

Employees' Retirement Fund Governance Overview

**Government Performance
and Financial Management
Committee**

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City of Dallas

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Purpose

- Background/overview of
 - Employees' Retirement Fund (“ERF”) and
 - lawsuit by ERF against the city and recent developments.
- Compare recent (“PFPS”) legislative changes, the Charter, and other city ordinances to Chapter 40A, “Employees Retirement Fund,” regarding governance.
- Next steps.

Background/Overview

- Employees' Retirement Fund (ERF) was established on January 1, 1944.
- Amended 22 times over the past 76 years.
 - Latest amendments in 2016, establishing Tier B employees.
- City Charter and Dallas City Code provide terms and term limits for appointed board and commission members.
- Council amended Chapter 8 to add term limits for elected members of the ERF board.
 - Three consecutive terms of whatever length of time.
- ERF filed a lawsuit against the city, arguing that the Chapter 8 term limits ordinance amendment was invalid because it amended Chapter 40A and did not follow the three-step process in Chapter 40A.

Background/Overview

- City filed a counterclaim and a motion for summary judgment, arguing the term limits ordinance amendment is valid under Texas law and the Dallas City Code. ERF filed its own MSJ asking the court to find the term limits ordinance amendment invalid.
- On December 24, 2019, the court granted the City's MSJ and denied ERF's, finding the Chapter 8 term limits ordinance amendment valid, resolving the principal issue in the City's favor.
- ERF (Chapter 40A) is drafted in three parts: (1) creation of the fund/board, composition and officers, terms, and powers and duties of the board (governance); (2) the plan itself; and (3) process for amendments to the chapter.
- This presentation compares the PFPS legislation, the Charter, and other city ordinances and identifies sections of Chapter 40A for further discussion.

Retirement Programs

PFPS

- The Police and Fire Pension System is governed by Texas Civil Statute Article 6243a-1, Pension System for Police Officers and Firefighters in certain cities.
- Significant amendments were made to this article during the 2017 Legislative Session.
- The Board of Trustees is not subject to city ordinances as it is not a city board and is preempted by the legislature regarding its code of ethics.

ERF

- Employees' Retirement Fund (ERF) was established by ordinance in accordance with the Texas Government Code.
- ERF is a city board (board of the city established by ordinance).
- The board and ERF employees are subject to applicable city ordinances.

Board Composition

PFPS has 11 board members

- Six appointed by the mayor.
- Three elected by the members and pensioners through a nomination committee.
- One current or former officer nominated/elected by members.
- One current or former fire fighter nominated/elected by members.
- Cannot be an elected official.
- Not required to reside in Dallas.

ERF has 7 board members

- Three appointed by the city council who may be city council members.
- Three employees from different departments of the city elected by members of the retirement fund.
- The city auditor.
- Appointed members must reside in Dallas.

Elected Member Provisions

PFPS

- Three elected under rules adopted by the board, members, and pensioners from a slate of nominees, selected and vetted by the nominations committee.
- One current or former officer nominated/elected by members of the pension system under rules adopted by the board.
- One current or former fire fighter nominated/elected by members of the pension system under rules adopted by the board.
- Board supervises the election.

ERF

- For elected board positions, the board may adopt rules and regulations not inconsistent with this chapter, the constitution or laws of the state.
- Determine the time, method, and manner of election to the board.
- If only one eligible employee or retiree is nominated, that employee or retiree will be declared elected by the board without requiring an election by the members of the retirement fund.

Board Member Qualifications

PFPS

- To be appointed or elected a trustee under this section, a person must have demonstrated financial, accounting, business, investment, budgeting, real estate, or actuarial expertise.
- To be appointed or elected through the nomination committee, a trustee may not be an active member or pensioner.

ERF

- No specific qualifications other than those listed in Chapter 8 for all appointed city board members (i.e., resident of Dallas)

Chair and Vice-Chair Appointments

PFPS

- The board shall, in June of each odd-numbered year, elect from among its trustees a chairman, vice chairman, and a deputy vice chairman, each to serve for two-year terms.

ERF

- The board shall elect a chair and a vice chair at the first regular meeting each calendar year.
- If the office of chair or vice-chair becomes vacant, the board will elect a replacement at its next meeting.

Charter/Chapter 8

- The mayor shall appoint the chair of each board from among the members appointed, subject to confirmation by the city council.
- Vice-chair of every board of the city must be appointed by the full city council, unless otherwise provided in state law, city charter, or city code.

Board Member Terms and Term Limits

PFPS

- Mayor determines whether six trustee serve for staggered two- or three-year terms.
- Nominations committee determines whether elected trustees serve for staggered two- or three-year terms.
- A trustee appointed or elected may not serve for more than six consecutive years on the board.

ERF

- Appointed members serve two-year terms.
- Elected members serve three-year terms.

Charter/Chapter 8

- Appointed members may not serve more than four consecutive two-year terms.
- Elected (ERF) members may not serve more than three consecutive three-year terms.

Board Vacancy

PFPS

- Vacancy of an appointed or nominations committee elected trustee is filled in the same manner as the original appointment/election.
- Board by rules determine how to fill a vacancy for an elected officer or fire fighter.

ERF

- Vacancy of city council appointee: city council appoints new member to fill the unexpired term.
- Vacancy of elected member: board holds an election within 90 days after the vacancy to fill the unexpired term.

City Charter/Chapter 8

- Vacancy of an appointed member, city council appoints a new member to fill the unexpired term.

Removal or Forfeiture

PFPS

- An appointed trustee may be removed by the mayor for cause.
- An elected trustee may be removed by the nominations committee for cause.

ERF

- No specific removal or forfeiture provisions;
- For appointed members, Charter/Chapter 8 provisions apply.

Charter/Chapter 8

- A board/commission member appointed by city council may be removed from office for any cause deemed by city council sufficient for removal in the interest of the public.
- Forfeiture is an automatic loss of membership (attendance, qualifications).

Trustee Training

PFPS

Appointed/elected trustee must complete a training program with information regarding the:

- law governing the pension system's operations;
- programs, functions, rules, and budget of the pension system;
- scope and limitations on the rulemaking authority of the board;
- results of the most recent formal audit of the pension system;
- laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest;
- other laws applicable to a trustee in performing the trustee's duties, including the board's fiduciary duties;
- code or codes of ethics and any applicable ethics policies adopted by the Texas Ethics Commission; and
- financial training regarding the risks of investing in alternative investments.

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Trustee Training

PFPS Training Cont'd

- The executive director shall create a training manual and distribute a copy of the training manual annually to each trustee. Each trustee shall sign and submit statement acknowledging receipt of the training manual.

PFPS Ethics

- The board shall adopt a code or codes of ethics consistent with the Government Code. In adopting or amending a code or codes of ethics, the board may consider comments on the policy from the city attorney of the city.

ERF

- No specific training requirements.
- ERF board members must comply with the city Code of Ethics.

Sections of 40A to consider for further review

- Section 40A-4(a)(11). That the board will determine the time, method, and manner of elections to the board.
- Section 40A-4(a)(2). That the board can adopt rules and regulations not inconsistent with 40A and the constitution and laws of the state.
- Section 40A-4(a)(18). That the board may interpret Chapter 40A as necessary to resolve problems.
- Section 40A-4(h). That if the board is in doubt as to construction or interpretation of any provisions in Chapter 40A, it may resolve all such doubts and questions without obtaining a judicial construction. All constructions and interpretations made by the board are binding and conclusive.
- Section 40A-35. That this chapter may not be amended except by a proposal initiated by either the board or the city council that results in an ordinance approved by the board, adopted by the city council, and approved by a majority of the voters voting at a general or special election.

Next Steps

- Input and direction from GPFM.

QUESTIONS

