trustees created by this Section. The Chairperson shall designate another member of the Board who shall act as Chairperson in the event of the Chairperson's absence. At least three members of the Board 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. The Board shall keep a record of all of its proceedings and shall hold regular meetings at a time to be set by the Board.

- (b) Election of Board Members. Elections of the Board members representing the Members of the Bureau of Fire and Bureau of Police shall be under the supervision of the City Auditor and shall be held ~~annually~~ in the month of ~~June~~ December, at which election one Active Member from the Bureau of Fire and one Active Member from the Bureau of Police shall be elected to the Board for three- year terms to succeed the members whose terms expire the month following the time of said election. Members so elected in ~~June~~ December shall take office the following ~~July~~ January. Similar elections for unexpired terms shall be held to fill other vacancies within thirty days after they occur. Elections shall be held in a manner prescribed by the rules and regulations adopted by the Board, which must be in writing and filed with the ~~Secretary~~ Administrator of the ~~Board~~ Fund.
A Board member

who ceases to be an Active Member may complete the remainder of the Board member's term. ~~The Board shall keep a record of all of its proceedings and hold regular meetings each month, at a time to be set by the Board. Seven members shall constitute a quorum at any and all meetings of the Board and the affirmative vote of a majority of a quorum shall constitute an action of the Board.~~

- (c) Appointment of Board Members. The appointments of the ~~three~~ two citizen members shall be as follows: one for the Council's appointment, an initial one year term and every three years thereafter; ~~for the elected Board members of the Bureau of Fire and Police appointment, and the other for an initial two year term and every three years thereafter; for the Board's appointment, an initial three year term and every three years thereafter.~~ The appointments shall be made in the month of ~~June~~, at which time ~~citizen~~ citizen January.

- ~~(d)~~ New Board members shall be appointed to succeed the member whose term expires in the month following the time of said election. ~~Members appointed in June shall take office the following July. Appointments or elected for terms to begin January 1, 2007 or as soon thereafter as they are elected or approved by the City Council. Appointments or elections for unexpired terms shall be made to fill vacancies within thirty days after they occur. The Board may set rules for attendance and any member may be removed by the Board for failure to abide by the attendance rules of the Board.~~

- ~~(d)~~ ~~Rehabilitation Subcommittee. The Board shall have a Rehabilitation Subcommittee consisting of five Board members: the Mayor, or the person serving on the Board in place of the Mayor; the City Treasurer, or the person serving on the Board in place of the City Treasurer; one of the Members elected from the Bureau of Fire; and one of the Members elected from the Bureau of Police and one citizen member. The elected~~

~~and citizen members shall be chosen by the Board. The Rehabilitation Subcommittee shall oversee the vocational rehabilitation of disabled Members and determine whether such Members are capable of other employment. The Rehabilitation Subcommittee may, by a majority vote of its members, exercise the authority of the Board to suspend or reduce benefits under Paragraph 5-306(c)5 or Subsection 5-307(b). Any Member adversely affected by a decision of the Rehabilitation Subcommittee to reduce or suspend benefits has the right of appeal to the full Board.~~

- (e) Indemnity. The members of the Board and the Fund Administrator appointed under Subsection 5-202(bf) shall be indemnified by the Fund from any claim or liability, including the cost of legal defense by counsel approved by the City Attorney, that arises from any action or inaction in connection with their functions under this Chapter subject to the following:
1. Coverage shall be limited to actions taken in good faith that the person reasonably believed were not opposed to the best interest of the Fund.
 2. Coverage shall be reduced by the extent of any insurance coverage.

Section 5-202. Powers of Board and Fund Administration.

- (a) As to Benefits. The Board shall not decide applications for disability benefits provided by this Chapter. The Board shall have the power to prescribe rules and regulations for administration of this Chapter and to ~~enforce~~provide for enforcement of the same by forfeiture of any benefit payment or by denial of any claim, if such rules and regulations are not followed. ~~The Board is authorized to suspend or reduce~~ The rules may provide for suspension or reduction of any disability benefit if the Member does not cooperate in treatment of the disability or in vocational rehabilitation or does not pursue other employment. ~~The Board is hereby authorized and empowered to designate~~ The rules may provide for the designation of one or more licensed physicians or psychologists to act at any time with the physicians appointed by the City Personnel Director in the mental and physical examinations of applicants for membership in the Bureau of Fire or Bureau of Police. ~~The Board is further authorized and empowered to~~ The rules may require applicants for benefits from the Fund and persons receiving benefits from the Fund to submit to and undergo mental and physical examinations by one or more licensed physicians or psychologists designated by the ~~Board~~Fund Administrator for that purpose. The Board is hereby authorized and empowered to administer oaths, subpoena and examine witnesses, and to require the production and examination of papers and documents for the purpose of rulemaking.

- ~~(b)~~ The Board may appoint shall retain one or more independent hearings officers and may who shall be members of the Oregon State Bar, have relevant disability training and experience, and who shall not be a Member or beneficiary of a Member. The Board shall establish rules of evidence and procedure for the conduct of hearings. The Board may
- ~~(c)~~ The Board shall establish an independent panel to consider appeals from the hearings officer's decisions. One panel member shall be appointed for an initial one year term and then every three years thereafter; the second panel member shall be appointed for an initial two year term and every three years thereafter and the third panel member shall be appointed for an initial three year term and every three years thereafter. Panel members shall be members of the Oregon State Bar, shall have relevant disability training and experience, and shall not be a Member or beneficiary of a Member. Panel members may be removed by the Board for cause.
- ~~(d)~~ The Board shall pay from the Fund the expenses of vocational rehabilitation of disabled Members established in a vocational rehabilitation plan approved by the Fund Administrator to reduce disability benefits. The Board may, but shall have no obligation to pay for such expenses. No member of the Board shall act on the member's own claim. has no obligation to, pay other financial incentives that demonstrate a reduction in disability costs.
- ~~(b)~~ ~~Generally.~~ (e) The Board may pay its administrative expenses from the Fund and may borrow from the General Fund. The Board may purchase bonds or insurance covering any act or failure to act.
- ~~(f)~~ The BoardFund shall appoint a Fund Administrator, who shall be selected and may be discharged by joint action of the Board and the City Auditor. The Boardhave a Fund Administrator. The Fund Administrator shall be appointed by the Mayor, approved by the Board and confirmed by the City Council. The Fund Administrator shall be a qualified disability expert. The Fund Administrator shall have the position of a bureau director and shall report to the Mayor and the Board. The Mayor may remove the Fund Administrator, for any reason, after seeking the advice of the Board. The Board and the Fund Administrator may appoint other agents or advisers to assist #the Board or Fund Administrator, including actuaries and attorneys.

Section 5-203. Review.

- ~~(a)~~ Medical Determinations. Any Member, or Surviving Spouse or Dependent Minor Child of a Member, adversely affected by a determination of the Board based upon the findings of its physicians or psychologists may request review of any question of the physical or mental condition of the

~~Member by a three person medical panel by filing with the Secretary of the Board a written request for such review within 30 days after such determination by the Board. The Board shall then refer the matter to a panel of three licensed medical doctors or psychologists, one of whom shall be selected by the Board, another by the person making the request, and the third by the first two selectees. If the first two selectees cannot agree on a third member of the panel, such third member shall be selected under rules of the Board. The Board shall base its determination upon review on the findings of the majority of such panel as to the mental or physical condition of the Member. The Board shall not be required to follow the findings of the majority of the panel as to the cause of the Member's physical or mental condition if there is substantial evidence to support the Board's decision.~~

~~(b) Court Review. Any review by the courts from any decision of the Board of Trustees must be taken within 60 days after said decision has been made.~~

~~(g) The Fund Administrator with the approval of the City Council shall have authority to settle and discharge all or part of its future obligations to any Member, spouse or beneficiary of a Member for disability benefits as to any and all claims or entitlements to disability benefits as part of a settlement.~~

~~(h) Disability Claims Processing.~~

~~1. Restoring injured workers physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable is an important aspect of any disability system.~~

~~2. All claims by FPDR Two and FPDR Three Members for service connected and occupational disability benefits under Sections 5-306 and 5-308, for nonservice connected disability benefits under Sections 5-307 and 5-309, benefits on service connected or occupational death before retirement under Section 5-308 and benefits for non service connected death before retirement under Section 5-309 shall be adjusted, administered and decided by the Fund Administrator. The decision of the Fund Administrator shall be made in accordance with this Charter and the rules and regulations adopted by the Board.~~

~~3. A FPDR Two or FPDR Three Member or a Surviving Spouse or Dependent Minor Child adversely affected by a determination of the Fund Administrator may appeal that decision to a hearings officer within 60 days of the date of the decision of the Fund Administrator. The hearings officer shall conduct an evidentiary hearing under the rules of procedure and evidence established by the Board. The~~

hearings officer shall have the power to administer oaths, subpoena and examine witnesses, and require the production and examination of papers and documents. The decision of the hearings officer shall be in writing and shall be issued within 30 days after the close of the evidentiary record. The decision shall be based on the evidence presented at the hearing.

4. The decision of the hearings officer shall be final unless an appeal to the independent panel is filed by the Member, Surviving Spouse, Dependent Minor Child or the Fund Administrator with the Fund within 30 days of the hearings officer's decision. The decision of the independent panel shall be de novo on the record and shall be the final decision of the Fund and may be appealed to the circuit court as provided by state law.

(i) Subrogation.

1. By filing a claim for disability benefits the Member or the beneficiary of a Member agrees to be bound by the subrogation provisions of this Chapter.
2. If injury, death or medical condition of a Member is due to the negligent, intentional or wrongful action of a third party or product manufactured by a third party, the Member or beneficiary of the Member shall bring a cause of action or other claim against that third party or assign the cause of action or claim to the Fund. As used in this Chapter, "third party" includes any provider of medical care or vocational assistance to the Member and does not include any City employee acting in the course and scope of his or her employment.
3. In the event a Member or the beneficiary of a Member collects damages from a third person for injury, death or medical condition inflicted on such Member for which benefits are paid or payable by the Fund, the Member or beneficiary shall pay to the Fund the money so collected or the total amount paid to such Member for any benefits paid or payable by the Fund that are authorized to be recovered by any law or this Chapter. The amount so collected by the injured Member shall be distributed as provided in the Oregon Workers' Compensation statutes governing similar damage recoveries.
4. The Fund shall have a lien on any recovery equal to the value of all benefits paid or payable by the Fund, including but not limited to, disability payments, vocational rehabilitation expenses paid on behalf of a Member, and medical expenses for the injury or medical condition. The Fund lien shall include the present value of the

Fund's reasonably expected future benefit payments.

5. No compromise or settlement of a cause of action or claim described in this subsection (i) by a Member or the beneficiary of a Member shall be valid without the approval of the Fund Administrator. In the event the Member, beneficiary or third party fails to obtain the approval of the Fund Administrator for the compromise or settlement, the Fund Administrator retains the right to pursue any causes of action against the third party.
6. The Fund Administrator shall have the right to offset disability payments in the amount that is the lesser of the Fund's unsatisfied lien or the amount recovered by the Member or beneficiary of the Member from the third party.
7. The Fund Administrator shall have the authority to suspend, offset or reduce benefits if a Member or the beneficiary of a Member does not pursue or assign to the Fund the Member's or beneficiary's cause of action against a third party who causes the injury, death or medical condition of a Member for which the Fund pays or is obligated to pay benefits, or does not pay a Fund lien on recoveries from such third parties. Benefits so suspended or reduced shall not be payable to the Member or beneficiary at any time unless the Fund lien has been satisfied.
8. The Board's right to bring a cause of action against a third party in the name of the Member or Member's beneficiaries shall be separate and independent of any other cause of action the City or Board may have.

~~Section 5-204.~~ **Section 5-203. Custodian and Disbursing Officer.** The funds created in Sections 5-101 and 5-104 shall be in the care and custody of the City Treasurer, and shall be paid out by the Treasurer on warrants or checks signed by the Chairperson (Mayor) and countersigned by the ~~Secretary of the Board (Auditor)~~ Fund Administrator and not otherwise; provided, however, that no warrants or checks shall be drawn upon either of said funds except by order of the Board, which order shall be duly entered upon the record of the proceedings of the Board.

~~Section 5-205.~~ **Section 5-204. Books and Accounts.** The books and accounts of the ~~Board~~ Fund, shall, at all times, be subject to the inspection of any person interested, and shall be audited annually at the expense of the Fund by a licensed public accountant or firm of accountants approved by the Board. ~~Upon the expiration of the term of office of the Auditor, all books and accounts of the Board shall be surrendered and delivered to the Auditor's successor, together with all records and documents.~~ City. The City Auditor may audit the activities of the Fund. All securities, moneys and properties of the Fund which have come into the possession of the Treasurer shall be delivered at the expiration of the Treasurer's term to the Treasurer's successor.

Section 5-205. Claims Recordkeeping and Assessment of the Fund. The Fund shall keep disability claims records in a manner comparable to the City's Workers' Compensation records. The Board shall retain an outside independent expert in disability management to conduct an initial audit to create benchmarks for comparison of the Fund going forward. The initial audit shall be conducted not later than nine (9) months after January 1, 2007. Twelve (12) months after the initial baseline audit, a subsequent audit shall be conducted.

Section 5-206. Legal Adviser. It shall be the duty of the City Attorney to give advice to the Board of Trustees and Fund Administrator in all matters pertaining to their duties and the management of either of the Fund or the Reserve Fund whenever required by the Board or the Fund Administrator, and the City Attorney shall represent and defend the Board ~~as its~~ and the Fund Administrator as their attorney in all suits or actions at law or in equity that may be brought against ~~it~~ them, and institute all suits and actions in ~~its~~ their behalf that may be required or determined upon by said Board or Fund Administrator; provided that the foregoing shall not prevent the Board or Fund Administrator from retaining other legal counsel to advise or represent ~~it~~ them as provided in Section ~~5-202(b)~~ 202.

Section 5-207. Monthly Payments. All benefits and allowances payable out of the Fund and hereinafter provided for and allowed by the Board shall be paid monthly out of the Fund by warrants or checks as herein provided, except where a different schedule of payment is provided in Article 3.

Section 5-208. Applications. All applications under this Chapter except applications for FPDR Three retirement benefits or other benefits provided by PERS shall be made within such time and in such form as may be fixed by the rules and regulations of the Board. Applications for FPDR Three retirement benefits or other benefits provided by PERS shall be made within such time and in such form as may be fixed by PERS statutes, rules and regulations.

ARTICLE 3. CURRENT FPDR TWO AND THREE BENEFITS

Section 5-301. Member, Surviving Spouse, Dependent Minor Child.

- (a) Member. Retirement, termination and disability benefits shall be paid to Members in accordance with this Chapter. Members shall consist of those persons who are permanently appointed as sworn employees in the Bureau of Police or Fire, except as follows:
1. Persons other than FPDR Three Members who participate in the Public ~~Employe~~ Employee Retirement System of the State of Oregon, or will so participate after a waiting period, shall not be Members.
 2. The chief of the Bureau of Police or of the Bureau of Fire shall be a Member unless the terms of employment of such chief provide

otherwise.

- (b)** Active Member. An Active Member is a person who is actively employed as a Member in the Bureau of Fire or Police and does not include a Member receiving disability or retirement benefits under this Chapter.
- (c)** Surviving Spouse. Death benefits shall be paid to the Surviving Spouse of a deceased FPDR Two or FPDR Three Member in accordance with this Chapter. The Surviving Spouse is a person to whom the Member was legally married throughout the 12-month period preceding death and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. Death benefits paid to a Surviving Spouse of a FPDR Three member shall be adjusted in accordance with the offset provisions in this Chapter.

- (d) Dependent Minor Child. Death benefits shall be paid to a Dependent Minor Child of a deceased FPDR Two and FPDR Three Member in accordance with this Chapter. A Dependent Minor Child is a child, natural or adopted, of a FPDR Two or FPDR Three Member who is substantially supported by the FPDR Two or FPDR Three Member, the FPDR Two or FPDR Three Member's Surviving Spouse or the FPDR Two or FPDR Three Member's estate and is under 18 years of age and unmarried. Death benefits paid to a Dependent Minor Child of a deceased FPDR

Three member shall be adjusted in accordance with the offset provisions in this Chapter.

- (e) More Than One Status. No person shall receive more than one survivor benefit under this Chapter at the same time, despite qualifying under both of ~~Subsections~~subsections (c) and (d), or qualifying under ~~Subsection~~subsection (c) or (d) with respect to more than one Member. A person so qualifying shall receive in any month the greatest of the benefits payable for that month.

Section 5-302. Years of Service.

- (a) Generally. A FPDR Two Member shall be credited with Years of Service for periods of service as an Active Member. One Year of Service shall be credited for each completed 12 months in such periods and 1/12th of a Year of Service shall be credited for each additional completed month. A FPDR Two Member shall not be credited with more than 30 Years of Service.
- (b) Military Service. A FPDR Two Member who leaves active duty in the Bureau of Fire or Police to enter the military service of the United States and returns to active duty in one of those Bureaus with reemployment rights protected by federal law shall be credited with Years of Service on the same basis as though the military service had been service described in ~~Subsection~~subsection (a), if the FPDR Two Member pays the FPDR Two Member contributions, as determined under rules established by the Board, for any period of such service preceding July 1, 1990.
- (c) Disability Service. A FPDR Two Member receiving disability benefits under Section 5-306 or 5-307 shall be credited with Years of Service for the period such benefits are received. The amount credited for each year shall be a fractional Year of Service equal to the FPDR Two Member's disability benefits received during the year divided by 75 percent of the Base Pay for the year for the position held by the FPDR Two Member at disability.

Section 5-303. Base Pay and Final Pay.

- (a)** Base Pay. As used in this Chapter, Base Pay means the base pay of the FPDR Two or FPDR Three Member's position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation or sick leave.

- (b) Final Pay. As used in this Chapter, Final Pay means the highest Base Pay received by the FPDR Two Member during any of the three consecutive 12-month periods preceding the month in which the FPDR Two Member retires, dies, ~~becomes disabled~~, or otherwise terminates employment with the Bureau of Fire or Police.

Section 5-304. Retirement Benefits.

- (a) Eligibility. A FPDR Two Member shall be eligible to receive a retirement benefit upon termination of employment with the Bureau of Fire or Police on or after attaining age 50 if the FPDR Two Member has 25 or more Years of Service or on or after attaining age 55. A FPDR Two Member receiving disability benefits under Section 5-306 or 5-307 shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the date the FPDR Two Member earns 30 Years of Service under Section 5-302 or the date the FPDR Two Member attains social security retirement age. For purposes of this ~~Subsection~~subsection, social security retirement age means the retirement age provided in Section 216(l)(1) of the Social Security Act.
- (b) Amount of Benefit. The retirement benefit shall be 2.2 percent of the FPDR Two Member's Final Pay times the FPDR Two Member's Years of Service. The amount shall not exceed the maximum benefit permissible under Section 415 of the Internal Revenue Code of 1986 or any successor provision, and regulations issued thereunder, as they may be amended from time to time. The provisions of such Section 415 or its successor, and such regulations, are incorporated by this reference.
- (c) Form of Benefit. One-twelfth of the retirement benefit shall be payable monthly for the life of the FPDR Two Member, commencing with the month following retirement. The benefit shall be adjusted as provided in Section 5-312.

~~Section 5-305. Termination Benefits.~~

- ~~(d) FPDR Three retirement benefits shall be provided as set out in the Oregon Public Employees Retirement System, as amended, and funded in accordance with this Chapter. The Fund shall pay the employee contribution required by the Public Employee Retirement System statutes. A FPDR Three Member shall also be credited with a contribution of three percent (3%) of salary, as defined in the PERS statute and accompanying rule and regulations, to the Individual Account Plan, or successor defined contribution plan established under the Public Employees Retirement System. If the City of Portland is required by law, or the Members elect to enter the federal Social Security system, the three percent (3%) of salary contribution to the Individual Account Plan, or successor defined contribution plan under the Public Employees Retirement System in this~~

subsection shall cease as to those affected Members.

Section 5-305. Retirement Benefits Upon Termination.

- (a) Eligibility. A FPDR Two Member whose employment with the Bureau of Fire or Police terminates after completing five Years of Service shall be eligible to receive the benefit on vested termination. A FPDR Two Member whose employment with the Bureau of Fire or Police terminates after completing one-half Year of Service and before completing five Years of Service shall be paid the benefit on unvested termination. For purposes of determining eligibility to receive termination benefits, Years of Service include periods of service recognized by the Public Employee Retirement System of the State of Oregon for accrual of benefits or as a waiting period before such accrual begins. A FPDR Two Member who fails to return to work upon recovery from disability shall be treated as terminating employment on the date of recovery.
- (b) Amount of Benefit on Vested Termination. The benefit on vested termination shall be the FPDR Two Member's retirement benefit accrued under Section 5-304 to the date of the FPDR Two Member's termination of employment with the Bureau of Fire or Police based on Final Pay at such termination. If the FPDR Two Member is employed after termination in service recognized by the Public Employee Retirement System of the State of Oregon for accrual of benefits or as a waiting period before such accrual begins, the benefit on vested termination shall be increased in the same proportion as any increases during the period of such service in the rate of Base Pay for the FPDR Two Member's position in the Bureau of Fire or Police held at termination.
- (c) Form of Benefit on Vested Termination. The benefit on vested termination shall be payable monthly for the life of the FPDR Two Member commencing on Earliest Retirement Date which shall be the date the FPDR Two Member would have been eligible to receive a retirement benefit under Section 5-304 assuming continued service as an Active Member. The benefit shall be adjusted as provided in Section 5-312.
- (d) Amount and Form of Benefit on Unvested Termination. The benefit on unvested termination shall be a lump sum, payable at termination, equal to the sum of the following:
 - 1. The FPDR Two Member's contributions to the Fund prior to July 1, 1990, if any.
 - 2. Seven percent of the FPDR Two Member's Base Pay received after June 30, 1990, disregarding Base Pay received during the first six months after becoming a Member.

- (e) Reappointment. A FPDR Two Member who has received the benefit on unvested termination and is later reappointed as an Active Member may repay to the Fund the amount received within 60 days after such reappointment and have Years of Service before the earlier termination restored. If the Member does not make such repayment, ~~Years of Service before the earlier termination shall be disregarded in any later calculation of benefits under this Chapter.~~ the Member shall be a FPDR Three Member.
- ~~(f) Transfer from PERS. A Member who is appointed an Active Member after July 1, 1990 immediately after leaving service as a police officer or fire fighter under the Public Employee Retirement System of the State of Oregon and receives a payment of employee contributions from such System, including contributions picked up by the employer, may pay to the Fund the amount received within 60 days after such appointment. A Member who makes such repayment shall receive Years of Service credit for the service as a police officer or a fire fighter with such System to which the employee contributions relate.~~

Section 5-306. Service-Connected and Occupational Disability Benefits.

- (a) Eligibility for Service-Connected Disability Benefit. An Active Member shall be eligible for the service-connected disability benefit when unable to perform the Member's required duties because of an injury or illness arising out of and in the course of the Member's employment in the Bureau of Police or Fire. ~~The Board~~ Fund Administrator shall determine the existence of a disability and whether it arises out of and in the course of such 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.
- (b) A Member shall not be eligible for the service-connected disability benefit on the basis of a condition of stress or mental disorder unless:
1. The employment conditions producing the stress or mental disorder exist in a real and objective sense;
 2. The employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police or fire employment or reasonable disciplinary, corrective, or job performance evaluation actions by the employer, or cessation of employment;
 3. There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community;

4. 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
5. The Member's employment conditions are the primary cause of the stress or mental disorder.

(bc) Eligibility for Occupational Disability Benefit. An Active Member shall be eligible for the occupational disability benefit when unable to perform the Member's required duties because of heart disease, hernia of abdominal cavity or diaphragm, AIDS, AIDS-related complex, tuberculosis, hepatitis B, or pneumonia (except terminal pneumonia). A Member shall not be eligible for an occupational disability benefit because of heart disease unless the Member has five or more Years of Service when the disability arises. The ~~Board~~ Fund Administrator shall deny an occupational disability benefit if ~~the Board~~ the Fund Administrator determines, by a preponderance of the evidence, that the disability was not contracted as a result of service as a police officer or fire fighter. No Member shall be eligible to receive a benefit for an occupational disability incurred while receiving benefits under Section 5-307, unless such occupational disability is incurred within two years after such Member had commenced and continued to receive benefits under Section 5-307, or unless such occupational disability is a recurrence of an occupational disability which became disabling and was compensated for under this Section.

(ed) Amount of Benefits. During the period the Member continues to be eligible under ~~Subsections~~ subsection (a), (b) or ~~(bc)~~ benefits shall be paid as follows:

1. During the first year from the date of disability, the Member shall be paid 75 percent of the Member's rate of Base Pay in effect at disability, reduced by 50 percent of any wages earned in other employment during the period the benefit is payable.
2. The Member shall continue to be paid the benefit described in Paragraph 1 after one year from the date of disability until the earliest date on which the Member is both medically stationary and capable of Substantial Gainful Activity. If not medically stationary sooner, the Member shall be treated as medically stationary for purposes of this Section on the fourth anniversary of the date of disability, regardless of the Member's condition. The Member is capable of Substantial Gainful Activity if qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member's rate of Base Pay at disability.
3. After the date described in Paragraph 2, the Member shall be paid

50 percent of the Member's rate of Base Pay at disability, reduced by 25 percent of any wages earned in other employment during the same period.

4. The minimum benefit shall be 25 percent of the Member's rate of Base Pay, regardless of the amount of wages earned in other employment.
5. The ~~Board~~ Fund Administrator may suspend or reduce the benefit if the Member does not cooperate in treatment of the disability or in vocational rehabilitation or does not pursue other employment.
6. Notwithstanding any other provision of the Chapter or the City Charter, a disabled Member receiving or eligible to receive Service-Connected and Occupational Disability Benefits under Section 5-306, or Non-Service Connected Disability Benefits under Section 5-307, shall not receive any such benefit for periods of time during which the member is incarcerated subsequent to and for the conviction of a crime. One-half of such benefit, however, shall be payable to the Member's spouse, if not incarcerated, or Member's minor children, during such periods of incarceration.

~~(de)~~ Form of Benefits. The service-connected and occupational disability benefits shall be paid bi-weekly during the first year from the date of disability and paid monthly thereafter. The benefits shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability. ~~The benefits shall cease when the Member reaches Disability Retirement Age under Subsection 5-304(a).~~

(f) Service-connected or occupational disability benefits to a FPDR Two Member shall cease at Disability Retirement Age under subsection 5-304(a) unless the Fund Administrator determines that the service-connected or occupational disability is temporary. If the service-connected or occupational disability is determined by the Fund Administrator to be temporary, a FPDR Two Member shall be eligible to receive disability benefits for a period of two (2) years from the date of such disability or the Disability Retirement Age, whichever is later. At the end of such period, the disabled Member shall be entitled to receive only a retirement benefit. Service-connected or occupational disability benefits to a FPDR Three Member shall cease at Normal Retirement Age under PERS unless the Fund Administrator determines that service-connected or occupational disability is temporary. If the service-connected or occupational disability is determined by the Fund Administrator to be

temporary, a FPDR Three Member shall be eligible to receive disability benefits for a period of two (2) years from the date of such disability or the Normal Retirement Age, whichever is later.

- ~~(e)~~**(g)** Medical and Hospital Expenses. In addition to the benefits described above, a Member with a service-connected or occupational injury or illness shall be reimbursed from the Fund for reasonable medical and hospital expenses arising from the injury or illness, as determined by the ~~Board.~~ Fund Administrator. Such reimbursement shall be allowed for expenses incurred while serving as an Active Member, while the FPDR Two Member's disability benefits under this Section continue and, if the FPDR Two Member continues to receive such benefits until Disability Retirement Age, while retirement benefits under Section 5-304 continue to the Member. The Board -304 continue to the FPDR Two Member. A FPDR Three Member shall receive a reimbursement for such reasonable medical and hospital expenses while serving as an Active Member, while the FPDR Three Member's disability benefits under this Section continue and, if the FPDR Three Member continues to receive such benefits until Normal Retirement Age under PERS while retirement benefits continue under PERS to the FPDR Three Member. The Fund Administrator may limit reimbursement to particular medical and hospital service providers with which it has made fee arrangements and may join in the purchase of services and administration of claims for other employees of the City of Portland.
- ~~(f)~~**(h)** Waiver of Other Remedies. By applying for and accepting service-connected or occupational disability benefits, a Member waives any right to recover any other compensation or damages from the City of Portland as a result of such disability.
- ~~(i)~~**(i)** Offset. The monthly amount of service-connected or occupational disability benefits under this Charter shall be reduced by any monthly disability benefit payment made by PERS up to the amount provided in subsection (d) of this Section. The Fund Administrator shall reduce any service-connected or occupational disability benefit payable under this Chapter in the amount determined to be necessary by the Fund Administrator to meet the limitation imposed by this subsection.

Section 5-307 . Nonservice-Connected Disability Benefits.

- (a)** Eligibility. An Active Member shall be eligible for the nonservice-connected disability benefit if the Member has 10 or more Years of Service and is unable to perform the Member's required duties because of an injury or illness that does not qualify as service-connected or occupational under ~~Subsections~~subsection 5-306(a), (b) or (c). No Member shall receive benefits under this Section as a result of the following: willful injuries; injuries sustained while, or illness contracted as

a result of, willfully doing an unlawful act; or weakness, illness or disability resulting directly or indirectly from the habitual excessive use of or addiction to use of alcoholic beverages or illegal drugs.

- (b) Amount of Benefit. The benefit shall be 50 percent of the Member's Base Pay at disability, reduced by 50 percent of any wages the Member earns in other employment during the period the benefit is payable. The Board may reduce or terminate the benefit if the Member does not cooperate in treatment of the disability or in vocational rehabilitation or does not pursue other employment.
- (c) Form of Benefit. The nonservice-connected disability benefit shall be payable monthly from the date of disability. The amount shall be adjusted to reflect changes in the rate of Base Pay of the position held by the Member at disability. The benefit shall cease when the Member reaches Disability Retirement Age under ~~Subsection~~subsection 5-304(a).
- (d) Nonservice-connected disability benefits to a FPDR Two Member shall cease at Disability Retirement Age under subsection 5-304(a) unless the Fund Administrator determines that the nonservice-connected disability is temporary. If the nonservice-connected disability is determined by the Fund Administrator to be temporary, a FPDR Two Member shall be eligible to receive disability benefits for a period of two (2) years from the date of such disability or the Disability Retirement Age, whichever is later. At the end of such period, the disabled FPDR Two Member shall be entitled to receive only a retirement benefit. Nonservice-connected disability benefits to a FPDR Three Member shall cease at Normal Retirement Age under PERS unless the Fund Administrator determines that nonservice-connected disability is temporary. If the nonservice-connected disability is determined by the Fund Administrator to be temporary, a FPDR Three Member shall be eligible to receive disability benefits for a period of two (2) years from the date of such disability or the Normal Retirement Age, whichever is later.
- (d) Offset. The monthly amount of nonservice-connected disability benefits under this Charter shall be reduced by any monthly disability benefit payment made by PERS up to the amount provided in subsection (b) of this section. The Fund Administrator shall reduce any nonservice-connected disability benefit payable under this Chapter in the amount determined to be necessary by the Fund Administrator to meet the limitation imposed by this subsection.

Section 5-308. Benefits on Service-Connected or Occupational Death Before Retirement.

- (a) Eligibility. A Surviving Spouse of a Member who dies before retirement as a result of an illness or injury that qualifies as service-connected or occupational under ~~Subsection~~subsection 5-306(a), (b) or ~~(c)~~ shall be eligible to receive a death benefit. A Dependent Minor Child of such a Member shall be eligible to receive the benefit if the Member has no Surviving Spouse. If the Member has more than one Dependent Minor

Child, the benefit shall be divided equally among them. If the Member has a Surviving Spouse and one or more Dependent Minor Children of a former marriage, one-half the benefit shall be paid to the Surviving Spouse. The other half shall be paid to the Dependent Minor Children until the last ceases to be minor and then paid to the Surviving Spouse.

- (b)** Amount of Benefit. The benefit on service-connected or occupational death before retirement shall be 75 percent of the Member's rate of Base Pay at death until the earliest date on which the Member would have been eligible for retirement benefits under Section 5-304 if the Member had survived and continued in service as an Active Member. After such date, the benefit shall be 50 percent of the Member's Final Pay~~;~~, as adjusted as provided in Section 5-312.
- (c)** Form of Benefit. A Surviving Spouse shall be paid the benefit monthly starting with the month following the Member's death and continuing for the spouse's life. A Dependent Minor Child shall be paid the benefit until ceasing to be a minor. The benefit shall be adjusted as provided in Section 5-312.
- (d)** Offset. The monthly amount of service-connected or occupational death benefits under this Charter shall be reduced by any monthly death benefit payment made by PERS up to the amount provided in subsection (b) of this section. The Fund Administrator shall reduce any service-connected or occupational death benefit payable under this Chapter in the amount determined to be necessary by the Fund Administrator to meet the limitation imposed by this subsection.

Section 5-309. Benefits on Nonservice-Connected Death Before Retirement.

- (a) Eligibility. A Surviving Spouse of a Member who has one or more Years of Service and dies before retirement not as a result of a cause described in ~~Subsection~~subsection 5-308(a), shall be eligible to receive a death benefit. A Dependent Minor Child of such a Member shall be eligible to receive the benefit if the Member has no Surviving Spouse or if the spouse is under age 55. If the Member has more than one Dependent Minor Child, the benefit shall be divided equally among them. If the Member has a Surviving Spouse and one or more Dependent Minor Children of a former marriage, one-half the benefit shall be paid to the Surviving Spouse. The other half shall be paid to the Dependent Minor Children until the last ceases to be minor and then paid to the Surviving Spouse.
- (b) Amount on Death Before 10 Years of Service. If the Member had less than 10 Years of Service, the benefit on nonservice-connected death before retirement shall be a lump sum equal to the amount of the Member's contributions as provided in Paragraph 5-305(d)1, less any benefits paid to the Member under this Chapter.
- (c) Amount on Death After 10 Years of Service. If the Member had 10 or more Years of Service, the benefit on nonservice-connected death before retirement shall be an annuity equal to 50 percent of the Member's accrued retirement benefit under Section 5-304, based on 2.6 percent of the Member's Final Pay instead of 2.2 percent.
- (d) Form of Benefit. A benefit payable under ~~Subsection~~subsection (b) shall be paid in a lump sum. A benefit payable under ~~Subsection~~subsection (c) to a Surviving Spouse shall be paid monthly commencing with the month after the Member's death if the spouse is age 55 or over and otherwise with the month after the spouse attains age 55 and shall continue for the spouse's life. A benefit payable under ~~Subsection~~subsection (c) to a Dependent Minor Child shall be paid monthly commencing with the month after the Member's death and shall continue until the child ceases to be a minor. A benefit payable under ~~Subsection~~subsection (c) shall be adjusted as provided in Section 5-312.
- (e) Offset. The monthly amount of nonservice connected death benefits under this Charter shall be reduced by any monthly death benefit payment made by PERS up to the amount provided in subsection (b) and (c) of this section. The Fund Administrator shall reduce any nonservice connected death benefit payable under this Chapter in the amount determined to be necessary by the Fund Administrator to meet the limitation imposed by this subsection.

Section 5-310. Benefits on Death After Retirement.

- (a) **Eligibility.** The Surviving Spouse of a FPDR Two Member who dies after retirement shall be eligible to receive a death benefit, except as provided in ~~Subsection~~subsection (b). The Dependent Minor Child of the FPDR Two Member shall be eligible to receive the benefit if the Member has no Surviving Spouse. If the Member has more than one Dependent Minor Child, the benefit shall be divided equally among them. If the FPDR Two Member has a Surviving Spouse and one or more Dependent Minor Children of a former marriage, one-half the benefit shall be paid to the Surviving Spouse. The other half shall be paid to the Dependent Minor Children until the last ceases to be a minor and then paid to the Surviving Spouse. Eligibility for death benefits after retirement shall be based on status as a Surviving Spouse or Dependent Minor Child at the date of the FPDR Two Member's death and without regard to a person's status at the time of the FPDR Two Member's retirement.
- (b) **Certain Disabled Members.** If the FPDR Two Member retired after a nonservice-connected disability and had less than 10 Years of Service, including service recognized by the Public ~~Employee~~Employee Retirement System of the State of Oregon for accrual of benefits or as a waiting period before such accrual begins, no death benefit shall be paid.
- (c) **Amount of Benefit.** The benefit on death after retirement shall be 100 percent of the Member's retirement benefit. A FPDR Two Member may make an irrevocable election at the time of retirement under rules established by the Board to be covered by a reduced death benefit and receive a retirement benefit under Section 5-304 based on a larger percentage of Final Pay as follows:
1. With a death benefit equal to 100 percent of the FPDR Two Member's retirement benefit, the FPDR Two Member's retirement benefit shall be based on 2.2 percent of Final Pay.
 2. With a death benefit equal to 75 percent of the FPDR Two Member's retirement benefit, the FPDR Two Member's retirement benefit shall be based on 2.4 percent of Final Pay.
 3. With a death benefit equal to 50 percent of the FPDR Two Member's retirement benefit, the FPDR Two Member's retirement benefit shall be based on 2.6 percent of Final Pay.
 4. With a death benefit equal to 25 percent of the FPDR Two Member's retirement benefit, the FPDR Two Member's retirement benefit shall be based on 2.8 percent of Final Pay.

- (d)** No Spouse or Children. If a FPDR Two Member has no Surviving Spouse or Dependent Minor Child at death, no death benefit shall be paid except for the benefit based on return of FPDR Two Member contributions provided in Section 5-311, if any. In no event shall a FPDR Two Member receive a retirement benefit based on more than 2.8 percent of Final Pay regardless of not having a Surviving Spouse or Dependent Minor Child.

- (e) Form of Benefit. The benefit shall be paid monthly commencing with the month after death and shall continue until the later of the death of the Surviving Spouse or the date the last Dependent Minor Child ceases to be a minor. The benefit shall be adjusted as provided in Section 5-312.

Section 5-311. Return of Member Contributions. If a FPDR Two Member's contributions under Paragraph 5-305(d)1 exceed the total of all benefits paid under this Chapter to the FPDR Two Member and to the FPDR Two Member's Surviving Spouse and Dependent Minor Children at the time the last of such benefits ceases to be paid, the excess shall be paid as an additional benefit. The additional benefit shall be paid in a lump sum to the person who was formerly a Dependent Minor Child of the FPDR Two Member receiving benefits under this Chapter or, if there are ~~is~~ more than one such ~~persons~~person, divided equally among them. If there are no such persons, the additional benefit shall be paid to the estate of the FPDR Two Member's Surviving Spouse. If there was no Surviving Spouse, the additional benefit shall be paid to the FPDR Two Member's estate.

Section 5-312. Benefit Adjustments. Benefits payable under this Chapter shall be adjusted, where so indicated in the Section of this Article in which each benefit is described, in accordance with this Section after payment commences. The Board shall determine the amount and timing of such adjustments in its discretion, except the

percentage rate of change shall not exceed the percentage rate applied to retirement benefits payable to police and fire employees by the Public ~~Employee~~Employee Retirement System of the State of Oregon.

Section 5-313. Limits on Time and Form of Payment.

- (a) Payment to FPDR Two Members. Payment of benefits to a FPDR Two Member shall comply with the following restrictions:
 1. Payment shall begin no later than the April 1 following the calendar year in which the FPDR Two Member attains age 70 1/2 or retires, whichever is later.
 2. Payment shall be made over a period no longer than the lives or joint life expectancy of the FPDR Two Member and any designated beneficiary.
 3. The benefit form shall be limited so that the benefit payable after death is incidental to the plan's primary purpose of providing retirement benefits.
- (b) Payment to Beneficiaries. Payment of death benefits shall begin no later than one year after the FPDR Two Member's death and shall be made over a period no longer than the beneficiary's life or life expectancy.

- (c) Applicable Regulations. The restrictions of this Section shall be complied with by payments in accordance with Treasury Regulation Sections 1.401(a)(9)-1 and 1.401(a)(9)-2, or any successor provisions, as they may be amended from time to time. This Section shall override any inconsistent distribution options provided in this Chapter.

Section 5-314. Funeral Benefit. A funeral benefit shall be paid on death of any Active Member or Member actively receiving disability or retirement benefits. The funeral benefit shall be one-half of the monthly salary at the date of death payable to the civil service classification of fire fighter if the Member was employed in the Bureau of Fire, or of police officer if the Member was employed in the Bureau of Police. If such classifications cease to exist, the benefit shall be based on the salary of comparable successor positions. The funeral benefit shall be paid to the Member's Surviving Spouse or, if there is no Surviving Spouse, to the Member's estate.

ARTICLE 4. MISCELLANEOUS.

Section 5-401. Amendment of Chapter.

- (a) ~~Effective Date. Chapter 5 shall be amended and restated as set forth in Articles 1 through 3 above and this Article 4, herein, effective July January 1, 1990. 2007. These amended provisions shall apply to all persons who become Members, and to the surviving spouses and Dependent Minor Children of such Members, after the effective date they are enacted. These amended provisions also shall apply to all other Members, and to the surviving spouses and Dependent Minor Children of such Members, except as provided in Subsections (b) and (c).~~

- (b) ~~Persons Receiving FPDR One Benefits.~~ The benefit rights of Members, Surviving Spouses and Dependent Minor Children actively receiving pensions or benefits on January 1, 1990 shall be controlled by Sections 5-113 through 5-123 and 5-126, set out in Article 5 of this Chapter, and by the Supplementary Retirement Program described in Subsection (d), instead of by Article 3, except as follows:

1. Death benefits payable to a spouse shall continue to be paid regardless of whether the spouse remarries.
2. The Surviving Spouse of a Member who dies after June 30, 1990 and after retirement and who has been married to the Member continuously for the 12-month period prior to death shall receive the death benefit provided by Section 5-118 regardless of not having 5 continuous years of marriage before retirement.

3. The Surviving Spouse of a Member who had a nonservice-connected disability, retired and then dies after June 30, 1990 shall receive the death benefit provided by Section 5-118 if the Member had 10 or more Years of Service.
 4. The Board may permit a Member receiving disability benefits on January 1, 1990 to make the election described in ~~Subsection~~subsection (c) at the same time as other Members if the Member's disability is expected to be of less than one year in duration.
 5. A Member receiving disability benefits on January 1, 1990 who was not permitted an election under Paragraph 4, who subsequently returns to service as an Active Member in the Bureau of Fire or Police capable of performing full duty without limitation and who earns two more Years of Service under ~~Subsection~~subsection 5-302(a) shall be given the opportunity, upon completing such two Years of Service, to make the election described in ~~Subsection~~subsection (c). Upon making such election, the Member shall receive a refund of the Member contributions paid during such two Years of Service.
- (c) Election. The provisions of Article 3 shall apply to persons who became Members before the date of enactment and who are not described in ~~Subsection~~subsection (b) only if such Members ~~make~~made an irrevocable election to have them apply. The election shall be made on forms and under procedures established by the Board. Benefits for a Member who ~~makes~~made the election, and for the Surviving Spouse and Dependent Minor Children of such a Member, shall be determined under Article 3 and not Article 5. Benefits for a Member who ~~does~~did not make the election, and for the Surviving Spouse and Dependent Minor Children of such a Member, shall be determined under Article 5, as modified by ~~Subsection~~subsection (b), and by the Supplementary Retirement Program described in ~~Subsection~~subsection (d), and not under Article 3. A Member who ~~retires~~retired between January 1, 1990 and June 30, 1990 shall ~~choose~~chose at retirement the level of death benefit after retirement under Section 5-310, which ~~shall apply~~applied starting July 1, 1990 unless the Member ~~does~~did not make the election described in this ~~Subsection~~subsection. A Member who ~~makes~~made the election and ~~starts~~started receiving retirement or disability benefits between January 1, 1990 and June 30, 1990 shall ~~start receiving~~receive benefits determined under Article 3 effective July 1, 1990.
- (d) Supplementary Retirement Program. The benefits provided by the Supplementary Retirement Program created by Ordinance No. 136977, and amended by Ordinance No. 152182, of the City of Portland shall be paid from the Fund pursuant to this Chapter effective July 1, 1990 to:

- ~~1. Persons described in Subsection (b); and~~
 1. FPDR One Members;
 2. Members described in ~~Subsections~~subsection (c) who ~~did~~ not make the election provided therein, and the Surviving Spouses and Dependent Minor Children of such Members.
- ~~(e) Repeal of Prior Sections. Except for the continued applicability of Sections 5-113 through 5-123 and 5-126 as provided in Subsections (b) and (c), the provisions of this Chapter as previously in effect are repealed and superseded~~ Continuity of Rules and Regulations. The rules and regulations adopted prior to January 1, 2007 shall remain in effect until changed by the Board.
- ~~(f) Continuity of Board. Notwithstanding anything expressed or implied in the amendments to this Chapter enacted in 1989, the members of the Board duly elected and serving as such immediately prior to the effective date of such amendments shall continue after the effective date of such amendments to serve as members of the Board for the remainder of the term for which they were elected.~~
- ~~(g)~~ (f) Notwithstanding any other provision of law or this Chapter, Chapter 5 shall be amended and restated as set forth ~~above in Articles 2 and 3 and this Article 4, herein,~~ effective ~~July~~January 1, ~~2001, 2007,~~ and said amendments shall apply to all matters existing or arising on or after ~~July~~January 1, ~~2001, 2007,~~ regardless of the date of injury or the date the matter is presented, ~~and this.~~ This amendment is intended to be fully retroactive so as to apply to all Members whenever sworn, except that the amendments shall not apply to any matter which has received Board approval on or before the date these amendments are approved by the voters; and shall not be applied or operate in such a manner as to reduce FPDR One or FPDR Two benefits provided.

Section 5-402. Tax Qualification. The benefits provided by this Chapter are intended to constitute a tax qualified pension plan that satisfies the requirements of Section 401(a) of the Internal Revenue Code of 1986, or any successor provision, as it may be amended from time to time.

Section 5-403. Changes by Council.

- (a) **Mandated Benefits.** If the City of Portland is required by law to extend to the Members additional benefits not described by this Chapter, the Council may provide for such benefits by ordinance and such additional

benefits shall be paid from the Fund. Such ordinance may include reductions in corresponding benefits described in this Chapter, which shall override inconsistent provisions of this Chapter.

- (b) PERS, Social Security and Workers' Compensation. If the City of Portland is required by law to cover all, or substantially all, of its police officers and fire fighters under one or more of the programs described in Paragraph 1, 2 or 3 below, or if the Council acts voluntarily to do so and such action is ratified by the affirmative vote of a majority of the Active Members, the corresponding benefits provided by this Chapter, as determined by the Council, shall cease to be provided and the City's employer contributions, taxes, benefit payments or other costs of the newly extended program for police officers and fire fighters shall be paid from the Fund. Such costs shall be requirements levied under Section 5-103. The programs are:
 - 1. The Public Employee Retirement System of the State of Oregon;
 - 2. The federal Social Security system; and
 - 3. The workers' compensation benefits required by statutes of the State of Oregon.
- (c) Tax Qualified Status. The Council is authorized to change the benefits provided by this Chapter by ordinance to the extent necessary to comply with changes in the requirements for tax qualified status as described in Section 5-402.
- (d) Advice by Board. The Council shall not take action under this Section without seeking the advice of the Board on the action proposed to be taken.
- (e) Savings Clause. The Council is authorized to modify the provisions of this Chapter by ordinance to the extent necessary to provide a substantially equivalent benefit if any one or more sections, clauses, sentences or parts of this Chapter shall for any reason be adjudged unconstitutional or invalid, or the use of the levy to pay and discharge any requirement, employee contributions, employer contributions, payroll taxes, benefit payments, or other costs of the Fund as provided in Section 5-103, is invalidated. In order to prevent payment of dual benefits, such ordinance shall require that the total benefits received by any Member do not exceed those provided in this Chapter before the 2007 amendments.

Section 5-404. Exemption from Execution. All pensions, allowances or benefits due or paid under this Chapter shall be exempt from attachment, execution, garnishment or other process issued out of any court for the payment or satisfaction, in whole, or in part, of any debt, damage, claim, demand or judgment against the beneficiary thereof.

The rights of Members and of their Surviving Spouses and Dependent Minor Children are personal and cannot be assigned or transferred to any other party in any way.

Section 5-405. Waiver of Benefits. A person entitled to benefits under this Chapter may, before the beginning of the fiscal year, file a written notice with the Board Fund Administrator waiving such benefits or a portion thereof, for the ensuing fiscal year. Such waiver once filed and accepted by the Board Fund Administrator shall be irrevocable, except death of such person during the term of the waiver shall automatically terminate the effectiveness of the waiver. Any benefits, or portion thereof, so waived shall be forever forfeited.

Section 5-406. Invalidity. If any part or section of this Chapter shall be declared invalid or unenforceable for any reason, it shall only void that part or section so declared and the remainder shall remain in full force and effect.

ARTICLE 5. PRIORFPDR ONE BENEFITS.

Section 5-113. Retirement, Resignation, and Discharge. The Board of Trustees shall, upon duly verified written application by any member who shall have been an active member for thirty (30) years and who shall have reached the age of fifty (50) years, retire and relieve said member from service and said member shall receive a monthly pension equal to the earned portion of a maximum pension as hereinafter defined, and said pension shall cease upon the member's death except as hereinafter provided.

The Board of Trustees shall, upon duly verified written application by any member who shall have been an active member for twenty-five (25) years and who shall have reached the age of fifty (50) years, retire and relieve said member from service and said member shall be paid a monthly pension equal to the earned portion of a maximum pension as hereinafter defined, and said pension shall cease upon the member's death except as hereinafter provided.

The Board of Trustees shall, upon duly verified written application by any member who shall have been an active member for twenty (20) years and who shall have reached the age of fifty-five (55) years, retire and relieve said member from service, and said member shall be paid monthly a pension equal to the earned portion of a maximum pension as hereinafter defined, and said pension shall cease upon the member's death except as hereinafter provided.

The Board of Trustees may upon its own motion and by two-thirds (2/3) vote of the entire Board, relieve from service any aged, disabled or infirm member whom it finds unfit for the performance of his or her duty. The Board may by majority vote require any member to appear, submit to and undergo mental or physical examinations by its physician or such additional physicians or psychiatrists as it may appoint. In such cases review of determination based upon the findings of the Board's physicians or psychiatrists may be had as provided in Section 5-107. The member so relieved shall receive his or her earned portion of the maximum pension as hereinafter set forth. Said pension shall cease at the member's death, except as hereinafter provided.

Any member coming within the provisions of this Article having twenty (20) years or more of active service who is discharged shall be entitled to receive his earned portion of the maximum pension upon reaching that age at which such member would otherwise have been eligible to receive the maximum pension had such member not been so discharged;
or the member may elect to receive at the time of discharge a refund of all contributions made by the member, less the amount of non-service connected disability benefits paid to the member from the Fund or previously established pension funds.

Any member who shall resign after five (5) years of active service shall receive at that time a refund of all his or her contributions made as a regular member during the member's entire service in his or her Bureau, unless the amount of non-service connected disability benefits paid to the member from the Fund or previously established pension funds.

Any member who shall be discharged after five (5) years of active service but before completing twenty (20) years of active service, shall receive at that time a refund of all contributions made by him or her, less the amount of non-service connected disability benefits paid to such member from the Fund or previously established pension funds.

Contributions made by a member while such member was a temporary ~~employee~~ employee shall not be included in computing contributions made by the member for funds. Any member who shall resign or be discharged before completing five (5) years of active service shall not be entitled to refunds of any contributions paid.

Section 5-114. Compulsory Retirement. Any member who has reached his or her sixty-fourth (64th) birthday anniversary shall be retired by the Board forthwith, subject to the provisions of the following Section relating to retirement of members receiving benefits upon service-connected or occupational disabilities; provided, however, that the Chief Engineer of the Bureau of Fire (Chief of the Bureau of Fire) and the Chief of the Bureau of Police who hold such positions on the effective date of this Act shall not be retired under the provisions of this Section prior to August 1, 1968. Any member retired under the provisions of this Section having any service less than thirty (30) years, shall be retired at the member's earned portion of the maximum pension.

Section 5-115. Benefits for Service-Connected Disability or Occupational Disability. Upon duly verified application of a member and a finding by the Board that through injury suffered in line of duty, or sickness caused by the performance of duty, the member is or has been unable to perform his or her required duties, said member shall be paid service-connected disability benefits equal to but not in excess of his full salary from the Fund until such member recovers or for a period of one (1) year, whichever period is shorter. A member accepting service-connected disability benefits waives any right such member may have against the City of Portland as a result of said disability. In the event that said member has not recovered at the end of one (1) year, the member shall receive after said first year and until the member recovers, but for a period of not to exceed three (3) additional years, service-connected disability benefits from the Fund equal to but not in excess of the member's full salary but in no event in excess of the then current salary of a First Class Fire Fighter or First Class Police Officer, as the case may be. If the service-connected disability continues after the end of four (4) years, the member shall be paid benefits from the Fund in an amount equal to sixty percent of the then current salary of a First Class Fire Fighter or First Class Police Officer, as the case may be, until the member recovers or if the member does not recover until the member reaches compulsory retirement age. Upon reaching compulsory retirement age, said member shall be retired by the Board and shall receive his or her maximum earned pension. In the event a member, disabled from an injury in

line of duty or sickness caused by the performance of duty, reaches compulsory retirement age before the expiration of one (1) year from the date of such disability, said member shall be paid benefits equal to the member's full salary from the Fund until the member recovers or for one (1) year from the date of such disability, whichever event first occurs, at which time the member shall be retired at his or her maximum earned pension. A member receiving service-connected disability benefits upon reaching compulsory retirement age, shall not receive any payments from the Fund in excess of such member's maximum earned pension except as hereinbefore provided plus such medical and hospital expenses as are authorized in this Article.

For the purpose of this Act the disabilities of heart disease, hernia of the abdominal cavity or diaphragm, tuberculosis and pneumonia (except terminal pneumonia) are occupational disabilities and a member so disabled shall not be considered to have suffered injury in line of duty or sickness caused by the performance of duty, but shall be entitled to the same benefits from the Fund as a member injured in line of duty or in the performance of duty until the member recovers or for the period of one (1) year from the date of such disability, whichever period is shorter, at which time the member shall be paid benefits from the Fund in an amount equal to sixty percent of the then current salary of a First Class Fire Fighter or a First Class Police Officer, as the case may be, until the member recovers or if the member has not recovered until he reaches compulsory retirement age, at which time the member shall be retired by the Board and shall receive his or her maximum earned pension. If such occupational disability occurs within one (1) year prior to the member's compulsory retirement date said member shall be paid benefits from the Fund equal to the member's full salary until he recovers or for a period of one (1) year from the date of said disability, whichever period is the shorter and in the event the member has not recovered from said disability after the expiration of said one (1) year period, said member shall be retired by the Board and shall receive his or her maximum earned pension. A member in accepting occupational disability benefits waives any right such member may have against the City of Portland as a result of said disability.

No member shall be given service-connected disability benefits or occupational disability benefits if the Board finds that said disability can probably be successfully corrected by competent medical or psychiatric treatment, or both, and said member fails or refuses to be so treated.

In the event of recovery of any member from service- connected disability or occupational disability prior to retirement, as attested by the member's attending physician, and the concurring approval of the Board's physician, the chief in charge of the respective bureau shall authorize return to work of such member, subject to the subsequent certification by the Board, which shall be retroactive to the time the member returns to work. Such return to work shall not be subject to other time limitations on such return contained elsewhere in this Charter. Said member returning to service shall be restored to service in the rank the member occupied at the time of his or her disability and his or her disability benefits shall cease upon restoration to service.

In the event a member is unable to perform his or her required duties from a recurrence of a prior service-connected disability, the period of such recurrence or periods of successive recurrences from the same original sickness or injury shall be added to the period or periods of prior disability for the purpose of computing total disability benefits to which the member is entitled, provided, however, if one (1) year or more lapse from the date of recovery from such original sickness or injury, the subsequent period of such recurrence or periods of successive recurrences of such disability shall be treated as a new disability for the purpose of computing benefits.

A member shall not be entitled to benefits from the Fund under the provisions of this Section during any period while such member is not a resident of the State of Oregon unless the Board has specially waived the requirement as permitted in this Article.

An additional percentage allowance for Dependent Minor Children shall be paid from the Fund to a member receiving under this section a sum equal to sixty percent of the then current salary of a First Class Fire Fighter or First Class Police Officer, as the case may be, until said member reaches age sixty-four (64). This allowance shall be based on the member's benefit amount and shall be according to the following percentages: Twenty-five percent for one Dependent Minor Child, fifteen percent for the second Dependent Minor Child, and ten percent in toto for all other Dependent Minor Children over two (2) in number. The additional allowance shall be reduced or shall cease when the child or children are no longer Dependent Minor Children.

Medical and hospital expenses of a member shall be payable from the Fund only in accordance with the following provisions: All medical and hospital expenses arising from a service-connected disability under this Section shall be paid from the Fund until the member's retirement pursuant to any Section of this Chapter; after retirement, if the member was off duty at the time of said member's retirement as the result of a service-connected disability, such medical and hospital expenses for the same service-connected disability shall continue to be paid from the Fund until the member's recovery from such disability; all medical and hospital expenses arising from an occupational disability under this Section shall be paid from the Fund until the expiration of one (1) year from the date of such disability or retirement of the member, whichever event occurs first.

No member shall be eligible to receive benefits under this section, in lieu of benefits under Section 5-116, for an occupational disability incurred while receiving benefits under Section 5-116, unless such occupational disability is incurred within two (2) years after such member had commenced and continued to receive benefits under Section 5-116, or unless such occupational disability is a recurrence of an occupational disability which became disabling and was compensated for under Section 5-115.

Section 5-116. Benefits for Nonservice-Connected Disability. Any member who is in active service and who has at least one (1) year of active service and who becomes incapacitated from performing his required duties on account of injury or sickness not service connected, and who at the time of said disability was either a recipient of disability benefits under Section 5-115 of this Article or was contributing to the Fund from his current or her salary in accordance with the provisions of this article, shall, upon the cessation of his or her sick leave benefits for such cause and upon cessation of his or her current salary other than vacation pay, be entitled to benefits equal to his or her maximum earned pension, but in no event less than twenty percent of the then current salary of a First Class Fire Fighter or First Class Police Officer, as the case may be, until he or she recovers, or if he or she has not recovered, until he or she reaches compulsory retirement age. If a member reaches compulsory retirement age while receiving nonservice -connected disability benefits under this Section, such benefits shall cease forthwith, and the member shall be retired by the Board and shall receive his or her maximum earned pension. All applications for benefits under this Section shall be duly verified and accompanied by a certificate from a legally licensed physician setting forth the cause or basis of the disability claimed. The Board shall determine whether the applicant for benefits meets the requirements herein set forth.

No member shall be given benefits under this Section if the Board finds that said disability can probably be successfully corrected by competent medical or psychiatric treatment or both, and said member fails or refuses to be so treated. In the event of recovery of any member from nonservice-connected disability prior to retirement as attested by the member's attending physician and the concurring approval of the Board's physician, the chief in charge of the respective bureau shall authorize return to work of such member subject to subsequent certification by the Board, which certification shall be retroactive to the time the member returns to work. Such return to duty shall not be subject to other time limitations on such return contained elsewhere in this Charter. Said member returning to service shall be restored to service in the rank the member occupied at the time of his or her disability.

A member shall not be entitled to benefits from the Fund under the provisions of this Section during any period while the member is not a resident of the State of Oregon, unless the Board has specially waived the requirement as permitted in this Article.

No member shall receive benefits under this Section as a result of the following: willful injuries; injuries sustained while willfully doing an unlawful act; or weakness, illness or disability resulting directly or indirectly from immoral practices or the habitual excessive use of or addiction to use of alcoholic beverages or narcotic drugs.

Section 5-117. Benefits and Pensions to Surviving Spouses and Children in Service-Connected or Occupational Disability Deaths. If any member shall die prior to retirement from an injury suffered in line of duty, or sickness caused by the performance of duty, or as a result of an occupational disability of heart disease, hernia of the abdominal cavity or diaphragm, tuberculosis, or pneumonia (except terminal

pneumonia), and shall leave a Surviving Spouse, said Surviving Spouse shall be entitled to benefits or pension as herein provided, while remaining unmarried. Said benefits shall be paid from the Fund and shall be at the rate of fifty percent of the current salary of a First Class Fire Fighter or First Class Police Officer, as the case may be, until such time as the deceased member would have had thirty (30) years of active service or would have reached compulsory retirement age, had the member lived, whichever event would have first occurred, at which time said Surviving Spouse while unmarried shall receive a monthly pension from the Fund. A qualified Surviving Spouse's pension shall be computed in accordance with the Survivor Annuity Table as set forth in Section 5-118 and shall be based on the deceased member's years of active service at compulsory retirement age, had the member lived, but in no event shall it exceed the maximum pension allowable to a Surviving Spouse.

An additional percentage allowance for a Dependent Minor Child or children shall be paid from the Fund to a Surviving Spouse qualified to receive benefits or pension under this Section. This allowance shall be based on the qualified Surviving Spouse's benefit or pension amount and shall be according to the following percentages: twenty-five percent for one Dependent Minor Child, fifteen percent for the second Dependent Minor Child, and ten percent in toto for all other Dependent Minor Children over two (2) in number. In the event the Dependent Minor Child or children are not in fact substantially supported by the Surviving Spouse, the additional percentage allowance for such Dependent Minor Child or children shall be paid not to the Surviving Spouse, as provided above, but shall be paid to the Dependent Minor Child or shall be divided equally among the Dependent Minor Children, as the case may be. The additional allowance shall be reduced or shall cease when the child or children are no longer Dependent Minor Children.

If there be no Surviving Spouse qualified to receive a Surviving Spouse's benefits or pension, or if the Surviving Spouse becomes disqualified, then the Dependent Minor Child or children of such deceased member shall receive the benefits or pension to which a Surviving Spouse without Dependent Minor Child or children would have been entitled, as heretofore provided in this Section, to be divided equally among them, if there is more than one. Any Dependent Minor Child's interest in said benefits or pension shall cease when is no longer a Dependent Minor Child.

If any member shall die prior to retirement from any causes specified in the first paragraph of this Section, leaving a Dependent Minor Child or children of a former marriage or marriages and a qualified Surviving Spouse, then the qualified Surviving Spouse's benefits or pension, as the case may be, plus children's allowances to which the Surviving Spouse might be entitled were all the children of the Surviving Spouse, shall be divided with the Dependent Minor Child or children of all marriages, fifty percent to said qualified Surviving Spouse, and fifty percent to the Dependent Minor Child or children of all the marriages to be divided equally among said children. Any Dependent Minor Child's

interest in said benefits or pension plus allowances, if any, shall cease when the child is no longer a Dependent Minor Child as defined herein, and any qualified Surviving Spouse's right to an additional allowance for a Dependent Minor Child shall cease under the same conditions.

A Surviving Spouse is disqualified and the Surviving Spouse's right to any benefits or pension from this Fund is thereafter and forever terminated when the Surviving Spouse remarries.

All persons deriving benefits from the death of any one member under the provisions of this Section may elect, if the Board after hearing finds it to be financially beneficial to the Fund, to receive collectively a five thousand dollar (\$5,000) cash settlement from the Fund in lieu of all further claims to benefits and/or pension. Said cash settlement shall not be paid if the deceased member was at the time of his or her death or within (1) one year thereafter would have been eligible for a maximum pension or would have reached compulsory retirement age.

Section 5-118. Benefits and Pensions to Surviving Spouses and Children on Deaths of FPDR One Members After Retirement or on Non-Service Connected Deaths Before Retirement. Deaths of FPDR One Members After Retirement. Upon the death of any member who retires under the provisions of this Article, other than a member who retired prior to July 1, 1947, the Surviving Spouse of said deceased member until such Surviving Spouse's death or remarriage shall receive a monthly pension to be computed from the "Survivor Annuity Table," set forth below, and in accordance with this Section; provided, however, that as to any member relieved from service by the Board under Section 5-113 for a nonservice -connected disability or retiring under Section 5-116 of this Act, the provision of this Section shall apply only to a member having twenty (20) years or more active service. Said table below shows the basis for computing the pension to which the Surviving Spouse shall be entitled. In using the table the difference between the member's and Surviving Spouse's ages shall be determined to the closest year. If at the time of said retired member's death, there be no Surviving Spouse, the Dependent Minor Child or children while so remaining shall receive the Surviving Spouse's pension as set forth in the "Survivor Annuity Table" below, computed on the basis of a member and Surviving Spouse of the same age, and said pension shall be divided equally among them, if there be more than one. If at the time of said retired member's death, the Surviving Spouse fails to qualify for a pension under this section, but the deceased member leaves a surviving Dependent Minor Child or children, the Dependent Minor Child or children while so remaining shall receive a pension as set forth below in the "Survivor Annuity Table" computed as though the Surviving Spouse had qualified as a for a pension. If the Surviving Spouse qualifies for a pension under this Section and later dies or remarries and there is a surviving Dependent Minor Child or children of the member, the Dependent Minor Child or children while so remaining shall receive said Surviving Spouse's pension and said pension shall be divided equally among them, if there be more than one.

SURVIVOR ANNUITY TABLE

Difference Between <u>FPDR One</u> Member's and Surviving Spouse's Age	Surviving Spouse's Pension Shall be determined as Percent of <u>FPDR One</u> Member's Maximum Earned Pension
<u>FPDR One</u> Member same age or Surviving Spouse Older	56%
" 1 year older	55%
" 2 years "	54%
" 3 " "	53%
" 4 " "	52%
" 5 " "	51%
" 6 " "	50%
" 7 " "	49%
" 8 " "	48%
" 9 " "	47%
" 10 " "	46%
" 11 " "	45%
" 12 " "	44%
" 13 " "	43%
" 14 " "	42%
" 15 " "	41%
" 16 " "	40%
" 17 " "	39%
" 18 " "	38%
" 19 " "	37%
" 20 " "	36%

The Surviving Spouse of any member who retires under the provisions of this Article, shall receive a pension only if the Surviving Spouse was lawfully married to the member for five (5) continuous years immediately prior to the date of the member's retirement and not otherwise.

Non-Service Connected Deaths Before Retirement. If a member has less than one (1) year of active service and dies before retirement for any cause not in line of duty, the member's Surviving Spouse and/or Dependent Minor Child or children shall have no rights under this Fund.

If a member has at least one (1) year but less than twenty (20) years of active service and dies before retirement from any cause not in line of duty, the member's Surviving Spouse, if said Surviving Spouse has been married to the member for at least one (1) year, shall be entitled to an option to either: (1) the return of the member's contributions made to the Fund and previously established pension funds less the amount of nonservice-connected disability benefits paid to the member from the Fund and any previously established pension funds, or (2) a cash settlement of fifteen hundred dollars

(\$1,500) plus an additional one hundred dollars (\$100) for every year of the member's active service up to twenty (20) years. If at the time of said member's death, there be no Surviving Spouse who has been married to the member for at least one (1) year, the deceased member's surviving Dependent Minor Child or children, if any, shall have the same rights of a qualifying Surviving Spouse as set forth above in this paragraph.

If a member has twenty (20) years or more of active service and dies before retirement from any cause not in line of duty, the member's Surviving Spouse, if said Surviving Spouse has been married to the member for at least one (1) year, shall be entitled to a pension to be computed from the "Survivor Annuity Table" set forth above, based upon the maximum earned pension of the deceased member; or said Surviving Spouse may elect at his or her option within one (1) year after the member's death, if the Board, after hearing so permits, to receive in lieu of further pension payments either: (1) a return of the member's contributions made to the Fund and previously established pension funds, less the amount of nonservice-connected disability benefits paid to the member from the Fund and any previously established pension funds; or (2) a cash settlement of thirty five hundred dollars (\$3,500). If at the time of said member's death there be no Surviving Spouse who has been married to the member for at least one (1) year, the deceased member's surviving Dependent Minor Child or children, if any, while so remaining shall be entitled to the same pension to which a qualifying Surviving Spouse of the same age as the member would have been entitled under the provisions of this paragraph. If a Surviving Spouse qualifies for and is receiving a pension under this paragraph and later dies or remarries, the surviving Dependent Minor Child or children of the deceased member while so remaining shall receive, in lieu of the Surviving Spouse, said Surviving Spouse's pension, and said pension shall be divided equally among them, if there be more than one.

Notwithstanding the above, if the member shall die before retirement from any cause not in the line of duty, leaving a Dependent Minor Child or children by a former marriage or marriages and the Surviving Spouse qualifies to receive a pension under this Section, then the Surviving Spouse's pension shall be shared with the Dependent Minor Child or children of all marriages, fifty percent to the said Surviving Spouse and fifty percent to the Dependent Minor Child or children of all marriages, to be divided equally among said children, if there be more than one. No Dependent Minor Child shall share in such division of the fifty percent last named, after such child has ceased to be a Dependent Minor Child as that term is defined in this Article. When there is no longer a Dependent Minor Child, the entire Surviving Spouse's pension shall be paid to the qualified Surviving Spouse until his or her death or remarriage. If the Surviving Spouse remarries or dies while there remain Dependent Minor Child or children, the entire Surviving Spouse's pension shall be paid to the Dependent Minor Child or children while they so remain, to be divided equally among said children, if there be more than one.

In the event a cash settlement option is available and exercised pursuant by this Section, the election to accept it must be by or on behalf of all persons deriving or possibly entitled to derive benefits therefrom.

Section 5-119. Pensions for Previously Retired FPDR One Members and Their Surviving Spouses and Children. The pension of any retired member of the pension or a Surviving Spouse or Dependent Minor Child or children of a deceased member, being paid as of July 1, 1947, shall be increased one-third (1/3) over and above the amount being paid on said July 1, 1947, and the total amount of such pension shall be paid from the Fund established by this Act, and not otherwise. The minimum pension for any person covered by this Section and on pension before July 1, 1947, shall be fifty dollars (\$50.00) per month after the above-mentioned one-third (1/3) increase has been effected. Effective July 1, 1962, the Board shall determine the percentage which the actual pension paid under this Section on July 1, 1949, is of the full salary of a First Class Police Officer or First Class Fire Fighter, as the case may be, as such salary was fixed on July 1, 1947; commencing July 1, 1962, and thereafter, increases or decreases shall be made annually at the beginning of each fiscal year of the pensions to be paid under this Section, subject to the minimum fixed above, by applying the percentage determined above to the full salary established by the City for a First Class Police Officer or First Class Fire Fighter, as the case may be, on July 1, 1962, and July 1 of each year thereafter, provided, however, in no event shall the amount paid as so computed, be less than the pension paid immediately prior to July 1, 1962. If a member who retired prior to July 1, 1947 dies or died after July 1, 1947, such member's Surviving Spouse or any Dependent Minor Child or children of such deceased member must qualify in the same manner as Surviving Spouse and children receiving a pension as of July 1, 1947, and those Surviving Spouses and children who qualify shall be paid a pension computed in the same manner as Surviving Spouses and children receiving a pension as of July 1, 1947.

Previously retired members of the Bureau of Police or Fire and their Surviving Spouses and Dependent Minor Children, by accepting any benefits provided herein, shall thereby waive any and all alleged, asserted or claimed rights under the provisions of any previous retirement and/or relief act in effect before the passage of this article.

Section 5-120. Variation in Amount of Benefit or Pension Payments. All benefits and pensions granted and paid under this Act shall vary annually and shall be based upon the current salary of a First Class Fire Fighter or First Class Police Officer, as the case may be, computed annually at the beginning of the fiscal year. A person entitled to benefits or pension under this Act may, before the beginning of the fiscal year, file a written notice with the Board waiving said benefits or pension or a portion thereof, for the ensuing fiscal year. Said waiver once filed and accepted by the Board shall be irrevocable, except death of said person during the term of the waiver shall automatically terminate the effectiveness of said waiver. Any benefits or pension, or portion thereof, so waived shall be forever forfeited. This Section shall not apply to pensions for previously retired members and their Surviving Spouses and children coming under provisions of Section 5-119, which shall be governed solely by said Section.

Section 5-121. Temporary FPDR One Members. A temporary fire fighter or police officer, or the Surviving Spouse and/ or Dependent Minor Children of either, shall only be eligible for the provisions of this Act relating to service-connected disabilities and service-connected death, not including occupational disabilities as herein defined, and not otherwise.

Section 5-122. Military Service. FPDR One Members entering military service in time of a national emergency so declared by the President of the United States or inducted by the federal or State government into the armed forces or the reserve components thereof at a time of said national emergency shall receive credit for all time spent in said service toward retirement under this Act; provided said member returns to active duty in the Bureau of Fire or Police, as the case may be, within sixty (60) days after being relieved with a favorable discharge from said service and does not voluntarily remain in said service after the emergency; and provided further, however, that if a member shall become eligible, while in said service, to receive a pension according to years of service and age, as provided in Section 5-113, it shall not be necessary for such member to return to active duty in the Bureau of Fire or Bureau of Police in order to receive his retirement pension. In case of the member's death while in said service the member's Surviving Spouse and Dependent Minor Child or children shall be eligible for benefits as provided in Section 5-118. In case of injury or sickness contracted by said member while in said service, after being relieved from said service the member shall be entitled to the same benefits the member would have received under the paragraph in Section 5-116 hereof providing for benefits upon nonservice-connected disabilities.

Section 5-123. Funeral Expenses. Upon the death of any active or retired member, the Board shall pay to the person responsible for the funeral expenses of said deceased member a sum not exceeding two hundred dollars (\$200) to be used for funeral expenses.

Section 5-126. Definitions of Terms. The following terms where used herein shall mean as follows:

1. The term "First Class Fire Fighter" shall mean a member of the Bureau of Fire who receives the maximum payment in the fire fighter classification, as set forth in the classification of positions in the Bureau of Fire by the Civil Service Board, and in the event of the change of the name of said classification where the term "First Class Fire Fighter" is used it shall be that position by whatever name it may hereafter be called;
2. The term "First Class Police Officer" shall mean a member of the Bureau of Police who receives the maximum pay in the police bureau classification as set forth in the classification of positions in the Bureau of Police by the Civil Service Board, and in the event of the change of the name of said classification where the term "First Class Police Officer" is used it shall be that position by whatever name it may hereafter be called;

3. The term "Surviving Spouse" shall include widower, and shall mean the spouse of a member who was legally married to a member and not judicially separated or divorced by interlocutory or final decree of court from the member at the time of the member's death;
4. The term "Dependent Minor Child" shall mean a child, natural (including posthumous) or adopted, of a member, who is in fact substantially supported by said member, or such member's Surviving Spouse or estate, while said child remains under eighteen (18) years of age and unmarried;
5. The term "maximum pension" shall mean a pension equal to sixty percent of the then current salary of a First Class Fire Fighter for fire fighters, or that of a First Class Police Officer for police officers, as the case may be, and said pension shall vary annually as said salaries may vary from time to time;
6. The term "earned portion of maximum pension" or "maximum earned pension" shall mean that portion of a maximum pension that the member's years of service bear to the years of service required for a maximum pension, but in no event shall it exceed the maximum pension;
7. The term "active service" shall mean that period of time after the date of permanent appointment during which a member serves and is paid from the payroll of the respective bureau of which he or she is a member; and likewise shall include time spent on military leave to the extent provided in Section 50-122, leave of absence from the Bureau of Police or Bureau of Fire to serve as a Chief of the Bureau thereof, during which time the member shall be classified as a member, and time lost as a result of occupational disabilities and service-connected disabilities. Time served under temporary appointment before date of permanent appointment shall not be included in computing "active service." Time lost from active duty as a result of a nonservice-connected disability for which period of time benefits are paid to a member from the Fund shall not be included in computing "active service";
8. The term "in line of duty" shall mean those acts connected with or resulting from duties assigned, required or authorized of members of the Bureau of Police or Bureau of Fire, as the case may be, which occur during the period of time which elapses between the time a member reports for duty until the time he is relieved from duty, and any other time the member is performing fire or police duties for the City of Portland, provided such acts are not in violation of departmental rules and regulations, City ordinances or State or federal laws;
9. The term "member" shall mean any person permanently and duly appointed in the Bureau of Fire or the Bureau of Police, under Civil

Service rules and regulations, to perform the duties of a regular fire fighter or police officer, including police women, police harbor pilots, police matrons, fireboat pilots and fire department engineers, or any person permanently and duly appointed prior to July 1, 1947, who has paid into the established Fire fighter's and Policemen's Relief and Pension Funds prior to July 1, 1947, in the City of Portland, under whatever designation he or she may be described, in any salary or budget ordinance providing compensation for the members of said Bureau of Fire or Bureau of Police; provided, however, that personnel of the Bureau of Fire or Bureau of Police, who are excluded from membership in the Fund pursuant to statutory authority shall not be deemed "members" under this Article;

10. The term "residence in the State of Oregon" or "resident of the State of Oregon" shall mean actually living in the State of Oregon as well as maintaining residence and domicile therein;
11. The terms "current salary of a First Class Fire Fighter" or "current salary of a First Class Police Officer" shall mean all wages or salary paid on a monthly basis to a member for service in that Civil Service classification. The terms shall not include wages or salaries for extra duties or extra services. For the purposes of payments under this Article "current salary of a First Class Fire fighter " and "current salary of a First Class Police Officer" shall be computed annually at the beginning of the fiscal year;
12. The term "full salary" shall mean the regular wages or salary paid on a monthly basis to a member in the member's particular salary range and step, but shall not include overtime pay;
13. The term "fund" or "Fund" when not accompanied by any descriptive words shall mean the Fire and Police Disability and Retirement Fund created by Section 5-101 of this Article;
14. The term "contributions" unless otherwise qualified, shall mean all moneys contributed by a member to the Fund established by this Act or to previously established fire and police pension funds of the City of Portland;
15. Pronoun: In construing this Article, if the context so requires, the singular pronoun shall be taken to mean and include the plural and vice versa.