

# POLICE AND FIRE DEPARTMENT RETIREMENT PLAN

## Minutes of the Board Meeting

THURSDAY

SAN JOSÉ, CALIFORNIA

November 4, 2010

### CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:41 a.m. on Thursday, November 4, 2010, in regular session at City Hall in Wing Meeting Rooms 118-119, 200 East Santa Clara Street, San José, California 95113.

### ROLL CALL

#### PRESENT:

David Bacigalupi	Chair – Via teleconference	Director/Board Secretary
Conrad Taylor	Vice Chair – Acting Chair	Russell U. Crosby
Rose Herrera	Trustee –arrived 8:45 a.m.	
Sam Liccardo	Trustee	
Scott Johnson	Trustee	
Sean Kaldor	Trustee	
Vacant	Trustee	

#### ALSO PRESENT:

Carmey Racy-Choy	-Staff via teleconference	Ron Kumar	-Staff
Donna Busse	-Staff	Veronica Niebla	-Staff
Mollie Dent	-City Attorney's Office	Barbara Hayman	-Staff
Russ Richeda	-Conflicts Counsel	Jennifer Holmboe	-Staff
Thomas J. Boyle	-Attorney	Ceara O'Fallon	-Staff
Roger Pickler	-Staff	Chris Platten	-Local 230 Counsel
Dr. Rajiv Das	-Board's Medical Director	Ken Heredia	-Retiree
Alex Gurza	-Office of Employee Relations	Paul J. Mulholland	-Retiree
Aracely Rodriguez	-Office of Employee Relations	Mike Moffett	-Retiree
Michael Moehle	-Staff	J. Wendling	-Retiree
Sonia Morales	-Staff	George Beattie	-SJPOA
Mary Dariano	-Staff	Ryan Jusko	-Staff
Andy Yeung	-Segal Company		

## REGULAR SESSION

### ORDERS OF THE DAY

**Vice Chair Taylor** called the meeting to order at 8:41 a.m.. and Trustees present were: Trustee Conrad Taylor, Trustee Scott Johnson, Trustee Sean Kaldor, Trustee Sam Liccardo, and via teleconference, Chair David Bacigalupi.

**Vice Chair Taylor** stated that **Item 15** and **Item 19** will be heard first before item # 1.

12-2-10 PF

**RETIREMENTS**

**1. Service**

- a. **Alan Anderson**, Battalion Chief, Fire Department, effective January 22, 2011; 25.05 years of service. **Approved - (M.S.C.- Kaldor/Liccardo, 6-0-1).**
- b. **Michael A. Bauer**, Fire Engineer, Fire Department, effective January 23, 2011; 26.53 years of service. (with reciprocity) **Approved - (M.S.C.- Kaldor/Liccardo, 6-0-1).**
- c. **David Churchill**, Battalion Chief, Fire Department, effective January 22, 2011; 24.30 years of service. **Approved - (M.S.C.- Kaldor/Liccardo, 6-0-1).**
- d. **Mark D. Efigenio**, Police Officer, Police Department, effective January 22, 2011; 25.44 years of service. (with reciprocity) **Approved - (M.S.C.- Kaldor/Liccardo, 6-0-1).**
- e. **Antoinette Igno**, Fire Captain, Fire Department, effective December 11, 2010; 20.29 years of service, pending change in status to Service Connected Disability (SCD). (with reciprocity) **Approved - (M.S.C.- Kaldor/Liccardo, 6-0-1).**

Trustee Rose Herrera arrived at 8:45 a.m.

- f. **Larry T. McGrady**, Police Lieutenant, Police Department, effective January 22, 2011; 25.44 years of service. (with reciprocity) **Approved - (M.S.C.- Herrera/Liccardo, 6-0-0).**
- g. **Arthur Mitchell**, Fire Captain, Fire Department, effective January 22, 2011; 25.06 years of service, pending change in status to Service Connected Disability (SCD). **Approved - (M.S.C.- Kaldor/Herrera, 6-0-0).**
- h. **Cynthia M. Perez**, Police Officer, Police Department, effective January 30, 2011; 22.71 years of service, pending change in status to Service Connected Disability (SCD). **Approved - (M.S.C.- Herrera/Liccardo, 6-0-0).**
- i. **James B. Wyatt, Jr.**, Battalion Chief, Fire Department, effective January 22, 2011; 25.02 years of service. **Approved - (M.S.C.- Kaldor/Herrera, 6-0-0).**

**2. Service Connected Disability (SCD)**

**Mark J. Skeen**, Fire Captain, Fire Department, effective May 13, 2009; 19.23 years of service.

Mr. Skeen appeared with representation by Attorneys Thomas Boyle and Chris Platten. The following reports were presented to the Board:

<b>MEDICAL REPORTS – DR’S NAME</b>	<b>DATED</b>
PATRICK MCCREESH, M.D.	9/14/2010 (FOUR REPORTS) : 8/15/2010 : 10/19/2009 : 4/28/2008 : 4/25/2007 : 7/19/2006 : 5/25/2006
RAY HSIEH, M.D.	6/2/2010 : 11/16/2009
DAVID YEH, M.D.	10/22/2009 : 6/25/2009 : 9/30/2008 : 6/18/2008 : 6/16/2008
MARK CULTON, M.D.	3/24/2009 : 6/13/2008
LAWRENCE CHAN, M.D.	9/10/2008 : 7/7/2006
MURRAY SOLOMON, M.D.	8/15/2007
KARJIT SEKHON, M.D.	6/8/2006
JULIA KAHAN	7/2/2003
DAVID GRIFFITH, M.D.	3/2/2003
<b>MEDICAL REPORT FROM BOARD’S DIRECTOR</b>	
RAJIV DAS, M.D.	9/21/2010



**Trustee Liccardo** commented that reports from the original fall from the roof were not included in the application for SCD. He also questioned if there is a practical option for people who are appealing a termination decision to file for disability, if it would actually stop the appeal process, and, if the Board has jurisdiction to entertain the case.

**Mr. Boyle** advised that Mr. Skeen was on disability because modified duty was unavailable at the time of separation from the City. Further, he did not apply for retirement because that action could nullify grounds for appeal. Additionally, his application was filed within one year of the Arbitrator's decision. Exception to the time limit should be made for Mr. Skeen because the Board has made this exception for other applicants in this circumstance. Mollie stated that staff reported last month that there have been no exceptions since the code change.

**Ms. Dent** stated that filing for SCD had not occurred within the required one year time limit. This is a Municipal Code requirement; permitting Skeen's application may not be permitted under the Code. She expressed that she, with assistance from Attorney Richeda, would like to research the other cases cited by Counsel and brief the board on their findings.

Deferred to the December 2, 2010 Board Meeting and for the City Attorney and Conflicts Counsel to present their research on the issues presented by Mr. Skeen's counsel.  
(M.S.C. Herrera/Liccardo, 6-0-0).

### 3. Change in Status

There were no change in status requests.

### 4. Deferred Vested

**Dean E. Ackemann**, Police Sergeant, Police Department, effective November 30, 2010; 25.20 years of service. **Approved - (M.S.C.- Herrera/Johnson 6-0-0).**

### DEATH NOTIFICATIONS

**A moment of silence was observed.**

5. **David T. Brickell**, Retired Police Sergeant, died September 15, 2010. Survivorship benefits to Mary Ann Brickell, spouse. **Note and File**
6. **Joseph S. Cancilla**, Retired Fire Engineer, died October 13, 2010. No survivorship benefits. **Note and File**

### NEW BUSINESS

7. Approval of retirement date change for **Cheryl Faltersack** from October 30, 2010 to November 13, 2010. **Approved - (M.S.C.- Kaldor/Herrera 6-0-0).**

8. Adoption of Resolution No. 3682 denying change in status from service retirement to Service Connected Disability (SCD) retirement application of **John P. Quayle**.  
*Approved - (M.S.C.- Herrera/Kaldor, 4-0-2; Bacigalupi/Taylor - abstained).*

9. Approval of retirement date change for **John P. Como** from November 27, 2010 to December 25, 2010. *Approved - (M.S.C.- Herrera/Kaldor 6-0-0).*

10. Discussion regarding disability process and Board training.

*Trustee Kaldor* suggested implementing a sub-committee to hear disability cases.

*Ms. Dent* stated that she will research and report the steps necessary to form a Disability Sub-Committee for the Police and Fire Plan. She also suggested investigating alternatives to sub-committees.

11. Discussion and possible action regarding Supplemental Retirement Benefit Reserve (**SRBR**):

a. Discussion and possible action on SRBR calculations from the Segal Company. *Deferred to December meeting.*

b. Adoption of Resolution No. 3683 declaring excess earnings as of June 30, 2010 for the purpose of transfer to Supplemental Retiree Benefit Reserve. *Deferred to December meeting.*

c. Discussion and possible action on City Council action regarding SRBR payments.

*Mr. Gurza* advised that the City Council has recommended suspending SRBR payments, not terminating or modifying them. Pension reform is in process and the Council wants time to review all of the issues, and the Bargaining Units as well as retirees will be consulted.

*Trustee Kaldor* stated that the Board has a fiduciary responsibility based on a City Council resolution. According to the ordinance, SRBR payments will remain in effect until the Board changes the methodology.

*Ms. Dent* stated that the Council decision only related to distribution of payments for this year, not the transfer of the funds to the SRBR account. The Municipal Code is silent about the determination of the amount of distribution. City Council has asked the City Attorney's Office to draft an ordinance to amend the Code and suspend the distribution of SRBR funds.

*Mr. Richeda* questioned Ms. Dent's analysis and stated that the methodology for distribution has been defined as required by the Municipal Code and the Board could submit their recommendation to the Council for continuance of the current methodology.

*Mr. Gurza* stated that the SRBR is not a product of collective bargaining and that POA and Local 230 waived the right to meet and confer.



**Trustee Herrera** advised that if the Board is required to make a distribution in 2010 calendar year, it has a fiduciary duty to take action today; however, the Board needs to know the minimum amount it is allowed to distribute and that information is not available today.

**Trustee Johnson** added that the Board has the authority to review distribution calculations, especially in the light of the on-going economic decline. He reminded the Board that retirees receive cost of living adjustments. Additionally, he expressed discomfort with the calculation methodology and wanted more information about it and also more information about the intent and purpose of SRBR payouts. He modified the motion to include a request for specific information regarding the dollar amounts each retiree receives and how much money he/she make per month.

Deferred one month to allow City Attorney's Office and Conflicts Counsel to research legal issues and to allow other interested parties to submit additional information. (M.S.C.- Herrera/Liccardo, 5-1-0; Bacigalupi – opposed).

12. Discussion and action regarding Internal Revenue Code Tax Compliance Review by Ice Miller for the Police and Fire Department Retirement Plan.
  - a. Review and recommendation to City Council on ordinance amending Chapter 3.36 of Title 3 of the San Jose Municipal Code to incorporate provisions related to the primary purpose of the Police and Fire Department Retirement Plan, use of retirement plan assets, prohibited retirement plan transactions, pension benefit vesting, pension benefit and contribution limits, required benefit payments, permissive purchases of service credit, rollover of employee contributions into other tax qualified plans and accounts, permissive retirement plan investment vehicles, qualified domestic relations orders and contributions, benefits, service credit for qualified military service, date of establishment of medical benefits account, and to make other technical amendments related to Internal Revenue Code provisions for qualified governmental retirement plans; and,
  - b. Adoption of resolution 3685 authorizing submission of the following applications to the Internal Revenue Service, upon Council approval of an ordinance containing the required Plan tax compliance language:
    - i. Application for a tax determination letter, with a payment by the Plan of the \$1,000 determination letter filing fee.
    - ii. Application to the Voluntary Compliance Program (VCP) for correction of failures to adopt timely amendments to the Retirement Plan as required under federal tax law and to define the establishment date of the Plan's IRC 401(h) account, with a payment by the Plan of the \$15,000 VCP fee.

**Ms. Dent** stated that operational changes would include permissive service purchases allowed on a pre-tax basis and IRAs as default in the absence of a designated retirement choice.

**Mr. Gurza** asked if the proposed changes were the only way to become tax compliant, he would like an opportunity to review to see if there are alternative solutions.

**Ms. Dent** responded that there were not many options available but she could schedule outside counsel to be available via conference call at the December Board Meeting to discuss any other possibilities.

**Trustee Kaldor** suggested sending the ordinance to the City Council and Bargaining Units in order to hear from interested parties.

Direction to send the Draft Ordinance to the City Council and Bargaining Units for review. Place item on the December 2, 2010 Police and Fire Board Meeting Agenda. (M.S.C.- Herrera/Taylor, 6-0-0).

13. Discussion and possible action regarding Auditor's report "Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future."

**Mr. Mike Moehle** informed the Board that they behaved responsibly last year and several changes were made at the time of the June 30, 2009 valuation which addressed the 2008-2009 economic downturn. The Board recognized a \$45M loss last year, adopted a new asset allocation policy, and implemented new actuarial assumptions. These changes have moved the Plan from the #13 position up to the #7 position in Roeder Financial's survey of Californian Public plans (#1 = most conservative).

Approved forwarding Staff's memo to City Council - (M.S.C.- Herrera/Kaldor 6-0-0).

14. Discussion and action regarding the draft Police and Fire Department Retirement Plan's Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2010.

**Ms. Niebla** stated that the Board is requested to authorize staff to take the next procedural steps regarding printing and issuing the CAFR and advised that Macias Gini O'Connell, external auditors, will be present at the December 2, 2010 Board meeting for discussion.

Approved - (M.S.C. Liccardo/Herrera, 6-0-0).

15. Discussion and action regarding Segal's economic assumptions for the valuation for the period ending June 30, 2010.

Carmen Racy-Choy, present via teleconference, stated that:

Staff is requesting the Board to reconsider use of the 8% investment return assumption because Segal's 2009 survey used out-of-date information, and staff believes Segal's methodology for setting the discount rate produces a rate that can not be supported by the investments of the Plan as documented in the staff memo.



**Mr. Yeung** from Segal Company stated that the letter of November 2, 2010 discusses Segal's methodology. Segal's approach uses a survey of eight other California clients. Based on that survey, Segal will readdress their analysis of the earnings assumptions. For other clients, that analysis has led to a recommended rate of 7.75%. Mr. Yeung stated that Segal recommends 7.75% and to reconsider the appropriateness of the rate next year.

Approved request for Segal to develop scenarios using 7.5% and 7.75% discount rates and to update the economic assumptions recommendation. (M.S.C. - Liccardo/Herrera, 6-0-0).

16. Discussion and action regarding Segal's non-economic assumptions for the valuation for the period ending June 30, 2010. **Deferred to December 2, 2010 Board Meeting.**
17. Approval for the Secretary to negotiate and execute an agreement with L.R. Wechsler, Ltd. for Consulting Services for Procurement of a Pension Administration System Phases I-IV as outlined in the Request for Proposal 06-30-2010-RK dated June 30<sup>th</sup> 2010 for an amount not to exceed \$400,000.00 (cost split 50/50 with San Jose Federated City Employees' Retirement System). **Approved – (M.S.C. – Herrera/Johnson, 6-0-0)**

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

18. Approval to discontinue Exit Health Physicals and provide communication regarding the use of the current health plans for similar services as Exit Health Physicals.

**Ms. Busse** stated that current health plans perform very similar exams for the exit physicals and **Dr. Das** has advised that the exit physicals do not impact his decisions. Additional efforts to communicate the importance of having retirees examinations will be made.

**Approved – (M.S.C. Herrera/Johnson 5-1-0; Bacigalupi- opposed).**

19. Approval of the Segal Company's Actuarial Valuation and Review of Other Postemployment Benefits (OPEB) as of June 30, 2009, in accordance with GASB Statements No. 43 and No. 45 for financial reporting purposes. **Approved – (M.S.C. Johnson/Herrera, 6-0-0).**

#### **STANDING COMMITTEE REPORTS/RECOMMENDATIONS**

20. Investment Committee (Bacigalupi/Johnson/Taylor/Alternate: Kaldor) – next meeting December 16, 2010. **Note and File**
21. Committee of the Whole – next meeting December 16, 2010. **Note and File**
22. Real Estate Committee (Bacigalupi/Taylor/Kaldor/Alternate: Herrera) – next meeting December 16, 2010. **Note and File**

**CONSENT CALENDAR (Items # 23 through 32)**

Approved – (M.S.C. – Herrera/Johnson 5-0-1; Bacigalupi abstained from approving the minutes).

**23. Approval of Minutes**

- a. Monthly Board meeting held on October 7, 2010.
- b. Tax Qualification Review – Joint Special Meeting held on October 20, 2010.

**24. Approval of Travel/Conference Attendance**

- a. Ali Amiry                      Manager Due Diligence:
  - November 8, 2010 - Chicago, IL
  - November 9, 2010 - New York, NY
  - November 10, 2010 - Atlanta, GA
  - November 11, 2010 - St. Petersburg, FL
  - November 12, 2010 - Boston, MA
  - November 12-19, 2010 - London, UK
  - December 4-6, 2010 - Dallas, TX
  
- b. Heidi Poon                      Manager Due Diligence:
  - November 8, 2010 - Chicago, IL
  - November 9, 2010 - New York, NY
  - November 10, 2010 - Atlanta, GA
  - November 11, 2010 - St. Petersburg, FL
  - November 12, 2010 - Boston, MA
  - November 12-19, 2010 - London, UK
  
- c. Karin Carmichael              National Pension Education Association 30<sup>th</sup> Annual Conference:
  - October 16, 2010 through October 19, 2010

**25. Approval of Monthly Expenses**

Plan Expenses from September 2010.

**26. Pending Action**

Pending Action Summary List as of November 2010.

**27. Benefits Review Forum**

None

**28. Return of Contributions**

- a. Voluntary
- b. Involuntary



**29. Investments**

Adoption of Resolution No. 3684 for the period of September 1, 2010 through September 30, 2010.

**30. Communication/Information**

Report on Investments as of September 30, 2010.

**EDUCATION & TRAINING**

**31. Notification of CalAPRS' Trustees Round Table**

- a. Trustees' Round Table, Double Tree Hotel, 2050 Gateway Place, San Jose, CA.  
January 28, 2011.
- b. General Assembly, Monterey, CA – March 3, 2011 thru March 8, 2011.
- c. Principles of Pension Management, Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610, March 22-25, 2011.

**32. Notification of IFEBP Training**

- a. 56<sup>th</sup> U.S. Annual Employees Benefits Conference, Honolulu, HI – Sunday, November 14, 2010 thru Wednesday, November 17, 2010.
- b. Investments Institute, Las Vegas, NV – April 11, 2011 thru April 13, 2011.
- c. Portfolio Concepts and Management, Philadelphia, PA – Monday, May 23, 2011 thru Thursday, May 26, 2011.
- d. Trustees and Administrators Institutes – New Trustees, Hilton, San Francisco, CA – Monday, June 13, 2011 thru June 15, 2011.

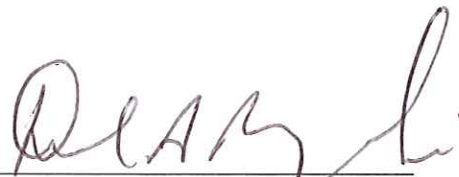
**33. Board Members State Mandated Training**

AB 1234 State Mandated Ethics Training; San Jose City Hall – December 9, 2010, Wing 119-120, 6:00 p.m. to 8:30 p.m. **Note and File**

**PROPOSED AGENDA ITEMS**

**PUBLIC COMMENTS**

**ADJOURNMENT 11:24 a.m.**



**DAVID BACIGALUPI, CHAIR  
BOARD OF ADMINISTRATION**

**ATTEST:**



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