

January 25, 2017

## **RESOLUTION**

**WHEREAS**, the Dallas Police & Fire Pension System (System) has taken steps that include: (1) making risky investments through limited-purpose entities that it has formed without any legal authority, or with which it has partnered without legal authority, under agreements that purport to make information about such entities secret; (2) borrowing to make investments instead of only investing “surplus” as required by law; (3) engaging in extensive, expensive, and unnecessary travel around the world by board members for the ostensible purpose of inspecting investments; (4) authorizing excessive disbursements to pensioners from DROP accounts even when the amount of such disbursements impaired the Dallas Police & Fire Pension System’s ability to pay retirement, disability, and survivor pension benefits; (5) considering the sale of assets to resume DROP disbursements even after temporarily deferring them under a judicial order; (6) authorizing additional millions of dollars in response to “cash calls” from investment enterprises even when such disbursements also impair the Dallas Police & Fire Pension System’s ability to pay retirement, disability, and survivor pension benefits; (7) allowing the System and undisclosed investments to be run by current and former employees who are not fiduciaries of the System; (8) making board decisions without properly posting agendas that adequately describe items to be discussed or actions to be considered, as required by law; and (9) incurring wasteful, uncontrolled, and high administrative expenses;

**WHEREAS**, the Dallas Police & Fire Pension System’s practices, including overstating asset values, misclassifying risky investments to make them appear safer and to make the System’s investments appear more diversified, entering into opaque investment agreements, and failing to post sufficiently informative agenda items, as required by law, are among the many methods that the System has used to evade state and city oversight that would have prevented many, if not all, of the enumerated improper practices and the current dire financial condition;

**WHEREAS**, the System has gone to the lengths of hiring a private investigator to conduct a forensic trace on a councilmember trustee who publicly opposed the System’s irresponsible steps and clandestine practices;

**WHEREAS**, Article 6243a-1 governs the pension funds of police officers and fire fighters to permit the consolidation of the terms of certain pension plans;

**WHEREAS**, Article 6243a-1 delegates unfettered powers to the System and its board and members, with no meaningful standards or safeguards, and therefore the funds supposedly held in trust by the System must be protected by a duly appointed and authorized fiduciary operating under court supervision;

**WHEREAS**, several past and current System board members appear to have direct personal financial interests, including sizable balances under the System's Deferred Retirement Option Plan (DROP) program, creating material conflicts between their personal financial interests and the interests of the System and its members, pensioners, and beneficiaries, but they have consistently failed to recuse themselves from board decisions and instead have deliberated and voted on matters subject to those conflicts, and appear determined to continue this practice, and therefore the System and its members and pensioners must be protected by a disinterested and loyal fiduciary;

**WHEREAS**, some of the persons who administer Article 6243a-1 apparently interpret it to limit or eliminate the city's powers to protect the financial security of its valued first responders, retired first responders, and their families and survivors;

**WHEREAS**, the System's board has administered plan assets in a manner that impairs the System's ability to achieve its primary fiduciary purpose of paying retirement, disability, and survivor pension benefits;

**WHEREAS**, Article 6243a-1's lack of limits, checks, and balances on the powers of the pension system board and plan members make it difficult or impossible for the state or the city to obtain necessary records and information needed for adequate oversight of the System, and permitted the System for years to overstate asset values to conceal its deteriorating financial condition from the city, the state, and its own members, directly causing the current emergency situation;

**WHEREAS**, because of the above and other deficiencies in Article 6243a-1, the Dallas Police & Fire Pension System has escaped any meaningful governance supervision, leading to incurrence of obligations far in excess of assets, increased benefits and features such as shockingly generous DROP returns, without the ability to honor those commitments, and materially diminished morale, security, and retention among important first responders who participate in plans administered by the Dallas Police & Fire Pension System;

**WHEREAS**, the city has insufficient tools under Article 6243a-1 to enable the city to protect the System's pensioners' retirement, disability, and survivor pension benefits while maintaining its own fiscal health and the safety of its residents;

**WHEREAS**, this situation has created a crisis posing an imminent and substantial threat to the fiscal health and public safety of the city;

**WHEREAS**, the System board, if it validly exists, is constitutionally and statutorily required to hold assets of the System in trust but has inexplicably abandoned its fiduciary obligations, as evidenced by, among other things, the board's stated intent to liquidate assets to resume uncontrolled DROP disbursements even while leaving underfunded its ability to pay retirement, disability, and survivor pensions;

**WHEREAS**, this situation as created an emergency substantially threatening the financial security of valued and courageous first responders who participate in pension plans created based on Article 6243a-1, as well as the financial security of their families;

**WHEREAS**, this emergency requires substantially increased control and oversight of the System;

**WHEREAS**, absent extraordinary measures, the Dallas Police & Fire Pension System will soon run out of sufficient funds to pay retirement, disability, and survivor pension benefits;

**WHEREAS**, the city's extensive and intensive efforts to negotiate agreed plan amendments and joint proposals to be considered by the Legislature to alleviate this emergency have been rejected by the System;

**WHEREAS**, until there are statutory changes that provide adequate governance tools to the city and/or financial support, the only remaining feasible method of meeting this emergency and of effectively supporting and protecting, for the near and long term, the Dallas Police & Fire Pension System, is extraordinary judicial action including, for example, receivership, declaratory relief, mandamus, and injunction; and,

**WHEREAS**, the public interest, the city's interest, and fundamental fairness require that the city indemnify and reimburse any and all such councilmembers who take such actions for their consequential expenses, and defend and indemnify them from any liability arising from such actions, and such indemnity, reimbursement, and defense will serve a public purpose; **Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**Section 1.** That the members of the city council who are also Dallas Police & Fire Pension System board members are strongly encouraged to take all lawful measures, including without limitation retaining outside counsel for the purpose of seeking judicial remedies, to address this dire emergency situation.

**Section 2.** That the city shall, to the fullest extent permitted by applicable law, indemnify, hold harmless, and defend all such councilmembers who take such actions from and against all losses, claims, actions, demands, obligations, judgments, settlements, damages, liabilities, costs, and/or expenses of any kind (including without limitation attorneys' fees and costs), whether or not involving a third-party claim, to which such councilmembers may become subject that in any way arise from, relate to, and/or result from any such actions.

**Section 3.** If any such councilmember takes any such actions, including without limitation retaining outside counsel for the purpose of seeking judicial remedies, the city shall pay (as they are incurred) such councilmember's legal and other expenses (including without limitation attorneys' fees and costs, and the costs of any investigation and/or preparation) incurred in connection therewith; provided, however, that the city

attorney will review any such payments to ensure the public purpose is accomplished and the public's investment is protected, and that no payment shall be made without the city attorney's approval on those grounds, which approval shall not be unreasonably withheld.

**Section 4.** If any such councilmember seeks judicial remedies, such councilmember shall, to the fullest extent permitted by applicable law, apply for an order for payment by any adverse parties of such councilmember's legal expenses (including without limitation attorneys' fees and costs), and such councilmember shall direct payment to the city of any such legal expenses that such councilmember actually and finally recovers from any adverse parties.

**Section 5.** That the city remains dedicated to providing a secure pension for retired and disabled first responders and their families, and providing for survivors, while not jeopardizing the public treasury, and the city will receive a return benefit from the proposed reimbursement, defense, and indemnity because such legal action is necessary to save the System from looming insolvency, which would severely compromise the morale and retention of the city's first responders and result in substantial claims against the city that would be expensive and time-consuming to defend even though not meritorious, and there would be financial risks to the city.

**Section 6.** That regardless of any legal action by the city council members who are trustees of the System or by others, the city will continue to seek consensual remedies for this emergency situation.

**Section 7.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the city of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By \_\_\_\_\_  
Assistant City Attorney