

#23a

POLICE AND FIRE DEPARTMENT RETIREMENT PLAN

Minutes of the Board Meeting

THURSDAY

SAN JOSÉ, CALIFORNIA

October 7, 2010

CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:45 a.m. on Thursday, October 7, 2010, in regular session at City Hall in the Council Chambers, 200 East Santa Clara Street, San José, California 95113.

ROLL CALL

PRESENT:

David Bacigalupi	Chair – VIA TELEPHONE - ABSENT
Conrad Taylor	Vice Chair – ACTING CHAIR
Rose Herrera	Trustee – arrived at 8:45 a.m.
Sam Liccardo	Trustee – arrived at 8:55 a.m.
Scott Johnson	Trustee
Sean Kaldor	Trustee
Vacant	Trustee

ALSO PRESENT:

Russell U. Crosby	-SECRETARY	Ron Kumar	-Staff
Donna Busse	-Staff	Veronica Niebla	-Staff
Mollie Dent	-City Attorney Office	Toni Johnson	-Staff
Russ Richeda	-Attorney	Jennifer Holmboe	-Staff
Thomas J. Boyle	-Attorney	Sonia Morales	-Staff
Lt. Mark Bustillos	-SJPD	Carol Bermillo	-Staff
Roger Pickler	-Staff	Sam Swift	-Attorney
Rajiv Das	-Board's Medical Director	Sandra Holloway	-SJPD
John Quayle	-SJPD	Billy Dishman	-SJPD
Aracely Rodriguez	-OER	Jim Jeffers	-Attorney
Michael Moehle	-Staff	William Van Key	-SJPD
Ron D'Acchioli	-SJFD	Diana Chavez	-Auditor's Office
Sharon Erickson	-Auditor's Office	Joe Ruis	-Auditor's Office
Timothy Hall	-Retired Firefighter	Robert Juelson	-Retired Fire Captain

REGULAR SESSION

Vice Chair Taylor called the meeting to order at 8:45 a.m.

ORDERS OF THE DAY

Vice Chair Taylor noted that the Civil Service Commission Representative position is still vacant and that **Item 9** is deferred and **Item 11** will be heard first under New Business.

11-4-10 PF

RETIREMENTS

1. Service

- a. **John P. Como**, Police Officer, Police Department, effective November 27, 2010; 25.63 years of service. (SCD pending)
(M.S.C. Herrera/Kaldor) Motion to approve. 4-0-2 (Absent: Bacigalupi & Liccardo)
- b. **Robert L. Davis**, Chief of Police, Police Department, effective October 31, 2010; 30.07 years of service.
(M.S.C. Herrera/Kaldor) Motion to approve. 4-0-2 (Absent: Bacigalupi & Liccardo)
- c. **Cheryl Faltersack**, Fire Captain, Fire Department, effective October 30, 2010; 25.09 years of service.
(M.S.C. Herrera/Kaldor) Motion to approve. 4-0-2 (Absent: Bacigalupi & Liccardo)
- d. **Mark E. Filson**, Fire Captain, Fire Department, effective October 2, 2010; 24.58 years of service.
(M.S.C. Herrera/Kaldor) Motion to approve. 4-0-2 (Absent: Bacigalupi & Liccardo)
- e. **Floyd D. Stewart**, Fire Captain, Fire Department, effective September 1, 2010; 48.12 years of service.
(M.S.C. Herrera/Kaldor) Motion to approve. 4-0-2 (Absent: Bacigalupi & Liccardo)

2. Disabilities

- a. **William P. Van Key**, Police Officer, Police Department, Service-Connected Disability effective October 7, 2010; 14.94 years of service. Mr. Van Key was present and represented by Attorney *Thomas Boyle*. The following reports were presented to the Board:

MEDICAL REPORTS – DR’S NAME	DATED
JOHN WELSH, M.D.	5/4/10, 4/29/10, 5/22/09, 4/15/09, 5/23/08, 1/21/08, 11/1/07, 10/2/07
STEVEN FEINBERG, M.D.	4/5/10, 3/1/07
ANNU NAVANI, M.D.	8/6/09, 5/15/09, 9/17/08
ANDREW DURKIN, M.D.	3/27/09,
ROBERT MILLARD, M.D.	9/11/07, 8/20/07, 8/8/07, 7/11/07
SCOTT WACHHORST, M.D.	6/27/07, 11/8/06
RICHARD VILLALOBOS, M.D.	7/16/07
VIRGIL WILLIAMS, M.D.	5/25/07 (2)
BRUCE LIN, M.D.	5/24/07
SATICH SHARMA, M.D.	4/18/07
MARK CULTON, M.D.	11/14/06
ELIZABETH KAISER, M.D.	11/8/06

MEDICAL REPORT FROM BOARD’S DIRECTOR	DATED
RAJIV DAS, M.D.	9/14/10

Trustee Johnson asked Dr. Das whether it was his opinion that Mr. Van Key’s injuries occurred during his employment with the City.

Dr. Das stated that from a medical perspective it was clear that Mr. Van Key’s injuries occurred while he was employed by the City as he was cleared medically to participate in full duty work and the Academy.

(M.S.C. Herrera/Kaldor) Motion to Approve. 4-0-2 (Absent: Bacigalupi & Liccardo)

Trustee Liccardo arrived 8:55 a.m.

3. Change in Status

- a. **Billy K. Dishman**, Retired Police Sergeant, Police Department. Request for change in status to Service-Connected Disability Retirement effective September 23, 2006; 25.24 years of service. Mr. Dishman was present and represented by Attorney *Jim Jeffers*. The following reports were presented to the Board:

MEDICAL REPORTS - DR'S NAME	DATED
PAUL ANDERSON, M.D.	11/30/2009; 08/28/2009
STEPHEN CORCORAN, M.D.	03/18/2009
GRADY JETER, M.D.	12/13/2007 (2 RPTS); 07/02/2007; 03/01/2005
Y. KASSA, M.D.	06/20/2007 (2 RPTS)
JOEL SAAL, M.D.	01/30/2007; 11/07/2006; 10/13/2006; 02/02/2006; 08/09/2005
GERALD SCHWARZ, M.D.	04/09/2005
RORY SATTERFIELD, M.D.	03/02/2005
SAMUEL BAKER, JR., M.D.	03/11/2004
JOHN O'BRIEN, M.D.	02/24/2004
ECHOCARDIOGRAPHY REPORT	02/20/2004

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	09/14/2010

Trustee Johnson stated that he had difficulty finding a connection between a work related injury and the work restrictions given to Mr. Dishman.

Mr. Richeda stated that focusing on the lower back injuries was important. Mr. Dishman returned to full duty work, but had a resurgence of symptoms. Dr. Das found that the lower back injuries necessitated work restrictions that prevented Mr. Dishman from returning to work.

(M.S.C. Liccardo/Herrera) Motion to Approve. 4-1-1 (Johnson – No; Bacigalupi – Absent)

- b. **Timothy R. Hall**, Retired Firefighter, Fire Department. Request for change in status to Service-Connected Disability Retirement effective June 27, 2009; 29.99 years of service. Mr. Hall was present and represented by Attorney *Sam Swift*. The following reports were presented to the Board:

MEDICAL REPORTS - DR'S NAME	DATED
PATRICK MCCREESH, M.D.	6/23/10 (2), 3/18/10 (4), 3/2/10 (2), 2/6/10 (2), 10/8/09 (2), 4/9/09, 1/21/09, 11/3/08, 7/3/08, 4/21/08, 6/14/07, 12/07/06, 11/07/00, 5/25/99
JOHN COLMAN, M.D.	1/21/10 (2), 4/3/09, 2/24/09
NICHOLAS ABIDI, M.D.	10/28/08, 10/21/08, 9/30/08
MARK CULTON, M.D.	7/22/08, 6/13/08, 2/8/08
DAVID KRAMER, M.D.	4/22/08, 6/22/07
STEVEN SHERRY, D.C.	12/6/06
R.H. REID, M.D.	4/12/99
ARON JUDKIEWICZ, M.D.	4/27/99

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	9/14/10

(M.S.C. Herrera/Kaldor) Motion to Approve. 5-0-1 (Bacigalupi – Absent)

- c. **Robert M. Juelson**, Retired Fire Captain, Fire Department. Request for change in status to Service-Connected Disability Retirement effective January 24, 2009; 38.31 years of service. Mr. Juelson was present and represented by Attorney *Sam Swift*. The following reports were presented to the Board:

MEDICAL REPORTS - DR'S NAME	DATED
1. PATRICK MCCREESH, M.D.	4/16/10 (X2), 4/8/10, 12/11/09 (X2), 11/14/09 (X2), 11/11/09, 11/10/09, 9/11/08, 2/28/08, 5/7/07 (X2), 2/2/06, 12/30/04, 2/2/04, 12/8/03, 10/10/02
2. EUGENE DELLAMAGGIORE, M.D.	3/29/10 (X3), 3/23/10 (X4), 12/28/09 (X2), 10/20/08, 5/5/08 (X2),
3. ALLEN KAISLER-MEZA, M.D.	10/20/08
4. MARK CULTON, M.D.	4/24/08,
5. LAWRENCE CHAN, M.D.	2/14/08, 4/10/06
6. KEITH FRAKER, M.D.	1/9/08
7. EDWARD DAMORE, M.D.	12/28/07
8. WILLIAM SOULE, M.D.	5/7/07, 5/7/07
9. HARJIT SEKHON, M.D.	2/9/06
10. MURRAY SOLOMON, M.D.	12/10/02

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	9/14/10

(M.S.C. Herrera/Kaldor) Motion to Approve. 5-0-1 (Bacigalupi – Absent)

- d. **John P. Quayle**, Retired Police Officer, Police Department. Request for change in status to Service-Connected Disability Retirement effective January 31, 2005; 25.00 years of service. *(Continued from September 2, 2010 meeting)*
- (i) Staff memo regarding Disability Application Filing deadline.
 - (ii) Letter from Stanek & Boyle regarding John P Quayle – Section 3.36.920
- Mr. Quayle was present and represented by Attorney *Thomas J. Boyle*. The following reports were presented to the Board:

MEDICAL REPORTS - DR'S NAME	DATED
C. ARULANANDAN, M.D.	3/3/10 (2), 1/8/07, 10/12/05
JONATHAN NG, M.D.	11/20/09, 8/5/09 (4), 6/26/09

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	8/16/10
RAJIV DAS, M.D.	5/11/10

Ms. Dent stated that since Trustee Liccardo was not present at the September Board meeting it be in order for Trustee Liccardo to participate in this hearing, the Board would need to rehear the evidence submitted at the September hearing.

Mr. Boyle and *Dr. Das* reviewed the medical reports, the work restrictions and ability to perform the modified duty position offered by the Department at time of Mr. Quayle's retirement, and the issue of a disability application more than one-year after retirement.

Ms. Dent explained that the legal interpretation of the one-year rule is that the applicant needs to demonstrate by a preponderance of evidence that the condition resulted from work factors that had not been previously known to cause injury or disease. *Ms. Dent* went on to explain that the criteria

for evaluation of a disability retirement application need include consideration of whether the disability existed while the applicant was working for the City and whether there was medical knowledge at the time that the injury/disease was caused by exposure to workplace factors that were harmful.

Lt. Bustillos explained that the exempt officer positions are essentially desk jobs where the employee is not supposed to enforce the law, but the job does not preclude the employee from stepping into duty if a situation requires it.

Trustee Liccardo stated that from his perspective the Board's purpose is to provide disability benefits to those employees who retire based on disability with no alternative employment available that meets their work restrictions. After hearing testimony and reviewing the medical records, it does not appear that Mr. Quayle's retirement was based on disability.

(M.S.C. Herrera/Liccardo) Motion to Deny. 4-1-1 (Taylor – No; Bacigalupi – Absent)

4. Deferred Vested

- a. **Rodolfo E. Downing**, Police Officer, Police Department, effective November 27, 2010, 18.11 years of service.

(M.S.C. Liccardo/Taylor) Motion to Approve. 5-0-1 (Bacigalupi – Absent)

DEATH NOTIFICATIONS (Moment of Silence)

The items listed below are Note & File

5. Notification of the death of **Jonathan Watkins**, Active Firefighter, died 7/25/10. Survivorship benefits to Ryan and Sean Watkins, sons.
6. Notification of the death of **Glenn McCourtie**, Retired Police Lieutenant, died 8/12/2010. Survivorship benefits to Mary-Ellen McCourtie, Spouse and to Wesley McCourtie, son.

NEW BUSINESS

7. **Approval of change of Retirement date for Steven J. Gutierrez from August 21, 2010 to October 30, 2010.**

(M.S.C. Herrera/Liccardo) Motion to Approve. 5-0-1 (Bacigalupi – Absent)

8. **Discussion regarding Lowest Cost Plan and Kaiser Senior Advantage Plan.**

This item is Note & File.

Ms. Busse stated that retirees are still offered the Kaiser Senior Advantage Plan, but active plan members are not; therefore, the Kaiser Senior Advantage Plan cannot be the lowest cost plan.

9. **Discussion regarding disability process and Board training.**

This item is deferred.

10. **Discussion regarding letter from David Santiago, Retired Police Officer, requesting a rehearing of his Service-Connected Disability application.**

Note: This item was heard after item 11.

Ms. Dent explained that this was an item of correspondence as there is no official process for members who were denied a service-connected disability retirement requesting a rehearing of their application.

The Board would have to rescind its denial and then begin the hearing process again in order to proceed with a rehearing of Mr. Santiago's service-connected disability application.

The Board requested that communication be provided to Mr. Santiago that the Board did not move forward with his request for a rehearing.

11. Presentation from Auditor's Office on report titled "Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future."

This item is Note & File.

Ms. Erickson explained that the City Auditor's Office released the report on pension sustainability and most of the recommendations were directed to City Council and City Administration. At a high level, the report identifies that the rising pension benefit costs will have a dramatic impact on the City's ability to provide services. Three recommendations are important for the Board: #2, which recommends an actuarial audit every five years, if the Plan's actuary has not changed; #5, which recommends that City Council be fully informed on Plan performance and receive each plan's Comprehensive Annual Financial Report, and that staff provide a presentation to the City Council regarding the financial status and performance of the Plan; and #6, which recommends that staff prepare a summary of the Plan's financial status and performance and provide this summary to plan members and retirees.

Trustee Johnson asked about the possibility mentioned in the report of joining CalPERS to save on administrative costs.

Mr. Crosby explained that, while it might be possible to save on administrative costs through CalPERS, the current plan administration has paid for its costs for the next century with the investment outperformance over the last two years.

OLD BUSINESS/CONTINUED-DEFERRED ITEMS

12. Discussion and action regarding change in pay reporting for Labor Code Section 4850

Disability Payments and Impact on Retirement Fund. (Continued from September 2, 2010)

- a. Letter from Wylie, McBride, Platten & Renner on Pay Reporting for Disability Payments.
- b. Letter from Alex Gurza, Office of Employee Relations, regarding Amendments to Labor Code Section 4850.
- c. Review and recommendation of Ordinance amending SJMC 3.36.020.3 to clarify definition of compensation.

(M.S.C. Johnson/Herrera) Motion to recommend approval to City Council. 5-0-1 (Bacigalupi – Absent)

13. Update on status of Exit Physicals.

Ms. Busse stated that staff anticipates having the requested information from the Plan's insurance providers to be able to make a recommendation to the Board at its next meeting. The exit physicals will be continued until the Board decides otherwise.

Item deferred to next month's Board meeting.

STANDING COMMITTEE REPORTS/RECOMMENDATIONS

14. Investment Committee (Bacigalupi/Johnson/Taylor/Alternate: Kaldor) – next meeting October

21, 2010

The items below are Note & File.

- a. Summary of Minutes of the April 15, 2010 Investment Committee meeting.
- b. Summary of Minutes of the May 20, 2010 Investment Committee meeting.

15. Committee of the Whole

The item below is Note & File.

- a. Summary of Minutes of the May 20, 2010 Committee of the Whole meeting.

16. Real Estate Committee (Bacigalupi/Taylor/Kaldor/Alternate: Herrera) – next meeting December 16, 2010

The items below are Note & File.

- a. Summary of Real Estate Committee meeting, held July 1, 2010.
- b. Summary of Board of Directors Meeting of 1737 North First Street Corporation, held July 1, 2010.
- c. Summary of Board of Directors Meeting of 3169 Dodd Road Corporation, held July 1, 2010.
- d. Summary of Board of Directors Meeting of 3201 C Street LLC, held July 1, 2010.
- e. Summary of Board of Directors Meeting of 3301 C Street LLC, held July 1, 2010.
- f. Summary of Board of Directors Meeting of SJ Progress Point LLC, held July 1, 2010.

CONSENT CALENDAR (Items # 17 through 24)

(M.S.C. Liccardo/Herrera) Motion to approve. 5-0-1 (Bacigalupi – Absent)

17. Approval of Minutes

- a. Monthly Board meeting held on September 2, 2010.

18. Approval of Travel/Conference Attendance

- a. Donna Busse - GlobalMedia, 2nd Annual “Retiree Healthcare Congress”, Las Vegas, NV October 25-26, 2010.
- b. Sean Kaldor - IFEBP, “Foundations for Trustees 1,” San Diego, CA – November 20-21, 2010.
- c. Sean Kaldor - IFEBP, “Investments Institute,” Las Vegas, NV – April 11-13, 2011.
- d. Sean Kaldor - IFEBP, “Trustees and Administrators Institutes,” San Francisco, CA – June 13-15, 2011.
- e. David Bacigalupi - IFEBP, “56th US Annual Employees Benefits Conference,” Honolulu, HI – November 14-17, 2010.

Note: Bacigalupi will not be attending this Conference.

19. Approval of Monthly Expenses

- a. Plan Expenses from August 2010.

20. Pending Action

- a. Pending Action Summary List – As of October 2010.

21. Benefits Review Forum

- a. Summary of meeting held on September 22, 2010.

22. Return of Contributions

- a. Voluntary
- b. Involuntary

23. Investments

- a. Adoption of Resolution 3680 for the period of July 1, 2010 through July 31, 2010.
- b. Adoption of Resolution 3681 for the period of August 1, 2010 through August 31, 2010.

24. Communication/Information

- a. Report on Investments as of July 31, 2010.
- b. Report on Investments as of August 31, 2010.
- c. Open Enrollment Benefit Changes 2010-2011.

PROPOSED AGENDA ITEMS

Trustee Kaldor requested that staff review and provide an evaluation of what is currently being done regarding the City Auditor's Pension Sustainability Report, Recommendations #2, #5, and #6.

PUBLIC COMMENTS - NONE

EDUCATION & TRAINING

The below items are Note and File

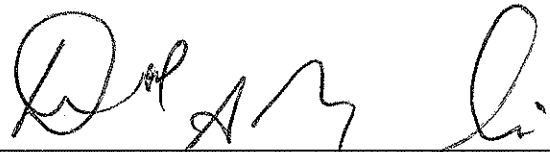
25. Notification of CalAPRS' Trustees Round Table

- a. Trustees' Round Table, San Diego, CA – October 15, 2010.
- b. Trustees' Round Table, Double Tree Hotel, 2050 Gateway Place, San Jose, CA – January 28, 2011.
- c. General Assembly, Monterey, CA – March 3, 2011 thru March 8, 2011.

26. Notification of IFEBP Training

- a. 56th U.S. Annual Employees Benefits Conference, Honolulu, HI – Sunday, November 14, 2010 thru Wednesday, November 17, 2010.
- b. Foundations for Trustees 1, Hilton, San Diego, CA – Saturday, November 20, 2010 thru Sunday, November 21, 2010.
- c. Foundations for Trustees 2 Pensions, Hilton, San Diego, CA – Saturday, November 20, 2010.
- d. Investments Institute, Las Vegas, NV – April 11, 2011 thru April 13, 2011.
- e. Portfolio Concepts and Management, Philadelphia, PA – Monday, May 23, 2011 thru Thursday, May 26, 2011.
- f. Trustees and Administrators Institutes – New Trustees, Hilton, San Francisco, CA – Monday, June 13, 2011 thru June 15, 2011.

ADJOURNMENT at 10:59 A.M.



**DAVID BACIGALUPI, CHAIR
BOARD OF ADMINISTRATION**

ATTEST:



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