

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

LEGAL OPINION

TO: BOARD OF THE POLICE AND FIRE RETIREMENT SYSTEM (PFRS)

ATTN: PRESIDENT WALTER L. JOHNSON, SR. AND
MEMBERS OF THE PFRS BOARD

FROM: BARBARA J. PARKER, CITY ATTORNEY

DATE: MAY 15, 2023

RE: **FREQUENCY OF REGULAR AND COMMITTEE MEETINGS**

I. INTRODUCTION

The Police and Fire Retirement System (“PFRS”) Board (Board) is considering adjusting the frequency of its meetings because the Board does not have enough business to necessitate monthly meetings. PFRS has two standing committees: the Audit & Operations Committee and the Investment Committee. Both committees contain three Board members. The Board, which is composed of seven members, and its two standing committees, currently meet on a monthly basis. The Board has asked that the City Attorney advise whether the Board may meet less frequently than on a monthly basis.

This is a public legal opinion because it interprets the City Charter and the powers and duties of the PFRS Board. Like all of our public legal opinions, this opinion will be posted on the City Attorney’s website at www.oaklandcityattorney.org.

II. QUESTIONS AND BRIEF ANSWERS

Question No. 1

May the PFRS Board reduce the frequency of its regular Board meetings to less than monthly?

Brief Answer:

No. Article XXVI, Section 2601(b) of the City Charter provides that “[t]he Board shall hold regular meetings monthly and special meetings at any time upon the call of its President.” Generally, a charter may only be amended by placing the amendment on

the ballot. (Cal. Const., art. XI, § 3.) Since the meeting frequency is set forth in the Charter, the PFRS Board may not reduce the frequency of its regular meetings.

Question No. 2

May the PFRS Board reduce the frequency of its regular committee meetings to less than monthly?

Brief Answer:

Yes. Because the City Charter does not address committee meetings of the PFRS Board, the Board may reduce the frequency of its regular committee meetings.

Section 5.2(b) of PFRS Board's Rules and Regulations specifically provides as follows:

The regularly scheduled meetings of the Audit/Operations Committee [and the] Investment Committee shall take place at Oakland City Hall on the last Wednesday of each month, at a specified time.

The Board has the authority to amend its own Rules and Regulations. Thus, the Board can amend its Rules and Regulations to reduce the frequency of the committee meetings. As long as the committees can continue to meet their responsibilities to timely make recommendations to the Board in the areas set forth in the Rules and Regulations, the Board may reduce the frequency of its committee meetings to less frequently than a monthly basis. The Board also could amend its Rules and Regulations to eliminate committee meetings and have the Board conduct all business if it can timely perform its Charter-mandated duties.

III. BACKGROUND

Article XXVI, Section 2601(b) of the City Charter provides that "[t]he Board shall hold regular meetings monthly and special meetings at any time upon the call of its President." The Charter does not address committee meetings. However, Article 5, section 5.2(b) of the PFRS Rules and Regulations specifically state that "[t]he regularly scheduled meetings of the Audit/Operations Committee [and the] Investment Committee shall take place at Oakland City Hall on the last Wednesday of each month, at a specified time.

Article 8, sections 8.1 and 8.2 of the Board's Rules and Regulations provide that each committee "shall be a Standing Committee of the Board..." The Rules and Regulations also set forth the duties of the respective committees.

Section 8.1 of the Rules and Regulations provides, in pertinent part:

The Investment Committee shall have the responsibility for making recommendations to the Board in the following areas:

- Review the Plan's overall investment objectives, risk tolerance and performance standards and recommend changes to the Board;
- Recommend the retention or termination of investment managers to the PFRS Board;
- Keep the Board apprised of the performance of the Plan's investment portfolio;
- Recommend the asset allocation of the Plan to the Board;
- Recommend to the Board which investments to target for the purpose of making benefit payments under the Plan; and
- Review and recommend to the Board changes to the Investment Policy.

Section 8.2 of the Rules and Regulations provides, in pertinent part:

The Audit/Operations Committee shall have the responsibility for making recommendations to the Board in the following areas:

- Review the Plan's administrative procedures for the purpose of ensuring prompt delivery of benefits and related services to participants and their beneficiaries and recommend necessary changes to the full Board;
- Review and recommend solutions to specific issues raised by the Board that relate to administration of the PFRS Plan;
- Review the actuarial valuation report and the annual financial audit report of the Plan and recommend approval by the Board, unless the Board President determines that a report should be reviewed in the first instance by the full Board;
- Review the annual budget and recommend approval by the Board;
- Monitor the Plan's administrative budget and assist the Board in defraying reasonable expenses;
- Develop and recommend changes to Board rules, regulations and policies in non-investment areas;
- Review PFRS Rules and Regulations every three years;
- Review PFRS Travel Policy as needed but not less than three years from the previous approval date;
- Recommend approval of board member and staff travel in accordance with the PFRS Travel Policy; and
- Other duties and/ or issues as directed by the Board.

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Article 14 of the PFRS Rules and Regulations provides that the Rules and Regulations may be amended in accordance with the following procedures:

- Amendments shall be read at a regular meetings.
- No vote may be taken earlier than the next regular meeting.
- At least four (4) members of the Board must cast affirmative votes to amend the Rules and Regulations.

The Board last revised the Rules and Regulations on June 27, 2018. On May 26, 2021, the Audit/Operations Committee reviewed the Rules and Regulations and determined that changes were not needed at that time. The Board approved of the Audit/Operations Committee determination. Thus, the Board last approved of the current version of the Rules and Regulations on May 26, 2021.

The Rules and Regulations are signed by the Board President and the Secretary.

IV. ANALYSIS

Since the meeting frequency of the Board's regular meetings is set forth in the Charter, the PFRS Board may not reduce the frequency of its regular meetings. Article XXVI, Section 2601(b) of the City Charter provides that "[t]he Board shall hold regular meetings monthly and special meetings at any time upon the call of its President." A charter may be amended only by the placing the amendment on the ballot. (Cal. Const., art. XI, § 3.) Accordingly, only the voters can reduce the frequency of the PFRS Board's regular meetings.

By contrast, the Board may reduce the meeting frequency of its two standing committee meetings: the Investment Committee and the Audit/Operations Committee, which are set forth in the PFRS Rules and Regulations and which the Charter empowers the Board to establish¹. The Board may amend the Rules and Regulations by a vote of four members in favor of the revisions. (Rules and Regulations Art. 14.) The Audit/Operations Committee is specifically responsible for reviewing the PFRS Rules and Regulations every three years and making recommendations to the Board. (Rules and Regulations 8.2.) Since the Audit/Operations Committee last reviewed the Rules and Regulations in May 2021, the Audit/Operations Committee mandatory review and recommendation is not due until 2024.

The Rules and Regulations set forth specific areas of responsibility for the two committees. As long as the Board is able to ensure the committees meet frequently

¹ City Charter section 2601(e) provides in pertinent part: "The Board shall possess power to make all necessary rules and regulations for its guidance."

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enough to meet their responsibilities as set forth in Article 8, sections 8.1 and 8.2, the Board is authorized to reduce the frequency of its two committees.

V. CONCLUSION

The PFRS Board may not reduce the frequency of its regular meetings but it may reduce the frequency of its two standing committee meetings: the Investment Committee and the Audit/Operations Committee, which are set forth only in the PFRS Rules and Regulations and not addressed by the City Charter.

We recommend that the Audit/Operations Committee discuss this matter and make a recommendation to the Board to revise the PFRS Rules and Regulations to reduce the frequency of the two standing committees of the PFRS Board. Alternatively, the Board may consider the matter directly without a recommendation from the Audit/Operations Committee.

In all events, we recommend revising Article 5, section 5.2b as follows (strikethrough indicates omitted language; underline indicates new language):

Section 5.2b: Standing Committee

The regularly scheduled meetings of the Audit/Operations Committee shall take place at Oakland City Hall on the last Wednesday of ~~each~~ the month, on a quarterly basis, at a specified time.

The regularly scheduled meetings of the Investment Committee shall take place at Oakland City Hall on the last Wednesday of ~~each~~ the month, on a quarterly basis, at a specified time.

Any proposed amendments will need to be read at a regular PFRS Board meeting, and the vote on the amendments must not occur until the next regular meeting. Any amendment requires passage by four (4) Board members.

Very truly yours,



BARBARA J. PARKER
City Attorney

Attorney Assigned:
Selia Warren