

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

CORRECTED

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**April 1, 2010**

### CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:37 a.m., on Thursday, April 1, 2010, in regular session at Department of Retirement Services, 1737 N. First St, Suite 600 - San Jose, CA, 95112.

### ROLL CALL

#### Present:

DAVID BACIGALUPI

CONRAD TAYLOR

ROSE HERRERA

KEITH KEESLING

SAM LICCARDO

SCOTT JOHNSON

**Chair**

**Vice Chair**

**Trustee – Absent**

**Trustee**

**Trustee – arrived 8:43 A.M.**

**Trustee**

### ALSO PRESENT:

**Russell Crosby**

**-SECRETARY**

Donna Busse

-Staff

Mollie Dent

-City Attorney Office

Toni Johnson

-Staff

Cristin James

-Staff

Jim Jeffers

- Attorney

Richards Fairhurst

- SJPD (Retired)

Sandra Holloway

- SJPD

Lt. Mark Bustillos

-SJPD

Carol Bermillo

-Staff

Amanda Ramos

-Staff

Mike Moehle

-Staff

Sam Swift

-Attorney

Ron Kumar

-Staff

Sharon Erickson

-City Auditor

Robin Opheim

-City Auditor's Office

Veronica Niebla

-Staff

Karin Carmichael

-Staff

Maria Loera

-Staff

Allision Suggs

-OER

Linda Charfauros

-Fire

Antonio Guerra

- Mayor's Office

## REGULAR SESSION

### ORDERS OF THE DAY - None

### RETIREMENTS

#### 1. Service

a. Jack Overstreet, Police Officer, Police Department, effective April 17, 2010; 25.01 years of service.

(M.S.C. Taylor/Keesling) Motion to approve. Motion carried 4-0-2.

b. Gregory H. Sancier, Police Officer, Police Department, effective April 16, 2010; 25.01 years of service (Reciprocity).

(M.S.C. Taylor/Keesling) Motion to approve. Motion carried 4-0-2.

c. April Serr, Fire Engineer, Fire Department, effective April 1, 2010; 24.25 years of service.

(M.S.C. Keesling/Taylor) Motion to approve. Motion carried 4-0-2.

d. David R. Yazzolino, Police Sergeant, Police Department, effective April 17, 2010; 24.94 years of Service.

(M.S.C. Taylor/Keesling) Motion to approve. Motion carried 4-0-2.

#### 2. Disabilities - NONE

3. **Change in Status -**

- a. **Richard Fairhurst, Retired Captain, Police Department. Request for change in status to Service-Connected Disability Retirement effective January 31, 2007; 30.22 years of service.**  
 Retired Police Captain Fairhurst was present and represented by Mr. Jeffers. The following medical reports were received:

MEDICAL REPORTS – DR’S NAME	DATED
1. GRADY JETER, M.D.	12/02/09 (TWO REPORTS), 09/14/06, 03/26/03, 05/17/01
2. GORDON BRODY, M.D.	11/10/2009 (TWO REPORTS), 04/03/08, 11/14/07
3. CHARLES BORGIA, M.D.	10/02/2009
4. CHRISTOPHER MOW, M.D.	08/20/2009 (TWO REPORTS), 02/15/08, 04/23/07, 01/26/07
5. LUCY LIN, M.D.	06/25/2009 (FOUR REPORTS), 04/17/07 (TWO REPORTS), 03/13/07 (TWO REPORTS), 03/06/07
6. EDWARD DAMORE, M.D.	01/09/07
7. JEFFREY HOLMES, M.D.	11/20/06
8. MARK CULTON, M.D.	07/11/06
9. OSCAR ABELIUK, M.D.	04/01/06, 11/22/03
10. ARTHUR MESSINGER, M.D.	07/15/05
11. ELLA BENOZA, M.D.	07/08/05
12. MATHEW TRAN, M.D.	07/12/04
13. RENE ORQUIZA, M.D.	07/22/03
14. ROBERT SCHIER, M.D.	12/06/02
15. RAJUL PANDIT, M.D.	06/08/01
16. STEVEN MUSICH, D.C.	04/23/01

MEDICAL REPORT FROM BOARD’S DIRECTOR	DATED
RAJIV DAS, M.D.	03/10/2010

(Trustee Liccardo arrives at 8:43)

(M.S.C. Taylor/Keesling) to approve application. Motion carried 4-1-1 (Johnson – no).

- b. **Robert J. Martone, Retired Fire Captain, Fire Department. Request for change in status to Service-Connected Disability Retirement effective January 24, 2009; 32.69 years of service.**  
 Retired Fire Captain Martone was present and was represented by Mr. Swift. The following medical reports were received:

MEDICAL REPORTS – DR’S NAME	DATED
PATRICK MC CREESH, M.D.	12/11/2009(8 RPTS); 11/24/2009; 08/24/2009 (2 RPTS); 08/18/2009; 04/09/2009; 01/10/2005; 01/29/2004;
STEVEN FEINBERG, M.D.	05/19/2009
RAY HSIEH, M.D.	10/09/2008
MRI – MD UNKNOWN (LAST PG MISSING)	09/05/2008
DAVID KRAMER, M.D.	01/24/2008
MURRAY SOLOMON, M.D.	05/16/2005

MARK EASTLAND, D.C.	06/16/2003; 04/11/2002; 02/28/2001
ERIC TREFELNER, M.D.	01/07/2000
PETER FEDIAY, D.C.	07/08/1998; 02/05/1998

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	03/10/2010

(M.S.C. Taylor/Keesling) to approve application. Motion carried 5-0-1.

- c. **Robert Mueller**, Retired Fire Captain, Fire Department. Request for change in status to Service-Connected Disability Retirement effective January 23, 2010; 25.52 years of service. Retired Fire Captain Mueller was present and represented by Mr. Swift. The following medical reports were received:

MEDICAL REPORTS – DR'S NAME	DATED
1. ROBERT GAMBURD, M.D.	1226/09 (SIX REPORTS), 11/16/09, 10/05/09, 12/12/08, 04/02/08 (TWO REPORTS), 04/24/07, 07/08/03
2. MARK CULTON, M.D.	05/20/08
3. DAVID ELLER, M.D.	05/31/05
4. MURRAY SOLOMON, M.D.	07/12/03

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	03/10/2010

(M.S.C. Keesling/Taylor) to approve application. Motion carried 5-0-1.

- d. **Steven L. Smith**, Retired Fire Captain, Fire Department. Request for change in status to Service-Connected Disability Retirement effective June 30, 2009; 25.01 years of service. Retired Fire Captain Smith was not present and was represented by Mr. Swift. The following medical reports were received:

MEDICAL REPORTS – DR'S NAME	DATED
DAVID STEWART, M.D.	10/13/09 (4), 5/26/09, 2/23/09, 10/12/00
TOM KOEHLER, M.D.	3/11/09
RON HANSON, M.D.	3/4/09
ANA MARTA SALINAS, M.D.	12/8/08
DEAN BUSBY, M.D.	2/19/08
MARK SPENSER, PA.	12/6/07
TRACI CLAUTICE-ENGLE, M.D.	11/19/07
ROBERT WEINMANN, M.D.	2/1/05
KAREN PRICE, PA-C.	10/30/03
HELMUT MEISL, M.D.	10/30/03
DAVID KRIEVES, M.D.	11/7/00
SCOTT SAWYER, D.C.	8/11/99
STUART SIMON, M.D.	8/11/99

**MEDICAL REPORT FROM BOARD'S DIRECTOR**

**DATED**

RAJIV DAS, M.D.

3/7/10

(M.S.C. Keesling/Liccardo) to approve application. Motion carried 5-0-1.

**4. Deferred Vested – None**

**DEATH NOTIFICATIONS – Moment of Silence/Note & File**

5. Notification of the death of George H. Cannell, Retired Assistant Police Chief; retired 1/16/71, died 2/3/10. Survivorship benefits to Virginia Cannell, spouse.
6. Notification of the death of Steven W. Kirkendall, Retired Police Officer, retired 10/3/98, died 2/16/10. Survivorship benefits to Maria Krikendall, spouse.
7. Notification of the death of Kenneth E. Ritchie, Retired Fire Engineer, retired 7/7/94, died 1/11/10. Survivorship benefits to Geraldine Ritchie, spouse.

**NEW BUSINESS**

**8. Discussion and possible action on the City Auditor's upcoming audit projects.**

*Ms. Erickson*, City Auditor stated that there were several projects in progress at the same time.

**A.** Contract for external auditor has expired, and an RFP has been issued and the City Auditor's Office has received six responses. The evaluation team will meet on April 12th to ensure that external audit team is on Board in time for work to commence in May. There will be multiple agreements covering different departments. She hopes to have the contracts reviewed by the City Council on April 27 and come back to the Police and Fire Board in May. **B.** Initiating an audit of disability retirements; identify potential factors leading to high disability rates. **C.** Audit of Pension sustainability of pension benefits and potential impact on City operations.

**Chair Bacigalupi** asked about the feasibility of hiring different auditors for the City and the Board.

*Ms. Erickson* stated that the auditor ultimately works for the City Council. This in no way limits the Board from hiring its own auditors to do more in depth work for the retirement system.

**Secretary Crosby** stated that it is unusual for a pension plan sponsor in California to select the same auditor for the trust fund as the sponsor. *Ms. Erickson* replied that for many years the City and the trust fund have had the same auditor. *Ms. Erickson* also informed the Board that the plan would bear the cost of their portion of the external audit.

**Trustee Johnson** stated that the Plan would have to pay for their portion of the audit and also pay for their own external auditor.

**Trustee Keesling** expressed concerns about having to pay for something the Auditor's Office is responsible for. *Ms. Dent* stated that if the Board wants their own auditor, they can conduct an RFP.

**Secretary Crosby** noted that trust fund expenditures must be approved by the board.

**Trustee Johnson** stated that it was his understanding that per the City Charter the Auditor's Office causes the audit to be conducted. He is also concerned that the discussion uses independence loosely, and one of the key responsibilities of a Certified Public Accountant is independence and the opinion that this Board receives, is independent. He also does not think the Board should preclude an auditing firm simply because it is the same firm that is auditing other entities of the City. Since they are auditing the City and they are auditing the retirement plan, it does not mean they are not independent. If the same auditor were selected, it would be good for them to communicate to this

Board how they would maintain independence. Timing is critical on this issue for the City. Per the City Charter, the City Manager is to issue an Annual Report which is due on September 1<sup>st</sup>. The report includes fund balances, including the retirement funds', even though the CAFR may not be issued yet, Finance provides that information to the City Manager's Office. *Ms Erickson* told the Board that if they had questions about the audits of pension sustainability or disability retirements to please let her know via e-mail or telephone.

**Trustee Keesling** requested that the auditor should contact labor groups associated with the audits since they will have their own perspective.

**Trustee Taylor** asked what the Auditor's Office was looking for in the disability audit. *Ms Erickson* stated that this was coming out of the Worker's Compensation audit and how the systems interface.

9. **Approval of request from Jeanne Riedel, ex-spouse of Gunther Riedel, active Police Officer, for Reduced Retirement Option, effective May 26, 2010 under Part 17, Section 3.36.3600 of the San José Municipal Code.** – (M.S.C. Keesling/Taylor) Approved 5-0-0.
10. **Adoption of Resolution No 3665 denying the service-connected disability retirement application of Gene Kischmischian.** - (M.S.C Taylor/Liccardo) Approved 5-0-1.

## **OLD BUSINESS/CONTINUED-DEFERRED ITEMS**

11. **Oral update on Travel Audit compliance.** Audit Committee met on March 30, 2010, and made revisions to the policy for Board approval in May.
12. **Update on FLSA Pensionable Earnings Issue.** Macias Gini O'Connell LLP will begin onsite testing on April 6, 2010.
13. **Discussion and possible action on definition of Final Compensation for pension calculation purposes.** *Ms. Dent* stated that the City Attorney's Office is preparing a public memo for distribution.
14. **Update and possible action on moving monthly Board meetings to City Hall.** The Secretary stated that the May 6, 2010 Board meeting is scheduled to be held at City Hall.
15. **Update and possible action on the selection of outside counsel for tax qualification review.** *Ms. Dent* stated the RFP received 6 responses. Out of the six, Ice Miller LLP was ranked number one by the committee due to their experience with government plans and tax related work. They are not registered in California at this time. The Board asked *Ms. Dent* to negotiate the following items with Ice Miller: **1.** Ask if they will register in California, **2.** If the only way they can register is with the State Bar Association, contemplate contracting with them by authority of the Attorney's Office, **3.** Or sub-contract with Saltzman and Johnson or the City Attorney's Office. The Board will discuss the outcome of the negotiations at the May 6, 2010 meeting.
16. **Discussion and possible action on SRBR balance reduction and impact on the City contribution rates.** Deferred until the May meeting.

**STANDING COMMITTEE REPORTS/RECOMMENDATIONS**

**Investment Committee(Bacigalupi/Johnson/Keesling/Alternate: Liccardo – Next Meeting April 15, 2010**

**Real Estate Committee (Bacigalupi/Keesling/Taylor/Alternate: Herrera) Chairman Bacigalupi was present via telephone in meetings 17 through 22 - Note & File**

17. Summary of committee meeting held January 21, 2010
18. Summary of Board of Directors Meeting of 1737 North First Street Corporation, held January 21, 2010.
19. Summary of Board of Directors Meeting of 3169 Dodd Road Corporation, held January 21, 2010.
20. Summary of Board of Directors Meeting of 3201 C Street LLC, held January 21, 2010.
21. Summary of Board of Directors Meeting of 3301 C Street LLC, held January 21, 2010.
22. Summary of Board of Directors Meeting of SJ Progress Point LLC, held January 21, 2010.

**Investment Committee of the Whole – Next Meeting**

**Due Diligence Committee (Bacigalupi/Taylor/Keesling)**

23. Last Meeting March, 30, 2010

**CONSENT CALENDAR - Items 24 through 31 (M.S.C. Keesling/Liccardo) Motion carried 5-0-1**

**24. Approval of Minutes**

Monthly meeting held March 4, 2010 (M.S.C. Bacigalupi/Keesling) Motion carried 5-0-1.

**Chair Bacigalupi** noted that on items 8 & 9 the vote showed 5-0-0 and it should be 5-0-1 since the Chair was absent.

**Trustee Johnson** noted in item 7, that there was additional discussion regarding the modified corridor and that the investment portfolio had recovered somewhat during the six months after the end of the fiscal year (Corrections made in the March 4, 2010 minutes.)

**25. Approval of Travel/Conference Attendance – (M.S.C. Liccardo/Keesling) Motion carried 5-0-1.**

- a. May Cheung, Travel to Ontario, CA to attend the CALAPRS Info Technology Round Table meeting, April 9, 2010.
- b. Ryan Jusko, Travel to Phoenix, AZ to attend New England Pension Consultant's Major Client Strategy Conference, March 29/30, 2010.
- c. Veronica Niebla, Travel to Ontario, CA to attend the CALAPRS Accountants Round Table meeting, April 9, 2010.

**26. Approval of Monthly Expenses**

P&F Plan Expenses for February 2010 – (M.S.C. Liccardo/Keesling) Motion approved 5-0-1.

**27. Pending Action**

Updated List - (M.S.C. Liccardo/Keesling) Motion carried 5-0-1.

**28. Benefits Review**

Summary of meeting held on February 24, 2010

**29. Return of Contributions - NONE**

**30. Investments**

Adoption of Resolution Number 3664 - (M.S.C. Liccardo/Keesling) Motion carried 5-0-1.

**31. Communication/Information**

Report on Investments as of January 31, 2010. (M.S.C. Johnson/Liccardo) Motion carried 5-0-1.

**Proposed Agenda Items**

Discussion of disability process and difference between worker's Compensation and pension retirements.

**Public Comments - NONE**

**Education and Training**

**ADJOURNMENT at 11:20 A.M.**

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**DAVID BACIGALUPI, CHAIR  
BOARD OF ADMINISTRATION**

**ATTEST:**

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**RUSSELL U. CROSBY, SECRETARY  
BOARD OF ADMINISTRATION**