

CITY OF OAKLAND
POLICE AND FIRE RETIREMENT BOARD
AGENDA REPORT

OFFICE OF THE CITY CLERK
2006 JUN 23 PM 1:57

TO: City Council Rules and Legislation Committee
FROM: Police and Fire Retirement Board and Finance and Management Agency, Office of Personnel Resource Management
DATE: July 13, 2006
RE: **Report And Resolution Placing A Charter Amendment On The November 7, 2006 Ballot That Would Provide That The Police And Fire Retirement ("PFRS") Board Shall Make Investments In Accordance With The Prudent Person Standard And Remove Investment Restrictions, Which Currently (1) Prohibit The PFRS Board From Investing More Than Fifty Percent Of The PFRS Fund In Equities (Stock And Mutual Funds) And (2) Prohibit Investment In Non-Dividend Paying Stocks Unless The Board Approves Such Investment In Advance On A Case-By-Case Basis**

SUMMARY

Article XXVI of the Oakland City Charter established the Police and Fire Retirement System ("PFRS") and Board to exclusively control the administration and investment of the PFRS Fund. The PFRS retirement plan was established in 1951 and was closed in 1976. The plan provides retirement benefits for sworn police and fire personnel.

Consistent with its fiduciary duties and the powers granted by the California Constitution and the City Charter, the PFRS Board retains financial advisers and investment managers to invest the PFRS fund in a diversified portfolio of investment instruments. At its monthly meetings, the PFRS Board reviews the performance of its investment managers; and the PFRS staff and its investment advisers monitor the PFRS Fund and investment managers on an ongoing basis.

The California Constitution and applicable court decisions require that the PFRS Board and each Board member exercise their powers and duties in accordance with the well established prudent person standard. Consistent with the prudent person standard, the PFRS Board regularly retains investment managers and experts to conduct financial and management audits of its investment managers.

Currently, the City Charter does not permit the PFRS Board to make its investment decisions solely in accordance with the prudent person standard. City Charter section 2601(e) prohibits the PFRS Board from investing more than fifty percent (50%) of the PFRS fund in equities (stock and mutual funds) and requires that the Board invest only in stocks that have paid dividends for the past five years unless the Board, on a case-by-case basis, approves investment in each non-dividend-paying stock in advance of purchase.

Item: _____
Rules and Legislation Committee
July 13, 2006

As explained in greater detail below, these investment restrictions prevent the Board and its investment managers and advisers from investing in the mix of instruments that they determine to be most prudent to maximize investment returns based on changes in economic and market conditions.

The purpose of this report is to present the PFRS Board's request that the City Council adopt a resolution submitting a proposed Charter amendment, entitled "Measure Amending Section 2601(e) of the Oakland City Charter to Provide that the PFRS Board Shall Make Investments in Accordance with the Prudent Person Standard as Required by the California Constitution", which will remove investment restrictions that currently, (1) prohibit the Board from investing more than fifty percent (50%) of the PFRS Fund in equities (stock and mutual funds), and (2) prohibit investment in non-dividend-paying stocks unless the Board approves such an investment in advance on a case-by-case basis.

The PFRS Board passed a motion recommending that the City Council submit the proposed amendment to the electors at the General Municipal Election on November 7, 2006.

FISCAL IMPACT

There is no immediate fiscal impact as a result of changing the City Charter to allow the PFRS Board to utilize the prudent person standard. Long term, changing this provision allows the PFRS Board to actively manage the allocation of the System's assets to adjust to changes in economic conditions.

The Charter mandates that the Police and Fire Retirement Fund must be fully funded by 2026. As of June 30, 2005, the PFRS actuary estimates that the System's unfunded liability is \$268.7 million. Because the plan was closed in 1976 and all except three members have retired, this liability will be covered by (1) City contributions and (2) investment returns. By changing the System's investment policy, the Board will increase its flexibility to adjust investments as market conditions change in accordance with the prudent person standard and thereby increase investment returns and decrease the City's unfunded liability to the Retirement System. There are no guarantees that the amendment will result in greater investment returns, but PFRS investment advisers believe that the prudent person standard maximizes the Board's ability to make changes to its investment mix as market and economic conditions change.

BACKGROUND

The Police and Fire Retirement System (PFRS) is a closed defined benefit plan, which was created pursuant to Article XXVI of the City Charter. A defined benefit plan provides its members a prescribed retirement pension based on the plan formula. The PFRS plan pays its members a percentage of the compensation currently paid to sworn personnel who hold the rank the retired member held prior to retirement. PFRS has a governing board of seven members that

oversee the administration of the System and the management of its investment portfolios. There are currently 1,322 retirees and 3 active members. The plan currently has over six hundred million dollars (\$600,000,000) in assets.

The City Council previously submitted to the Oakland electorate an amendment to the City Charter which relaxed the investment restrictions (Measure E). On March 26, 1996, the Oakland voters passed Measure E which amended Article XXVI, Section 2601(e) of the Oakland City Charter to increase the percentage of the invested funds of the System that may be invested in common stocks and mutual funds from forty percent (40%) to fifty percent (50%) and gave the PFRS Board the option to approve, on a case by case basis, the purchase of common stocks that have not paid a cash dividend for the five years preceding the date of investment. These amendments have had a positive impact on the funding status of the System as they allowed the Board to take advantage of a wider range of investment opportunities, consistent with the prudent person standard.

In 1997, the City issued pension obligation bonds and made a contribution to the System of approximately \$417 million. As a result, no employer contributions are required through the year ending June 30, 2011. In 2005, the City made a voluntary contribution of \$17,709,888. On July 1, 2011, the City will again be required to make contributions to the System, based on July 1, 2010 assets and liabilities. The actuarial valuations conducted prior to 2010 are primarily to track the relationship between the available assets and the estimated liabilities so that the City will be prepared for the necessary contributions in July 2011. Section 2619(6) of the City of Oakland Charter, mandates that the unfunded liability is expected to be fully funded by the year 2026.

KEY ISSUES AND IMPACTS

The asset management requirements currently set forth in the Charter severely restrict the PFRS Board's ability to capture investment opportunities that would achieve the highest rate of total return possible within prudent levels of risk. For example, the existing PFRS Charter provision mandates that the PFRS Board invest no more than fifty percent (50%) of the book value of all invested funds of the retirement system in common stocks and mutual funds. Another example is that the Charter mandates that the PFRS Board approve, on a case-by-case basis, all investment in common stocks that have not paid cash dividends for the five years preceding the date of investment. The PFRS Board believes that these Charter provisions hinder the investment performance of the System making it difficult to reach its actuarially assumed rate of return of eight percent (8%).

The current PFRS Investment Policy includes investments in the following asset classes:

- Public Equity (stocks)
- Domestic Equity (stocks)
- International Equity (stocks)

- Fixed Income (bonds)
- Real Estate

The proposed measure would amend Article XXVI of the Oakland City Charter to provide for an asset management policy that aligns with policies of other public pension plans throughout the country that have adopted into their governing documents an investment management approach that is consistent with the prudent person standard. Examples include the Public Employees' Retirement System ("PERS"), The San Francisco Employees Retirement System ("SFERS") and The Los Angeles County Employees Retirement Association ("LACERA").

PFRS and other California public retirement boards are required by the California Constitution to comply with the prudent person standard in managing retirement funds. Article XVI §17 of the California Constitution provides that "[n]otwithstanding any other provisions of law or this Constitution to the contrary, the retirement Board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system. . .", subject to various qualifications including, but not limited to the following:

1. Board members shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system;
2. the Board's duty to its participants and their beneficiaries shall take precedence over any other duty;
3. **Board members shall discharge their duties with the "care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. . .";**
4. **the Board shall "diversify the investments of the system so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.";**
5. the Legislature by statute may continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section;

The "prudent man standard of care" found in the Employee Retirement Income Security Act (ERISA) of 1974 is consistent with the prudent person standard established by the California Constitution and court decisions. Although the ERISA is a federal law that sets minimum

pension plan standards in private industry, many public sector pension plans have adopted ERISA's prudent man standard of care as it closely aligns with the fiduciary responsibilities of public pension plans.

A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries; and defraying reasonable expenses of administering the plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and in accordance with the documents and instruments governing the plan.

While the prudent person standard offers maximum flexibility, the Board will continue to set appropriate investment parameters in its Investment Policy which provides instructions to all of its investment managers.

Although the PFRS Board exercises a relatively conservative investment approach, the Board believes the prudent person standard will provide significantly more flexibility to invest funds in a way that will maximize risk adjusted investment returns on investments necessary to realize the actuarial assumptions of eight percent (8%) investment rate of return and ultimately reach the target funding level. The use of this standard will also give the Board the flexibility to adjust the investment portfolio to reflect current and changing economic and market conditions without returning to the voters to seek further amendments to the City Charter.

The tables below provide examples of the condition of investments under the existing asset allocation requirements as currently set forth in the Charter.

Table 1, Schedule of Funding Progress prepared by the System's Actuary, Milliman Inc., displays the actuarial accrued liability, value of assets, unfunded liability and funded status for the four years of July 1 2002-July 1, 2005. These results were realized under the current asset allocation configuration of fifty percent (50%). The performance reflects the System's failure to consistently meet the assumed actuarial rate of return (8 percent) which has had a direct impact on the overall funded status. The unfunded liability has increased from \$200 million to \$268 million while the overall funded status declined from 77.1% to 69.6% over the four year period.

Table 1
Schedule of Funding Progress
Police and Fire Retirement System
(\$millions)

| Valuation date July 1 | Actuarial Accrued Liability | Actuarial Value of Assets | Unfunded Liability | Funded Status |
|--------------------------|-----------------------------------|---------------------------------|-----------------------|------------------|
| 2002 | 875.5 | 674.7 | 200.8 | 77.1% |
| 2003 | 890.6 | 615.1 | 275.5 | 69.1% |
| 2004 | 890.3 | 621.6 | 268.6 | 69.8% |
| 2005 | 883.6 | 614.9 | 268.7 | 69.6% |

Source: Milliman, Inc. Actuarial Report as of June 30, 2005

Table 2, Historical Portfolio Returns, illustrates the difference in investment returns over one, three, five and ten years that would have been realized if the System had utilized a different allocation of equities and fixed assets. The most dramatic impact can be seen in the ten-year return of an additional \$60 million that could have been realized using an 80/20 allocation. The prudent person standard allows the Board to adjust the allocation in accordance with the current economic environment.

Table 2
Historical Portfolio Returns

| | 1 Year | 3 Year | 5 Year | 10 Year |
|--------------------------------|---------------|---------------|-----------------|----------------|
| Actual PFRS performance | | | | |
| Annualized Return | 8.3% | 8.8% | 4.6% | 5.9% |
| Comparison Allocations | | | | |
| 40/60 stock/bond allocation | (\$1,287,176) | (\$8,209,606) | \$38,348,709 | (\$25,463,951) |
| 60/40 stock/bond allocation | \$1,047,771 | \$7,449,773 | (\$44,151,506) | \$22,884,197 |
| 70/30 stock/bond allocation | \$1,844,295 | \$14,027,214 | (\$94,343,978) | \$43,025,405 |
| 80/20 stock/bond allocation | \$2,380,361 | \$19,629,205 | (\$150,792,152) | \$60,277,069 |

Source: Comparison allocation returns were estimated by PFRS investment consultant Pension Consulting Alliance based on historical performance of domestic equities and fixed income indices.

Table 3, Projection of Future Contributions, shows a projection of what the City will be required to contribute in 2011-2012 if the 8 percent actuarial rate of return is met in conjunction with wage growth of 4 percent, 4.50 percent or 5 percent. It is estimated that the City will need to begin contributing \$37 million annually to meet their PFRS liability by 2026. Ideally, the Plan should yield more than 8 percent on its investments to reduce the City’s liability in 2011 and beyond.

Table 3
Schedule of Funding Progress
Police and Fire Retirement System
(\$millions)

| | Valuation Assumptions | Unfavorable Experience | Favorable Experience |
|--|--------------------------|---------------------------|-------------------------|
| Investment Returns | 0.08 | 0.08 | 0.08 |
| Wage Growth | 0.045 | 0.05 | 0.04 |
| Annual City Contribution 2011-2012 Amount | \$37 million | \$41 million | \$32 million |

Source: Milliman, Inc. Actuarial Report as of June 30, 2005

RECOMMENDATION(S) AND RATIONALE

The Police and Fire Retirement Board recommends that City Council adopt a resolution submitting to the voters an amendment to Article XXVI of the Charter of the City of Oakland Police and Fire Retirement System, that would allow the PFRS Board to make investments solely in accordance with the prudent person standard. The use of this standard allows the Board to adjust to current and changing economic conditions and also allows the Board to take advantage of a wider range of investment opportunities to meet or exceed investment expectations. As discussed earlier, the prudent person standard is well established by court decisions; the California Constitution requires that California public pension boards comply with that standard; and many public pension systems utilize that standard.

The Finance and Management Agency supports the recommendation.

Item: _____
 Rules and Legislation Committee
 July 13, 2006

ACTION REQUESTED OF THE CITY COUNCIL:

The Police and Fire Retirement Board and the Finance and Management Agency request that the City Council adopt a resolution submitting a Charter amendment to the voters on November 7, 2006 that would allow the PFRS Board to make investments solely in accordance with the prudent person standard when managing and investing the assets of the PFRS Fund, thereby eliminating certain current investment restrictions.

Respectfully submitted,

POLICE AND FIRE RETIREMENT
BOARD

By:


Robert Crawford, President


William E. Noland, Director
Finance and Management Agency

Reviewed by:

Marcia Meyers, Director of Personnel
Office of Personnel Resource Management

Prepared by:

Yvonne S. Hudson, Manager
Retirement and Benefits

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:


OFFICE OF THE CITY ADMINISTRATOR

Item: _____
Rules and Legislation Committee
July 13, 2006

CALIFORNIA CONSTITUTION
ARTICLE 16 PUBLIC FINANCE

SEC. 17. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to all of the following:

(a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

(b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

(c) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The members of the retirement board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(e) The retirement board of a public pension or retirement system,

consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section.

(h) As used in this section, the term "retirement board" shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term "retirement board" shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system.

2006 JUN 20 PM 4:02

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

[Signature]
Office of the City Attorney

Resolution Submitting On the Council's Own Motion To Be Voted Upon At The Municipal General Election To Be Held on November 7, 2006, A Proposed Charter Amendment, Entitled "MEASURE AMENDING CITY CHARTER SECTION 2601(E) TO PROVIDE THAT THE POLICE AND FIRE RETIREMENT BOARD SHALL MAKE INVESTMENTS IN ACORDANCE WITH THE PRUDENT PERSON STANDARD AS REQUIRED BY THE CALIFORNIA CONSTITUTION", Which Will Remove Investment Restrictions That Currently (1) Prohibit The Board From Investing More Than Fifty Percent of the Retirement Fund In Equities (Stock and Mutual Funds) And (2) Prohibit Investment In Non-Dividend Paying Stocks Unless The Board Approves Such Investment In Advance On A Case-By-Case Basis

WHEREAS, Article XXVI of the Oakland City Charter established the Police and Fire Retirement System ("PFRS") to provide retirement benefits for Police and Fire Department sworn employees and created the Police and Fire Retirement Board to exclusively control the administration and investment of the funds of the system (the "Police and Fire Retirement Fund"); and

WHEREAS, Oakland City Charter section 2601(e) provides that the total amount of retirement system funds invested in common stocks and mutual funds "shall not exceed fifty (50) percent of the book value of all invested funds of the retirement system."; and provides further that the Police and Fire Retirement Fund may be invested only in common stocks that "at the time of purchase, have paid cash dividends for not less than five years next preceding the date of investment or prior to the purchase of such stocks, the Board shall expressly approve purchase of same by motion adopted with not less than five (5) Board members voting in favor of such purchase"; and

WHEREAS, the California Constitution requires that the PFRS Board and other California public pension boards discharge their duties and exercise their powers in accordance with the prudent person standard and "diversify the investments of the system so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is clearly not prudent to so; and

WHEREAS, the prudent person standard is well established by court decisions and is consistent with the standard that the Employment Retirement Income Security Act ("ERISA") has established for private pension systems; and

WHEREAS, based on a survey of other city and county retirement systems' investment guidelines and the recommendation of the Police and Fire Retirement Board's investment advisors, allowing the Board to make investments solely in accordance with

investment return and maintain a prudent investment position; and

WHEREAS, for the foregoing reasons, the City Council and the City of Oakland Police and Fire Retirement Board desire to amend City Charter section 2601(e) to permit the Police and Fire Retirement Board to invest the PFRS retirement fund assets in accordance with the prudent person standard, thereby removing the aforesaid investment restrictions; and

WHEREAS, section 10400 et seq. of the Elections Code allows for the Oakland Municipal General Election of November 7, 2006 to be consolidated with the Statewide General election to be held on the same date; now, therefore be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to November 7, 2006 to file with the Alameda County Board of Supervisors and the County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the proposed Charter Amendment text shall be as follows:

Article XXVI of the Charter of the City of Oakland is amended at section 2601(e) to read:

(e)The Board shall possess power to make all necessary rules and regulations for its guidance and shall have exclusive control of the administration and investment of the fund established for the maintenance and operation of the system, subject to the terms, conditions, limitations and restrictions hereinafter set forth. All funds received by the Board not required for current disbursements shall be invested in, but not limited to: . . .

(3) Common Stocks provided that:

- a. The Board shall make investment decisions regarding total of such investments together with the total of all holdings of shares of diversified management investment companies (Mutual funds) (4 next below) shall not exceed fifty (50) percent of the book value of all invested funds of the retirement system in accordance with the prudent person standard as defined by applicable court decisions and as required by the California Constitution. . . .
- c. ~~Such stocks shall, at the time of purchase, have paid cash dividends for not less than five years next preceding the date of investment or prior to the purchase of such stocks, the Board shall expressly approve purchase of same by motion adopted with not less than five (5) Board members voting in favor of such purchase. . . .~~

(4) Shares of diversified management investment companies (Mutual Funds) provided that:

- a. The Board shall make investment decisions regarding total of such investments together with the total of all holdings of shares of common stocks (3 next above) shall not exceed fifty (50) percent of the book value of all invested funds of the retirement system in accordance with the prudent person standard as defined by applicable court decisions and as required by the California Constitution. . . .

and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed Charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE _____

MEASURE TO _____

| | | |
|--|-----|--|
| Measure _____. Shall section 2601(e) of the Charter of the City of Oakland be amended to provide that the Police and Fire Retirement Board shall make investment decisions regarding common stocks and mutual funds in accordance with the prudent person standard as established by court decisions and as required by the California Constitution? | Yes | |
| | No | |

FURTHER RESOLVED: That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the November 7, 2006 election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 7, 2006 election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California