

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**August 6, 2009**

### **CALL TO ORDER**

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:49 a.m., on Thursday, August 6, 2009, in regular session at Department of Retirement Services, 1737 N. First St, Suite 600 - San Jose, CA.

### **ROLL CALL**

#### **Present:**

**DAVID BACIGALUPI**  
**BILL BRILL**  
**CONRAD TAYLOR**  
**KEITH KEESLING**  
**ROSE HERRERA**  
**SAM LICCARDO**

#### **CHAIR**

**Trustee**

#### **VICE CHAIR**

**TRUSTEE**

**Trustee (Arrived 8:46 a.m.)**

**Trustee (Arrived 8:46 a.m.)**

### **NOT PRESENT:**

**Scott Johnson**

**TRUSTEE (Excused)**

### **ALSO PRESENT:**

**Russell Crosby** -**SECRETARY**  
**Carmen Racy-Choy** -Staff  
**Mollie Dent** -City Attorney Office  
**Debbi Warkentin** -Staff  
**Tamasha Johnson** -Staff  
**Richard Benitez** -SJPOA  
**Jorge Gonzalez** -SJPD  
**Bruce DeMers** -P&F Retirees  
**Ali Amiry** -Staff  
**Jim Jeffers** -Attorney  
**Veronica Niebla** -Staff  
**Ceara O'Fallon** -Staff  
**A. Rosingana** -SJ Retirees  
**Andy Yeung** -Segal  
**John Tennant** -Attorney  
**Sandra Holloway** -SJPD  
**Juan M. Reyes** -SJPD  
**Sam Swift** -Attorney  
**Bill Thomas** -SJREA  
**Valerie Simpson** -SJPD  
**Amanda Ramos** -Staff

**Donna Busse** -Staff  
**Robert Pegram** -Public member  
**Russell Richeda** -Saltzman & Johnson  
**Thomas J. Boyle** -Attorney  
**Toni Johnson** -Staff  
**Jesselle Holcomb** -Staff  
**Rhonda Snyder** -Staff  
**Antonio Guerra** -Mayor's Office  
**S. Gracie** -SJPD  
**Bobby Lopez** -SJPOA  
**Aracely Rodriguez** -OER  
**J. Donald** -SJFD  
**Franco Vado** -POA  
**Karin Carmichael** -Staff  
**Lt. Mark Bustillos** -SJPD  
**Doris Lee-Harold** -SJPD  
**Jim Unland** -SJPD  
**Linda Charfauros** -SJFD  
**Mike Moffett** -Retired SJFD  
**Ron Kumar** -Staff  
**George Beattie** -SJPD

## **REGULAR SESSION**

### **ORDERS OF THE DAY**

**Chair Bacigalupi** called the meeting to order at 8:32 a.m. He stated Item 1d – application of Brian Kneis has changed the effective date to 8/9/09. He also stated that Closed Sessions, Items #32 and #33, will be discussed after Item #18, and then Items # 12 and #13 will follow closed session.

## RETIREMENTS

### 1. Service

- a. **Gary W. Drake**, Sergeant, Police Department. Request for Service Retirement effective July 24, 2009; 30.10 years of service.

(M.S.C. Brill/Keesling) to approve. Motion carried 4-0-3. (Absent: Herrera, Liccardo, Johnson).

- b. **Daniel Fino**, Police Officer, Police Department. Request for Service Retirement effective June 19, 2009; 28.33 years of service.

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

- c. **Andrew F. Galea**, Deputy Chief, Police Department. Request for Service Retirement effective August 8, 2009; 30.85 years of service.

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

- d. **Brian C. Kneis**, Sergeant, Police Department. Request for Service Retirement effective August 8, 2009; 29.14 years of service.

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

- e. **Scott E. Marsh**, Sergeant, Police Department. Request for Service Retirement effective August 8, 2009; 28.54 years of service.

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

- f. **Steven L. Smith**, Fire Captain, Fire Department. Request for Service Retirement effective June 30, 2009; 25.01 years of service. **(SCD Pending)**

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

- g. **Edward N. Videan**, Police Officer, Police Department. Request for Service Retirement effective August 22, 2009; 20.03 years of service.

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

### 2. Disabilities

- a. **Juan M. Reyes**, Police Officer, Police Department. Request for Service-Connected Disability Retirement effective August 6, 2009; 21.26 years of service.

For the record **retired Police Officer Reyes** was present and was self represented. The following reports have been received:

#### MEDICAL REPORTS – DR'S NAME

#### DATED

1. RENEE OWNBEY, D.C.	4/15/09 (X6), 9/15/08, 4/4/07, 5/30/03, 12/31/00
2. LUCY LIN, M.D.	8/3/07, 5/17/07, 10/14/05, 9/26/03
3. HAMID MEHDIZADEH, M.D.	9/25/03
4. KLAUS FECHNER, M.D.	7/28/99
5. JERWIN WU, M.D.	7/22/99

6. MICHAEL CAHN, M.D.	4/28/99
7. HECTOR MACKINNON, M.D.	11/12/92, 11/10/91, 10/15/91
8. RANDALL SEAGO, M.D.	9/25/90
9. ROBERT HAYWARD, M.D.	3/12/90
10. RUDY ROJAS, D.C.	5/12/89, 12/8/86
11. I. FINK, M.D.	12/6/86

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	7/20/09

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

**3. Change in Status**

- a. ***John S. Donald***, Retired Fire Engineer. Request for change to a Service-Connected Disability Retirement effective January 24, 2009; 31.47 years of service.

For the record retired Fire Engineer Donald was present and was represented by *Mr. Swift*. The following reports have been received:

MEDICAL REPORTS – DR'S NAME	DATED
1. Patrick McCreesh, M.D.	04/28/09 (six reports), 03/26/09, 04/05/07, 02/21/07, 05/25/06
2. John Knight, M.D.	06/16/2008, 03/11/2008, 02/13/2008
3. Philip Chyu, M.D.	01/10/08, 10/22/03
4. Mark Culton, M.D.	01/16/07
5. Sean Freezell, D.O.	11/14/06
6. Lawrence Chan, M.D.	08/04/06
7. Stephen Kahn, M.D.	05/01/06, 10/31/03
8. Douglas Lange, M.D.	10/19/04, 04/08/04, 01/13/04, 11/25/03

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	07/20/09

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

- b. ***Doris M. Lee-Harold***, Retired Police Officer. Request for status change to Service-Connected Disability Retirement effective January 24, 2009; 20.61 years of service.

For the record retired Police Officer Lee-Harold was present and was self represented. The following reports have been received:

MEDICAL REPORTS – DR'S NAME	DATED
1. EMEKA NCHEKWUBE, M.D.	4/13,2009 (X2), 8/11/08 (X2), 7/14/08, 6/16/08, 2/20/08, 11/28/07, 6/11/07, 1/11/07, 8/23/06
2. CONWAY LIEN, M.D.	3/11/09 (X2)
3. RENE OWNBEY, M.D.	11/17/08, 8/30/08 (X12), 2/27/08
4. FAUZIA BASIT, M.D.	9/2/08 (X4), 7/26/06, 1/23/06, 6/10/04, 2/21/03
5. NICHOLAS COLYVAS, M.D.	8/25/08 (X3), 7/27/04, 11/20/03
6. MARK SONTAG, M.D.	4/23/08
7. LAWRENCE CHAN, M.D.	1/11/08

8. JERRY LIU, M.D.	11/14/07,
9. DONALD PANG, M.D.	8/25/06, 6/23/00, 11/30/99
10. EDWARD DAMORE, M.D.	12/20/04, 11/5/04, 10/1/04
11. ALAN KIMELMAN, M.D.	9/30/04
12. TRIPTA SACHDEV, M.D.	3/31/04
13. AARON HAMMONS, D.C.	3/30/04
14. JOHN FORTUNE, M.D.	12/2/05, 10/18/05
15. CLARE VROOM, N.P.	11/18/05
16. MOHAMMED AHMED, M.D.	12/18/03
17. MARK LARSEN, M.D.	12/10/03
18. MARIA MATSUMOTO, M.D.	10/23/03
19. STEPHEN COLLINS, D.C.	9/11/03
20. GRADY JETER, M.D.	6/4/03, 3/3/03
21. MARK CULTON, M.D.	3/11/03, 7/17/06
22. CATHERINE JASAN, M.D.	7/22/98, 6/3/98
23. CARY YOUNG, M.D.	8/25/97
24. CALVIN GORDON, M.D.	2/3/97
25. ARTHUR HOLMBOE, M.D.	7/12/94, 5/13/94
26. S. KUCERA, M.D.	12/22/91

<b>MEDICAL REPORT FROM BOARD'S DIRECTOR</b>	<b>DATED</b>
RAJIV DAS, M.D.	7/8/09

**Members Herrera and Liccardo arrived**

(M.S.C. Brill/Taylor) to approve. Motion carried 6-0-1. (Absent: Johnson).

**4. Deferred Vested - None**

Chair Bacigalupi stated 286 years of service were retired today. He thanked and congratulated everyone.

**DEATH NOTIFICATIONS**

**5. Notification of the death of Hilbert Bolton, Retired Fire Captain; retired 7/12/77, died 5/15/09. No survivorship benefits.**

*This item is note and file.*

**NEW BUSINESS**

**6. Approval of Lump Sum Payment to Lisa Rodriguez, ex-spouse of Retired Officer Raymond Pena effective immediately under Part 17, Section 3.36.3600, San José Municipal Code.**

(M.S.C. Brill/Herrera) to approve. Motion carried 6-0-1.

**7. Update on Securities & Exchange Commission's inquiry of pension plans.**

*Ms. Dent* stated the SEC made a written request in late June to both Plans for a variety of information related to placement fees in connection with Plan investments. Provided in the packet was a letter that granted a time extension for the requested information, as the original deadline did not provide enough time to respond, and as of 7/24/2009 the requested documentation was provided to the SEC. Additionally there was a verbal request related to real estate investments. The SEC requested the same information from several plans.

**Chair Bacigalupi** requested that for the next meeting to provide a cover letter outlining what information was provided.

*Mr. Richeda* noted AB 1564 that is pending in the Assembly and the potential regulation of placement agents. There is controversy throughout the country regarding managers paying to be considered for hire by a Plan, otherwise known as pay to play.

**8. Discussion and Board direction on counsel's legal opinion on Board quorum requirements.**

*Ms. Dent* stated she provided a memo to the Board in February 2009, and she has provided a memo from Ms. Devencenzi regarding the teleconferencing requirements, which still apply. For teleconferencing, at least a quorum of the Board must participate from within the boundaries of the City of San Jose. When the membership for the Board increased from 5 members to 7 members, the Code was assumed to have been amended; however it was not, so the quorum requirement is inconsistent. The Board must have a minimum of three (3) members participating within San Jose for teleconferencing, which is a Brown Act requirement. There is not a requirement in the Municipal Code. Having a lower requirement can be advantageous when people are unable to attend a meeting, so that business can still be conducted.

*This item is note and file.*

**9. Report on City's prefunding of required contributions for Fiscal Year 2009-10 and reconciliation for Fiscal Year 2008-09.**

*Mrs. Niebla* stated the memo outlines the prepayment elected by the City for the current Fiscal Year, which was received on 7/2/2009, and provides the reconciliation from last Fiscal Year. The actuaries use estimated payroll assumptions when doing the actuarial study, so the actual payroll is reviewed and reconciled to the projected amount.

There was discussion about the nature of the calculation and how the time value of money is assumed.

*This item is note and file.*

**10. Discussion and election of new director to Board of Directors of:**

- a. 1737 N. First Street Corporation;
- b. 3169 Dodd Road Corporation;
- c. 3201 C Street, LLC;
- d. 3301 C Street, LLC; and,
- e. SJ O'Fallon, LLC

(M.S.C. Taylor/Brill) to nominate Keesling as the new directors. Motion carried 6-0-1.

**11. Review of Medical Director's services as provided and request for Board direction on the potential for issuing RFP for medical services.**

**Chair Bacigalupi** stated he requested this item, as he thinks there may be a potential for a conflict of interest, and would like to see how other Plans handle this matter and what other methods are available. He would also like for the Medical Director to participate in the process. He explained that when a police officer gets hired the medical director passes the candidate, although that candidate has a back injury, but down the road, that same

applicant comes before the Board to request a disability retirement and is examined by the same medical director.

*Dr. Das* stated he performs medical surveillance exams for police officers and firefighters, which is not for treatment but more wellness support for identifying work exposure. He also performs DMV physicals, medical reviews for random drug testing, and the Retirement Board services. He continued that the post-hire process is such that if a candidate has a medical problem at hire then that injury must be cleared, so that there are no work preclusions.

*Mr. Richeda* stated when the Medical Director was initially hired; he only served the Retirement Board. It was thereafter that the City began to use his services as well. He suggested the Board could request that the medical director provide a written memorandum that indicates his role.

*Mr. Lopez* stated current processing time for disability applicants take several months, and the applicants are using up all of their leave time; so the potential for adding to the amount of workload to the medical director is of concern.

(M.S.C. Brill/Herrera) to have staff provide report indicating what services are provided by the Medical Director; delays have occurred and for what reason. Motion carried 6-0-1.

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

### **(Out of Order)**

- 14. Authorization for Secretary to negotiate and execute an amendment to agreement with Macias, Gini & O'Connell for the following: a) audit of City's payroll transmission process; b) to continue term through December 31, 2010; c) authorize Secretary to add/modify MGO's agreed-upon procedures as needed; and, d) increase not-to-exceed amount by \$30,000 for a total of \$100,000 (to be shared with FCERS System on usage-per plan basis).**

The Secretary stated there are substantial issues with FLSA, which will be discussed during Closed Session. Since the system has been never been audited there are many issues arising.

(M.S.C. Brill/Herrera) to approve. Motion carried 6-0-1.

### **16. Oral update on Travel Audit compliance.**

*Mrs. Niebla* stated there are still three open items to resolve, which will be reviewed at the Audit Committee, and then brought to the Board.

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

- 17. Request for authorization for Secretary to negotiate and execute the 2<sup>nd</sup> Amendment to the agreement with the Wilfred Jarvis Institute extending term to June 30, 2010.**

(M.S.C. Keesling/Herrera) to approve. Motion carried 6-0-1.

- 18. Request for Board direction on trustee travel relating to investment manager due diligence trips. (Cont'd from June agenda)**

Chair Bacigalupi stated this matter was heard in June and the motion did not pass, so it is back this month for further discussion.

(M.S.C. Keesling/Taylor) to direct the Chair to establish a sub-committee to discuss and review this matter.  
Motion carried 5-0-2.

**(Out of Order)**

**ADJOURNMENT INTO CLOSED SESSION AT 9:35 AM**

- 32. CLOSED SESSION - Conference with Legal Counsel – Anticipated Litigation**  
Initiation of litigation pursuant to subsection (c) of Section 54956.9 of Government Code  
Number of matters to be discussed: 1
- 33. CLOSED SESSION – Conference with Legal Counsel Anticipated Litigation (Claim Not Filed)**  
Signification exposure to litigation pursuant to subsection (b) of Section 54956.9 of Government Code.  
Number of matters to be discussed: 2

**RECONVENE INTO OPEN SESSION 10:42 AM**

*Ms. Dent* stated there was nothing to report out of Closed Session at this time.

**Member Brill exited 10:40 a.m.**

**(Back on Agenda)**

- 12. Acceptance of Segal's Actuarial Valuation of Other Postemployment Benefits (OPEB) as of 30 June 2007 and authorization to forward to City Administration.**

*Mrs. Racy-Choy* stated this report is only for disclosure for the City's financial statements, not for setting contribution rates.

(M.S.C. Herrera/Keesling) to accept Segal's Actuarial Valuation and OPEB Report as of 6/30/2007, and authorize it be forwarded to City Administration. Motion carried 4-1-2(Liccardo-No/Brill& Johnson – Absent)

- 13. Discussion and request for Board direction on Segal's Projection of Contribution Rates under Different Scenarios (Retirement Plan Only).**

*Mr. Yeung* stated in this report, Segal has analyzed the impact of: (1) increasing contribution rate requirements brought about by unfavorable past and hypothetical future market rates of return since the last valuation date as of June 30, 2007; (2) increasing contribution rate requirements that would result if the current 8% assumed rate of investment return assumption used in the June 30, 2007 valuation were to be changed to 7.5% stating with the June 30, 2009 valuation; and (3) elimination of the 80% to 120% market value corridor starting with the 6/30/2009 valuation. He noted that the preliminary net rate of return of -19.5% for plan year 08/09 was provided by the Retirement Department and used by Segal without review. According to the Retirement Department, it was calculated by taking the -18.81% gross rate of return, reduced by 0.55% in administrative and investment expenses and by 0.14% in benefit related payments from the SRBR.

*Mrs. Racy-Choy* stated the numbers provided were preliminary numbers, and will be finalized next week. The 0.14% referred to as a benefit related payment is actually the amount of money transferred from the general fund to the SRBR interest fund.

*Mr. Yeung* stated under the baseline scenario, the employer contribution rate for the Retirement Plan is expected to more than double from 22.5% of payroll developed in the June 30, 2007 valuation to 46.0% developed in the June 30, 2012. Then under Scenario 1, if the Board were to decrease the 8.0% assumed rate of investment return assumption used in the June 30, 2007 valuation to 7.5% effective with the June 30, 2009 valuation, there would be an immediate increase in the employer and the employee contribution rates of 8.5% and 1.1% of payroll, respectively. The Scenario 1 contribution rates remain higher when compared to the Baseline until the end of the projection period. This is in part due to the assumption that, under Scenario 1, the Plan would actually earn an annual market return of 7.5% starting in 09/10, which is 0.5% less than that assumed under the Baseline scenario. Under the Baseline scenario, it is anticipated that the AVA would be limited by the 120% of market value corridor in the June 30, 2009 valuation. This means that any market losses after the AVA exceeds 120% of the MVA would have to be fully recognized in developing the employer's contribution rate as of the June 30, 2009 valuation. And under Scenario 2, 80-120% market value corridor was removed that was applied in determining the maximum amount that the AVA is allowed to deviate from the MVA in the Baseline scenario. Note that, relative to the Baseline scenario, the June 30, 2009 contribution rate is smaller by 8.9% of payroll. However, in the long term, the contribution rates under Scenario 2 will end up slightly higher than the rates under the Baseline scenario, due to the lower contributions in the early years. He noted that Segal included results under Scenario 2 with no MVA corridor to illustrate the impact of the MVA corridor, and not because removing the MVA corridor is necessarily a viable policy option.

*Mrs. Racy-Choy* stated that the scenarios were run independent of each other as previously requested by Trustees.

**15. Update and request for Board direction on the RFP issued for actuarial services.**

*Mrs. Racy-Choy* stated at the June Board meeting the request to do an RFP was approved, and within 10 days the RFP was released. The six (6) largest firms were contacted; only Segal submitted a reply. Staff is requesting further direction from the Board.

**The Secretary** stated staff would like to perform more outreach and bring this item back in the future.

(M.S.C. Herrera/Keesling) to bring back this item in the future. Motion carried 5-0-2. (Absent: Johnson, Brill).

**STANDING COMMITTEES / REPORTS / RECOMMENDATIONS**

**Investments Committee (Johnson, Bacigalupi, Keesling – Alternate: Liccardo)**

**19. Approval of minutes of 30 June 2009 Committee meeting**

(M.S.C. Keesling/Herrera) to approve. Motion carried 5-0-2.

**20. Approval of Investment Committee's FY 2009-10 Workplan**

(M.S.C. Keesling/Herrera) to approve. Motion carried 5-0-2.

**21. Approval of modifications to the P&F Plan's Statement of Investment Policy to include policy language in regards to high yields bonds, bank loans, convertible bonds & administrative changes and adoption of Resolution No. 3575**



modifying Statement of Investment Policy and ratify the revisions adopted by the Board on June 5, 2008 and December 4, 2008

(M.S.C. Taylor/Herrera) to approve. Motion carried 5-0-2.

**Real Estate Committee (Bacigalupi, Keesling, Taylor – Alternate: Herrera)**

**22. Summary of committee meeting held 1 July 2009**

**23. Summary of SJ Progress Point, LLC Board of Directors' Meeting held 1 July 2009**

*These items are note and file.*

**Audit Committee (Taylor, Brill, Johnson – Alternate: Bacigalupi) – Last meeting 5/21/09**

**CONSENT CALENDAR (Items 17-24)**

(M.S.C. Herrera/Keesling) to approve. Motion carried 5-0-2.

**PROPOSED AGENDA ITEMS**

Chair Bacigalupi would like to agendize the following items:

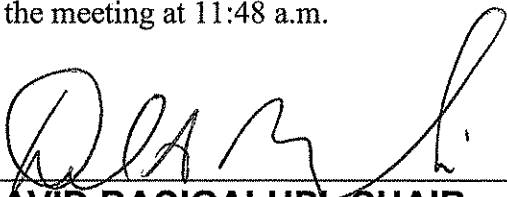
1. Request for Attorney General's opinion re: cell phone stipends as it relates to the Public Records Act and being open records

**PUBLIC COMMENTS**

**EDUCATION AND TRAINING**

**ADJOURNMENT**

There being no further business, Chair Bacigalupi adjourned the meeting at 11:48 a.m.

  
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**DAVID BACIGALUPI, CHAIR**  
**BOARD OF ADMINISTRATION**

**ATTEST:**

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