

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**April 5, 2007**

### CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:37 a.m., on Thursday, April 5, 2007, in regular session in the Department of Retirement Services' Conference Room, 1737 North First Street, Suite 600, San José, California.

### ROLL CALL

#### Present:

**MARK J. SKEEN, CHAIR**

**BRET MUNCY**

**BILL BRILL**

**SCOTT JOHNSON**

**Fire Employee Representative**

**Police Employee Representative**

**Trustee**

**Trustee**

### ALSO PRESENT:

<b>Tom Webster</b>	<b>-SECRETARY</b>	Susan Devencenzi	-City Attorney
Russ Richeda	-Saltzman & Johnson	Debbi Warkentin	-Staff
Roger Pickler	-Staff	Tamasha Johnson	-Staff
Udaya Rajbhandari	- "	Howard Carter	-SJPD Retiree
Donna Busse	- "	Ron Kumar	- "
Amanda Ramos	-Staff	Carol Bermillo	-Staff
Judy Powell	-Staff	Mike Pribula	-Staff
Maria Loera	-Staff	Jim Jeffers	-Attorney
Susan Perriera	- "	Rich Fong	-SJPD
Martin Hogan	-SJPOA	Bob St. Amoir	-POA
Alex Gurza	-OER	Aracely Rodriguez	OER
Sandra Holloway	-SJPD	Dale Morgan	-SJPD
Vaughen Edwards	-SJPD	Rich Sanchez	-SJPD
Colleen Hy	-Staff	Eric Ramones	-SJFD
Matt Stanek	-Attorney	C. Taylor	-POA
Jeff Ricketts	-POA	Dave Santiago	-SJPD
Bob Lopez	-POA	Karin Carmichael	-Staff
John Tennant	-POA	Jaime Saldivar	-Retiree
Toni Johnson	-Staff	Alex Martinez	-SJPD
Karen Martinez	-SJPD	Brian Long	-SJPD

## REGULAR SESSION

### ORDERS OF THE DAY

The Chair called the meeting to order at 8:37 a.m., and stated that Item 3a has been deferred. Also, Item 3c will be moved to the beginning of the meeting.

### RETIREMENTS

Service - None

**(Out of Order)**  
**Change in Status**

**Jaime E. Saldivar**, Retired Police Officer. Request for change to Service-Connected Disability Retirement effective January 4, 2007; 30.99 years of service.

**Retired Police Officer Saldivar** was present and was represented by *Jim Jeffers and Dr. Salvardo*.

For the record, the following medical reports have been received:

<u>Doctor's Name</u>	<u>Report Date</u>
Anthony Salvardo	10/24/06; 9/12/06; 8/8/06; 5/16/06; 5/3/04; 7/1/99; 3/25/99; 1/28/99; 1/5/99; 4/11/96; 3/8/95; 2/16/95
Leo J. Sifflet	8/8/06
Triage Report	3/2/06
Jonathan Ng	12/3/04; 7/31/04
Jon B. O'Brien	10/6/04; 7/12/04
Walter W. Silberman	6/12/96; 8/17/95; 7/25/95
<u>Board Doctor</u>	<u>Report Date</u>
Rajiv Das	2/2/07; 10/18/06

*Dr. Das* said the restrictions he provided are based on those assigned by the treating physician, *Dr. Salvardo*.

*Mr. Jeffers* discussed *Mr. Saldivar's* medical condition and career.

*Sergeant Overstreet* talked about *Mr. Saldivar's* work ethic, the injuries and pain associated with them, and the value of *Mr. Saldivar*. He further added that although, *Mr. Saldivar* had a desire to work, he felt that the injuries created a lack of ability to perform.

*Dr. Salvardo* described *Mr. Saldivar's* ankle injury and stated that his condition will continue to deteriorate and is almost to the point that surgery will not be effective. He stated this case is very challenging and believes that at anytime the bone could give out requiring emergency treatment, so he will have a very limited lifestyle.

*Mr. Saldivar* described the history of his ankle pain and the disease.

(M.S.C. Muncy/Brill) to approve application. Motion carried 4-0-3. (Heredia/Cortese/Williams absent).

**(Back on Agenda)**  
**Disabilities**

**Derek M. Edwards**, Police Officer, Police Department. Request for Service-Connected Disability Retirement effective April 5, 2007; 24.74 years of service.

**Police Officer Edwards** was present and was represented by *Jim Jeffers*.

For the record, the following medical reports have been received:

<u>Doctor's Name</u>	<u>Report Date</u>
John Colman	1/6/06; 3/21/06; 8/5/06; 10/23/06
Oscar Abeliuk	11/22/03; 4/19/04; 2/19/05

Jonathan Ng	9/17/03; 1/13/04; 2/20/04
Allan Rosenthal	1/9/04
Terence Delaney	7/15/04
William Breall	10/3/03
Arthur Messenger	8/11/03

<u>Board Doctor</u>	<u>Report Date</u>
Rajiv Das	7/8/04; 2/1/07

*Dr. Das* stated that the condition in Mr. Edwards' hips causes his blood supply to be compromised, and will require surgery. He also suffers from neck and back problems, and has already had a hip replacement. The restrictions provided are based on the surgeon's, and his treating physician's recommendations.

*Mr. Jeffers* stated that he has had two hip replacement surgeries and will probably need two knee surgeries.

(M.S.C. Muncy/Brill) to approve application. Motion carried 4-0-3.

**Chair Skeen** asked Lt. Morgan about Article 39 positions, since for the previous applicant, the Department had a position available for, and this applicant the Department did not, so if he could explain that process.

*Lt. Morgan* stated that it has to do with when they submit their retirement and what date was on the letter. In January, which was Mr. Saldivar's date, there were positions that were available. Currently, they have 30 positions in the exempt program, which is the maximum number allowed to exempt, plus they have eight people waiting to go into the exempt program. They also have an additional 25 officers out on disability, and another 10 that are approaching their 120 days. In other words, we are shifting people around right now and we do not have any positions available. It is as of the date that their letter was submitted.

**Chair Skeen** said that he knows that the process can take up to six months before it even gets to the Board, so the letters that say that the Department can accommodate a modified duty position or no, you don't have positions; are not necessarily accurate?

*Lt. Morgan* stated that at the time that the letters were issued they are accurate. The letters that the Board will receive from this point forward will all say "no," until it looks like we are getting spaces available. The letters that were in the past, those letters were accurate then. The Consent Decree that we follow only allows us to have 30 except position.

*Ms. Devencenzi* stated that one of the things they are looking at is at the time the person is leaving. If there is a situation where you are looking at a person today, then you do the evaluation based on today; if you have a person who is looking for a change in status, then you go back and look at the time that the person actually left. If you had somebody who retired in September 2006, then you would be looking back at September 2006, to figure out at the time that the person left could we have accommodated him because that's the rule on a change-in-status, so you may see some that still come forward and say that at the time that the person retired we could have accommodated them. It seems like a discrepancy, but it is correct.

**Member Brill** stated that he is also concerned and he wants to be specific to the date because these cases all have to be looked at individually. Often times, if somebody is coming back as a change-in-status that we go back and look on that date that they separated from City service. In a few of these, most are on unpaid disability leave now that means they are still employed, so perhaps in the body of the letter sent by the Department, in responding to the restrictions when this statement is made, "You are currently above our maximum" the date of that or is it just the date from the memo because sometimes we have to go back one to two years and sometimes they are still serving. I am just trying to find a way to establish more clarity.

**Member Johnson** requested that if staff can, for each board meeting when there are retirements, if we can get some kind of supplemental memo with staff working with the respected group, when there are changes.

**Chair Skeen** asked how much weight as fiduciaries to this Plan should we be putting on whether or not the police department has positions for these people or not.

*Mr. Richeda* said that his take, and he's not sure if Mrs. Devencenzi agrees or not, but it's a piece of evidence that you have to consider. It doesn't necessarily control your decision, but I think in the face of that piece of evidence the applicant has to come forward and explain in a persuasive way, a manner that persuades you, why they cannot perform the duties of that light duty position. And obviously that's going to be difficult, they might testify about their pain and their pain tolerance, the medications their on, whatever they feel is germane to sort of rebutting of the fact that there's a light duty position and then depending, you can just decide, weigh the evidence as you hear it, or you perhaps could, in the appropriate case, I'm not saying in every case refer it out to additional medical examination, or to Dr. Das to determine why that individual can perform the duties of that light duty position, but its very difficult its very subjective, but at least at least you have to do what you can to come to a conclusion, but you do not have to take, in my opinion, the departments statement as gospel in any given case, but you have to consider it with care.

*Ms. Devencenzi* added that you also have to look at the Plan document because that's – when you raise the issue of fiduciary duty – you have a duty as a fiduciary to operate the Plan in accordance with the underlying document. The standard for disability retirement in the Police and Fire Plan is if the person is unable, first you establish where the person has a disability, but that disability has to prevent the person from continuing in the job or any other job within the same classification of positions for which the department has a job available. One of the criteria that you look at is, if the person actually could be accommodated in a job, then he doesn't actually qualify for disability retirement under the terms of the Plan. Also, when there is a disability you have to look in the medicals to see if there is a connection to their job.

*Lt. Morgan* said that at this point they are going to be polling the members of the exempt program, asking them who are ready to retire because we need those spaces. The Consent Decree spells out how we poll and who can actually retire. Those people will get that letter from the department saying we do not have a job, and the ones that are heading home are the ones that we can force out that have a disability, that don't have as much seniority as the people that want to stay longer, but we do not have a job for them. This is the first time under the Consent Decree that we are going to have to force people out because of the sheer numbers we have.

**Member Muncy** clarified that they are only forced out if they do not receive any volunteers

*Mr. Lopez* said that the situation is that they have 30 positions for exempt employees, and those 30 positions are made available because the kindness of the City, the problem is that we can only accommodate 30. We have in the department a rotational process, so officers come in and out, and to ask the department to accommodate more than 30 would be putting a burden on the department because we do have the rotational process, so the full duty officers are able to work in various sections and this enables them to have that available to them, so they can work their way up. To have more than 30 positions, it would negate from the ability to have the other officers going through and to benefit from the rotation, it would hinder other officers' careers, hinder the performance of the department, and therefore putting a huge burden on them.

**Member Johnson** directed that staff work with legal counsel to bring to the Board a proposal to formalize a process for evaluating light duty positions.

**Karen M. Martinez**, Police Officer, Police Department. Request for Service-Connected Disability Retirement effective April 5, 2007; 15.70 years of service.

**Police Officer Martinez** was present and was represented by *Matt Stanek*.

For the record, the following medical reports have been received:

<u>Doctor's Name</u>	<u>Report Date</u>
Robert Lieberson	12/10/06; 4/10/06; 3/14/06
Emeka Nchekwube	10/19/06; 5/11/06; 1/26/06; 12/15/05; 11/22/05; 8/25/05; 1/20/05; 9/23/04
Michael Butler	7/15/05; 6/2/04
Brad Platt	10/8/04
Rodney Wong	7/27/04
Satish Sharma	4/21/04
Charles Musich	3/26/01; 1/18/00
<u>Board Doctor</u>	<u>Report Date</u>
Rajiv Das	2/27/07; 1/23/07; 1/9/07

*Dr. Das* stated that Mrs. Martinez had neck surgery in January 2005 and has continued to have problems. His restrictions are based on those provided by the treating physician.

*Mr. Stanek* gave a background of Mrs. Martinez' career and history of injuries, he also explained the effect on her lifestyle.

*Mrs. Martinez* described the injury and how it affects her life and ability to work.

**Member Brill** said that he could not find the connection to the cause being work related.

*Mr. Stanek* referred to Dr. Lieberson's report, that the final sentence reads that the reason is industrial related.

(M.S.C. Muncy/Brill) to approve application. Motion carried 4-0-3.

### **Change in Status**

**Pedro Aguilar, Jr.**, Retired Police Sergeant. Request for change to Service-Connected Disability Retirement effective December 17, 2006; 28.19 years of service.

This item was deferred.

**Howard Carter**, Retired Police Officer. Request for change to Service-Connected Disability Retirement effective January 31, 2006; 20.48 years of service.

**Retired Police Officer Carter** was present and was represented by *Jim Jeffers*.

For the record, the following medical reports have been received:

<u>Doctor's Name</u>	<u>Report Date</u>
Jonathan Ng	8/24/06; 8/11/06
Lawrence Leung	5/16/06; 9/12/02; 6/27/02; 2/5/99
E. John Harris	5/11/06; 4/27/06
Michael Post	8/5/02
Paul Ford	2/1/02
Gary Fanton	11/19/01; 10/4/01
David Smith	5/20/92

R. Cree Pillsbury	1/6/89
John Doiron, Jr.	8/18/88
<u>Board Doctor</u>	<u>Report Date</u>
Rajiv Das	3/8/07; 3/2/07

*Dr. Das* described the history of Mr. Carter's fibrosis. He said that his blood does not clot, so he can not be placed in a situation where there is potential for injury because he could bleed uncontrollably.

*Mr. Jeffers* said that Mr. Carter's fibrosis is accelerated by sedentary work and as a police officer he has had several episodes. The progression is more serious now and any duty is a threat.

**Chair Skeen** asked how the leg thrombosis was related to work.

*Mr. Carter* stated that his job required that he sit on a stool taking walk-ins. That position caused a lot of clots in the leg because he was told to that job, since he was new – at the time – although, he told the department that he couldn't be in that position because of his condition. Each time he has an episode it creates permanent damage at the location of the clot.

(M.S.C. Muncy/Brill) to approve application. Motion carried 4-0-3.

**Deferred Vested** - None

**DEATH NOTIFICATIONS** - None

**NEW BUSINESS**

**(Out of Order)**

**Oral presentation on City of San José Sunshine Provisions and Recommendations for Closed Sessions. (Time Certain – 10:00 a.m.)**

**The Secretary** stated that the process is moving fast and we are asking them to discuss the preliminary recommendations, which were released on Monday. This is not to make a decision, but to hear the recommendations and think about how it may affect the Board, then to ask the Board to recommend that staff review and recommend changes to the Sunshine Task Force.

*Ms. Tucker* said that currently they are in Phase I, which are preliminary recommendations for public meetings, public information, and closed sessions. She discussed the background of the Sunshine Task Force, which she said was modeled after primarily five other cities' sunshine ordinances. The process will be two phases, the first addresses how closed sessions are conducted, it is to improve public access, and once the final recommendations come forward the provisions will be implemented with a Pilot Program. The Task Force looked at and defined a series of bodies, so there are currently four main meeting bodies – Policy Bodies, Ancillary Bodies, Non-City Governmental Body/Non-governmental Body, and Closed Session meetings. They outlined the additional requirements, which extend beyond those of the Brown Act; the idea is to create transparency in Government. They defined what a Policy Body is and stated that is what this Board would be considered. They gave examples of the different public meeting bodies and provided their definition for each, along with reviewing what the requirements would be for each varying type of body.

*Mrs. Herrick* stated that these are the recommendations reached at this point, but that now is the time to provide input for the Task Force to address concerns, prior to going to Council for approval. She said the first recommendation for closed session meetings is the topic of agendas and the description on them, so it will be the requirement for the Brown Act, plus more. One additional requirement is that the closed session be audio

recorded. The preliminary recommendation is that all audio be available to the public when the need for confidentiality expires. Permanent topics of closed session, like real estate, still are done in closed session but with modifications. The ordinance specifies price and payment details. The actual real estate deal needs to be exposed in open session, but negotiations to the extent of agreement that are made in closed session will need to be ratified by the Board in open session. Finally, if the funds used to secure an asset are not specifically allocated for real estate use, then that must be disclosed in open session prior to having a discussion in closed session. Disclosure of closed session items requires that the discussion be followed by a written summary. There was concern about requiring approval to ratify closed session agreements on labor negotiations, so the Task Force made referrals to the attorneys, but the City's view is that it does not violate the CA/Federal Law. They are still working on the details about how to deal with disclosure of certain recordings and certify a check and balance for disclosures. If there are disagreements, there will be an appeal process that is still being set up.

*Ms. Tucker* addressed the Public Information section, which will have requirements for maintaining the release of information, reviewing of files, calendars of officials, lobbyists and additional public outreach. She said that Phase II will include recommendations for public records, technology, enforcement – how to, and citizen oversight commission – and ethics and conduct provisions; which may or may not be included since these items are being referred to other bodies. The Phase I recommendations they hope to complete by the end of April, so they can forward approval to Council in May. Public records are a big issue still; Senior Staff has been reviewing recommendations and groups should provide a memo to back-up their concerns they submit.

**Member Johnson** directed staff to survey other Plans – specifically, those with Sunshine Provisions, such as San Francisco and Oakland – regarding video and audio equipment and taping of meetings, and what part of the meeting is taped either video or audio.

There was further discussion pertaining to clarification of terminology, staff responsibility, implications of these provisions, and any issues going forward that may affect the Board or staff.

**Member Brill** directed staff to work with legal counsel to address the issues in the Sunshine recommendations and that staff provide a report outlining concerns for the Board to review and for submission to the Task Force.

Information regarding the Task Force and the Sunshine Provisions can be obtained on the City's website at: <http://www.sanjoseca.gov/clerk/TaskForce/SRTF/SRTF.asp>

### **(Back on Agenda)**

#### **Approval of the Department of Retirement Services' Budget Proposal for the Fiscal Year 2007-2008.**

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3.

#### **Approval of conducting a Board-initiated audit on the P&F Retirement Plan and authorization to staff to draft RFP for auditing consultant.**

**The Secretary** stated that typically there is a process done by Plans when the top executive leaves, and the Chair asked him to agendize this item to discuss it further.

**Chair Skeen** stated that the system is audited on a regular basis, every two years, however if one person has been administering the system for a long period of time, when they leave a full audit should be done.

**Member Johnson** said that he agrees that we should do a full audit. He said that in the County system this is a normal practice just to identify issues that may exist and to give the new executive the auditor's performance review. He suggested direction to staff to get in touch with the Santa Clara County system to discuss performing an audit of this nature, and to research the scope.

**Chair Skeen** stated that the Secretary, Member Johnson, and legal counsel to work together to formulate an RFP and to provide the cost – which will be split 50/50 with the Federated Plan - for this type of audit to bring back to the Board for review.

This item will be continued.

## **OLD BUSINESS / CONTINUED ITEMS**

**Approval of First Amendment to agreement with Towers, Perrin, Forster & Crosby to increase compensation by \$13,700 for a not to exceed amount of \$128,700.**

**The Secretary** stated that this is the disability audit that was completed and there were additional work requirements, since the Board earned \$5000, so it's a difference of \$18,700.

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3.

**Approval to rescind prior Board action engaging Kohlberg & Associates for a fee-benchmarking review of the P&F Department Retirement Plan.**

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3.

**Approval of draft ordinance permitting police plan members to redeposit previously withdrawn contributions to purchase service credit for previous Federated Service and to purchase service credit for unpaid leave of absence.**

**The Secretary** stated part of the reason that the POA MOA agreed to in December 2005, took so long is because there was much discussion on the verbage in it that read that the entire cost to be borne by the member. The Ordinance is here now for the Board to review and comment on and you have a period of 60 days, otherwise it will go to Council for approval.

*Mrs. Devencenzi* stated that she had some corrections of typos, and reviewed those with the Board.

**Member Brill** asked if we knew how people would be impacted.

*Mr. Lopez* said that they believe it is between 3-4 people, he would recommend that the Board approve this item because those peoples will bear the whole cost.

**Approval to proceed with Board-initiated investigation into the release of members' personal information and authorization to staff to issue RFP for investigatory consultant.**

**The Secretary** stated that this was brought forward from the discussion with the POA last month; however the language on the agenda did not allow action to be taken.

**Member Johnson** said that this is a conflict interest issue and that we should be getting and ensuring that we have accurate controls in place to prevent this from happening again.



**Member Muncy** asked staff where the personal information physically exists, how many PC's have access to it, who has authority to access it, are the people that access the information in the Retirement office or is it with Information Technology group at City Hall, what training has been provided about access to personal information, are new policies in place – in the Department or for City Hall, does personal information exist at Mercer – the former actuary, and where are we in the deletion of personal information from files and the timeline of that? He also asked where staff was with substituting social security numbers to Peoplesoft ID's for the data files. He also requested that staff add the item regarding the security assessment to the pending actions.

*Mr. Lopez* said that the Board has gone a long way to resolve this issue. He received a letter from the Firefighters and it said everything was secure. The POA has no interest in taking further action and they are completely satisfied with the service they received. Any further investigation will be for the Board's purposes only.

### **Approval of Board Procedure for Declaring a Conflict of Interest.**

**The Secretary** stated that the attorneys have drafted language for procedures, which is what is presented now.

*Mr. Richeda* said that if the Board approves this, then he would suggest that the Board calendar the item for review once, every year at the same time, perhaps, every January.

(M.S.C. Brill/Muncy) approved the item. Motion carried 4-0-3.

## **STANDING COMMITTEE REPORTS/RECOMMENDATIONS**

### **Investment Committee (Skeen/Heredia/Muncy)**

Summary of meeting held 15 March 2007

- a. Approval to delegate authority to Secretary to sign amendments to agreements that deal with operational changes.

(M.S.C. Brill/Muncy) approved the item. Motion carried 4-0-3.

- b. Approval for Trust Company of the West to participate in mini-tender offers with the understanding manager will indemnify Board against any losses to the extent such losses were the result of manager negligence.

(M.S.C. Brill/Muncy) approved the item. Motion carried 4-0-3.

**Real Estate Committee (Skeen/Heredia/Muncy – Alt: Vacant) – next meeting 21 June 2007.**

**Investment Committee of the Whole (Full Board) – next meeting 17 May 2007.**

## **APPROVAL OF MINUTES**

**Monthly board meeting held 1 March 2007.**

This item will be continued.

**Special board meeting held 1 March 2007.**

This item will be continued.

**Special board meeting held 15 March 2007.**

This item will be continued.

**PENDING ACTIONS LIST**

**Updated list as of 26 March 2007.**

(M.S.C. Brill/Muncy) approved item. Motion carried 4-0-3.

**BENEFITS REVIEW**

**Summary of meeting held February 2007.**

*This item is note and file.*

**CONSENT CALENDAR**

**Chair Skeen** requested that Memo's provided by *Mr. Richeda* be placed as one item.

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3.

**PROPOSED AGENDA ITEMS**

**Member Muncy** requested that he be provided the timeline (except officers) with a 6-month breakdown of the disabilities, either being separate disability versus a change in status disability.

**PUBLIC COMMENTS**

**EDUCATION & TRAINING**

**ADJOURNMENT**

There being no further business, at 12:19 p.m., **The Chair** stated the meeting would be adjourned.

---

**MARK J. SKEEN, CHAIR  
BOARD OF ADMINISTRATION**

**ATTEST:**

---

**EDWARD F. OVERTON, SECRETARY  
BOARD OF ADMINISTRATION**