

POLICE AND FIRE RETIREMENT PLAN

Minutes of the Board Meeting

THURSDAY

SAN JOSÉ, CALIFORNIA

April 6, 2006

CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:35 a.m., on Thursday, April 6, 2006, 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

KENNETH HEREDIA, VICE CHAIR

BILL BRILL

LARRY LISENBEE

BRET MUNCY

DAVID CORTESE

CINDY CHAVEZ

Fire Employee Representative

Retiree Representative

Civil Service Representative

City Administration Representative

Police Employee Representative

City Council Representative

City Council Representative

ALSO PRESENT:

Edward F. Overton -SECRETARY / DIRECTOR

Susan Devencenzi -City Attorney

Russ Richeda -Saltzman & Johnson

Roger Pickler -Staff

Judy Powell - "

Henry DeGroot -SJFD Retiree

Kerry Burns -Fire

Maria Loera -Staff

Debbi Warkentin -Staff

Susan Perreira - "

Jack Solois -Retiree's Assn.

Colleen Hy -Staff

Toni Johnson - "

Mike Pribula - "

John Tennant -POA

Allen Rye -POA

Tom Webster -Staff

Carol Bermillo - "

Aracely Rodriguez -OER

Tamasha Johnson -Staff

Udaya Rajbhandari - "

Donna Busse - "

Rhonda Snyder - "

Aleta Holcomb - "

Ron Kumar - "

John Castro -Retiree

Maria Kung -Fire

Sam Swift -Attorney

Bill Hallmark -Mercer

Jeff Ricketts -POA

Robert Lopez -POA

Randy Sekany -Local 230

REGULAR SESSION

ORDERS OF THE DAY

The Chair called the meeting to order at 8:35 a.m. He also stated that Item 11 has been moved to occur after Item 4.

RETIREMENTS

Service - None

Disabilities - None

Change in Status

John C. Castro, Jr., Retired Fire Engineer. Request for change to Service-Connected Disability Retirement effective January 29, 2005; 29.93 years of service.

Retired Fire Engineer Castro was present and was represented by *Sam Swift*.

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

<u>Doctor's Name</u>	<u>Report Date</u>
Shahid Siddqui	7/27/04; 7/28/04; 9/24/04 & 3/16/05
Jake Benford	7/24/04
<u>Medical Director</u>	<u>Report Date</u>
Dr. Rajiv Das	1/12/06

Dr. Das summarized Mr. Castro's medical condition.

Mr. Swift discussed Mr. Castro's work and medical history.

(M.S.C. Brill/Muncy) to approve application. Motion carried 5-0-2 (Cortese/Chavez arrived late).

Deferred Vested - None

OLD BUSINESS / CONTINUED ITEMS (Out of Order)

Approval of William M. Mercer's actuarial study for the two-year period ending June 30, 2005 and establishment of rates of contributions to be effective 1 July 2006.

Mr. Hallmark stated that this was the final valuation report he has presented to the Board. He sent over some exhibits yesterday that break out certain costs, which are more for the accounting purposes of the Retirement Department. The recommended contribution rates are divided between the basic and the COLA. The City's total is 21.42, which is the same as in the pension summary. He went through the report briefly and explained some of the developments that occurred at previous Board meetings, which led up to this final report. He stated that the total rate for the City would be 25.22% and the member's rate would be 11.26%. He said there is a chargeback to the SRBR that reduces the City's rate by .39% for 12 months starting on July 1, 2006.

Member Heredia stated that there should be two rates, one for the 2006-2007 year and one for 2007-2008 year, that should clearly state what the rates are going to be.

The Secretary explained the calculation and then stated to Mr. Hallmark that the format should be what the rates are and show the new rates, without having to do the arithmetic.

Mr. Richeda stated that modification would be made and that these are interim rates, as they still have to determine the Police and Fire benefits separately.

The Board discussed that issue briefly and clarified that it was a separate item and would be discussed at a later time.

Member Heredia wanted to know how the new rates would be affected once the upcoming ordinances pass.

The Secretary explained that the rates are for the plan as it is; we cannot provide a rate for something that has not been provided yet. Once the ordinances pass, that enhancement will come back to the Board for any rate increases approval, if needed.

Member Muncy clarified that the new rate for the City is going to be 25.22% for 2006-2007 and then it will increase by 0.39% for the 2007-2008 year.

(M.S.C. Muncy/Lisenbee) to approve setting the new City contribution rate at 25.22% and member's contribution rate at 11.26% for 2006-2007 and for 2007-2008 the City's rate will be 25.61% and the member's rate will remain 11.26%. Motion carried 4-3-0. (No-Skeen/Heredia/Cortese)

(Back to Agenda)

DEATH NOTIFICATIONS

Notification of the death of Eugene T. Brown, Retired Sergeant; retired 12/3/86; died 2/23/06, and survivorship benefits to Barbara Brown, spouse.

(M.S.C. Brill/Heredia) to approve benefits. Motion carried 7-0-0.

Notification of the death of Fred R. Mullins, Retired Police Officer; retired 1/12/81; died 3/14/06, and no survivorship benefits.

(M.S.C. Brill /Heredia) to approve benefits. Motion carried 7-0-0

Notification of the death of Albert W. Potter, Retired Firefighter; retired 9/5/96; died 2/10/06, and survivorship benefits to Lorraine Potter, spouse.

(M.S.C. Brill/Heredia) to approve benefits. Motion carried 7-0-0

Notification of the death of John N. Scott, Retired Fire Engineer; retired 4/11/82; died 3/4/06, and survivorship benefits to Maria Scott, spouse.

(M.S.C. Brill/Heredia) to approve benefits. Motion carried 7-0-0

NEW BUSINESS

Approval of the Police and Fire Department Retirement Plan's budget for the fiscal year 2006-2007.

(M.S.C. Brill/Heredia) to approve item. Motion carried 7-0-0.

Recess Taken

Discussion on Russ Richeda's Conflict of Interest Analysis concerning Board Member Heredia.

Mr. Richeda stated that he has provided a memo in response to three questions presented to him. The question were 'Does the relationship between Board Member Heredia and Mr. Platten's Law Firm constitute a conflict of interest. Should he not vote, what authority the Board has to determine if he is entitled to legal counsel of his choosing, and if the Board should pay for it. He stated that this is a very complex area of law, but he did not feel that Member Heredia possessed a conflict to the Board.

Member Cortese, Mrs. Devencenzi, and Mr. Richeda discussed the legal opinions, the areas they researched, and the prior rulings by the San Jose City Attorney's Office. They then described the threshold test and both attorneys agreed that Member Heredia in their legal opinion did not pose a conflict.

Mr. Sekany stated that both attorneys agreed that Member Heredia does not pose a conflict of interest and can vote but he feels they need to get a declaratory relief, given what was cited by Member Heredia at the special meeting that he "didn't have anything to do with that other stuff", and that what the Legal Counsel has researched may be different than cited by the City Attorney's Office. Also, the fact that there are several lawsuits going on, the Board should get a hold on this matter and bullet-proof itself, so that we don't create any more complications.

Member Brill said that it is probably a minimal cost, but he doesn't know that the Board wants to spend money from the Plan to cover it.

Chair Skeen felt Member Heredia can get legal representation and the Board to pay for it. His question is if a letter is sent FPPC does it resolve any issue for Member Heredia or any one else on the Board.

Mr. Sekany expressed that Mr. Yank could have pointed at anybody. He understands that the Board has timelines pertaining to numerous items, but now it seems that there is something at hand that needs action and it is clearly wise to take some time to explore the options.

The Secretary asked if the attorneys started the ruling today, when would it likely to be done. He asked if outside counsel is allowed to submit information in regards to what counsel here has already proposed or suggested.

Mr. Tennant stated that the POA thought the Board would accept Mr. Richeda's legal opinion as presented, Mr. Yank's issue could be dropped, and we would move on. The POA has not seen Mrs. Devencenzi's legal opinion; however with what they know at this time, the POA would like Mr. Yank's issue dropped for now.

Member Heredia clarified his comments as referred to by Mr. Sekany, that at the special meeting, the transcribed statement was that he would be the fiduciary in this matter and anything outside of that duty he didn't and wouldn't have anything to do with.

Mr. Sekany stated that his attorney is not present, nor is Mr. Yank, but John works with Mr. Yank and he wanted to make that clear. He has not heard anything yet about what should be done. This is a can of worms that has been opened.

Chair Skeen asked Mr. Sekany what he wants the Board to do.

Mr. Sekany stated that he wants them to get a letter from the FPPC, and find out if it is appeal able, because he just would like some form of bullet-proof clarity regarding the situation.

Member Brill, *Mrs. Devencenzi*, and *Mr. Richeda* discussed what the next step is, if action can be taken, or what form the motion should be in.

Member Lisenbee said that the basic issue of conflict of interest seems resolved, as there are three attorneys agreeing, and there is no way for someone to bullet-proof themselves. He feels there should be outside legal counsel for Member Heredia on this matter only and that the Board pays for it.

Chair Skeen expressed that if Mr. Yank withdrew the issue, what if the Board still feels it is an issue. He further stated that at what point does this get resolved, as who will be pointed to next.

Member Chavez inquired about if an analysis of each Board member could be done to have any conflicts of interest issues that could arise on the forefront.

(M.S.C. Brill/Chavez) to refer this matter back for further analysis of each Board member by Mrs. Devencenzi and Mr. Richeda working together. Motion carried 7-0-0.

OLD BUSINESS / CONTINUED ITEMS

Status report on the Board's Disability Process Audit Committee.

(M.S.C. Brill/Cindy) to accept report. Motion carried 7-0-0.

STANDING COMMITTEE REPORTS/RECOMMENDATIONS

Investment Committee (Skeen/Heredia/Muncy)

- Summary of meeting held 16 February 2006.
 - a. Approval to grant Seix Investment Advisors' request to invest in emerging market debt securities as part of the core plus portion of the portfolio and limited to 10% of total fixed income portfolio.
 - b. Approval to grant Seix Investment Advisors' request to invest 5% of the Plan's fixed income portfolio managed by them in non-US dollar security.

(M.S.C. Brill/Muncy) to approve items. Motion carried 7-0-0.

- Summary of meeting held 16 March 2006.
 - a. Approval to grant an Investment Policy exception for William Blair & Co. to increase their limit for investments in Emerging Markets Equities from 20% to 25% of their international equity portfolio.

(M.S.C. Brill/Chavez) to approve item. Motion carried 7-0-0.

Real Estate Committee (Skeen/Heredia/Muncy – Alt: Vacant)

- Summary of special meeting held 16 March 2006.

- a. Approval of delegation of authority of operational activities from the P&F Retirement Board to its Real Estate Committee.
- b. Approval of authorization to Director to negotiate and execute a contract extension for Kennedy Associates and MIG Realty Advisors.

(M.S.C. Chavez/Brill) to approve item. Motion carried 7-0-0.

- Summary of 3201 C Corp. Board of Directors' Meeting held 18 January 2006.
- Summary of 3301 C Corp. Board of Directors' Meeting held 18 January 2006.
- Summary of 1737 N. First St. Corp. Board of Directors' Meeting held 16 March 2006.
- Summary of 300 New Sanford Rd. Corp. Board of Directors' Meeting held 16 March 2006.
- Summary of 3169 Dodd Rd. Corp. Board of Directors' Meeting held 16 March 2006.
- Summary of 3201 C Street Corp. Board of Directors' Meeting held 16 March 2006.
- Summary of 3301 C Street Corp. Board of Directors' Meeting held 16 March 2006.

The above items are note and file.

Investment Committee of the Whole (Full Board)

- Summary of meeting held 16 February 2006.

This item is note and file.

APPROVAL OF MINUTES

Monthly board meeting held 2 March 2006.

(M.S.C. Brill/Muncy) to approve item. Motion carried 7-0-0.

PENDING ACTIONS LIST

Updated list as of 28 March 2006.

(M.S.C. Brill/Muncy) to approve item. Motion carried 7-0-0.

BENEFITS REVIEW

- Summary of meeting held 25 February 2006.

(M.S.C. Brill/Chavez) to approve item. Motion carried 7-0-0.

CONSENT CALENDAR

(M.S.C. Chavez/Brill) to approve Consent Calendar. Motion carried 7-0-0.

PROPOSED AGENDA ITEMS

**PUBLIC COMMENTS
EDUCATION & TRAINING**

Notification of IFEBP's Benefits Conference for Public Employees to be held in Las Vegas, Nevada, October 8-11, 2006.

ADJOURNMENT

There being no further business, at 11:15 a.m., **The Chair** stated the meeting would be adjourned.

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

ATTEST:

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