

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**September 4, 2008**

### CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:35 a.m., on Thursday, September 4, 2008, in regular session at Department of Retirement Services, 1737 N. First St, Suite 600 - San Jose, CA.

### ROLL CALL

#### Present:

**KEN HEREDIA**  
**BILL BRILL**  
**SCOTT JOHNSON**  
**DAVE CORTESE**  
**BRET MUNCY**

**VICE CHAIR**  
**Trustee**  
**Trustee**  
**Trustee (Arrived 9:02 am)**  
**Trustee**

### NOT PRESENT:

**MARK J. SKEEN**  
**FORREST WILLIAMS**

**CHAIR (Excused)**  
**Trustee (Excused)**

### ALSO PRESENT:

**Russell Crosby** -**SECRETARY**  
**Russell Richeda** -Saltzman & Johnson  
**Tamasha Johnson** -Staff  
**Bruce DeMers** -PF Retirees  
**Karin Carmichael** -Staff  
**Aracely Rodriguez** -OER  
**Mike Rosingana** -SJFD  
**Eric Romones** -SJFD  
**Deanna Santana** -CMO  
**Michael Houston** -City Auditor's Office  
**Rhonda Snyder** -Staff  
**Steve Hendrickson** -Deputy City Auditor  
**Jeanne Groen** -HR  
**David Bacigalupi** -Retiree  
**Robert Lobach** -SJPD  
**Sandra Holloway** -SJPD

**Mollie Dent** -City Attorney Office  
**Debbi Warkentin** -Staff  
**Donna Busse** -Staff  
**Veronica Niebla** -Staff  
**Randy Sekany** -L230  
**Micah Bailey** -ITD  
**Bill Thomas** -SJREA  
**Carol Bermillo** -Staff  
**Doug Baker** -OER  
**Antonio Guerra** -CMO  
**Sharon Erickson** -City Auditor's Office  
**Jorge Oseguora** -City Auditor's Office  
**Jay Wendling** -P&F Retirees  
**Jim Jeffers** -Attorney  
**Thomas J. Boyle** -Attorney  
**Maria Loera** -Staff

## REGULAR SESSION

### ORDERS OF THE DAY

Vice-Chair Heredia called the meeting to order at 8:38 a.m.

### RETIREMENTS

#### 1. Service

**Charles C Carter**, Fire Engineer, Fire Department. Request for Service Retirement effective September 6, 2008; 40.15 years of service.

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3. (Absent: Skeen, Cortese, Williams)

**2. Disabilities**

**Stephen H. Cassidy**, Police Officer, Police Department Request for Service-Connected Disability Retirement effective September 4, 2008; 20.35 years of service.

*Officer Cassidy* was present and was represented by *Mr. Jeffers*.

For the record the following medical reports have been received:

| <u>Doctor's Name</u>   | <u>Report Date</u>                                   |
|------------------------|--|
| 1. JOHN ROLLINS        | 3/12/08 (X4); 1/15/07; 6/30/04 (X2); 2/2/04; 1/19/04 |
| 2. RONALD FUGIMOTO     | 6/8/07   |
| 3. TED ROBINSON        | 10/14/03   |
| 4. WALTER W. SILBERMAN | 7/12/00  |

| <u>Board's Medical Director</u> | <u>Report Date</u> |
|---------------------------------|--------------------|
| RAJIV DAS, M.D.                 | 8/15/08            |

*Dr. Das* stated the applicant had been in a serious motor vehicle accident years ago and continues to have residual symptoms.

*Mr. Jeffers* stated that in 1996, while Office Cassidy was stopping a pick-up truck, the police vehicle was totaled in the accident. That accident resulted in major injuries, but eventually Officer Cassidy returned to work until his treating physicians finally took him off duty, as his symptoms continued to persist.

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

**3. Change in Status**

**Robert J. Lobach**, Retired Police Officer. Request for change to Service-Connected Disability Retirement effective January 27, 2007; 25.77 years of service.

*Retired Officer Lobach* was present and was represented by *Mr. Boyles*.

For the record the following medical reports have been received:

| <u>Doctor's Name</u>                             | <u>Report Date</u>   |
|--|--|
| 1. THOMAS BOYLE (ATTORNEY LETTER)                | 8/4/08   |
| 2. JONATHAN NG, M.D.                             | 2/20/08, 12/6/06, 12/7/06, 11/21/06, 11/15/06(X3)              |
| 3. DEVINA GROVER, M.D.                           | 2/13/08 (X2), 10/1/07, 9/19/07 (X2), 2/23/07, 1/9/07, 10/17/06 |
| 4. ANDREW DURKIN, M.D.                           | 10/22/07   |
| 5. ALLEN PANG, M.D.                              | 10/15/07(X2)   |
| 6. STEPHEN CONRAD, M.D.                          | 9/18/07  |
| 7. EMEKA NCHEKWUBE, M.D.                         | 8/20/07 (X2), 11/22/06, 4/14/03, 2/5/97                        |
| 8. MICHAEL WALL, M.D.                            | 8/16/07, 10/26/04, 5/4/04, 3/9/04, 11/21/03                    |
| 9. MARGARET CHENG, M.D.                          | 6/13/07, 3/2/07  |
| 10. THAO PHAM, D.O.                              | 2/23/07  |
| 11 JANICE GILL CORRESPONDENCE                    | 2/14/07  |
| 12. MARK CULTON, M.D.                            | 11/15/03   |
| 13. WORKERS COMP APPEALS BOARD AWARD STIPULATION | 10/15/03, 4/6/00, 9/27/95                                      |
| 14. ROBERT MILLARD, M.D.                         | 11/12/03, 10/22/03, 10/20/03, 8/8/03,                          |
| 15. ARTHUR HOLMBOE, M.D.                         | 3/5/98, 1/31/95, 1/16/95, 12/15/94                             |
| 16. STUART MASS, M.D.                            | 3/11/97  |

| <u>Board's Medical Director</u> | <u>Report Date</u> |
|---------------------------------|--------------------|
| RAJIV DAS, M.D.                 | 8/19/08            |

*Mr. Boyles* gave a history of Officer Lobach's career and injuries.

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

**4. Deferred Vested - None**

**DEATH NOTIFICATIONS**

5. Notification of the death of Freeman (Art) Gingerich, Retired Battalion Chief, retired 4/6/1988; died 6/14/2008 and survivorship benefits to Roberta K. Gingerich, spouse.

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

6. Notification of the death of Terry Kepler, Active Police Officer, died 6/15/2008 and survivorship benefits to Rhonda Kepler, spouse, and Justin, Cody and Shelley Kepler, surviving children.

**Member Muncy** stated that an application for a Service-Connected Disability may be forwarded for consideration.

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

**NEW BUSINESS**

7. Discussion of Saltzman & Johnson memo concerning whether the Board should apply to the IRS for determination on the tax-qualified status of the Plan and Board direction to attorneys and staff concerning whether to seek an IRS determination letter.
8. Direction to City Attorney's Office to initiate an updated internal Tax Compliance Review of the Plan; authorization for Director to negotiate & execute an amendment to the Plan's conflict counsel's agreement with Saltzman & Johnson to amend the scope of work to include providing services related to the internal tax compliance review, at a cost not to exceed \$20,000 and no increase in maximum amount payable under the agreement; and report on a work plan for completion of tax compliance review, including the option of seeking an IRS determination letter.

**Member Cortese arrived**

*Mr. Richeda* stated the importance of complying with the provisions of the Internal Revenue Code applicable to government plans. One way to confirm compliance is through seeking a determination letter from the IRS. He noted that the Retirement Boards are under no obligation to apply, and many plans have not done so. If the Board wants to apply, it would need to be done by the end of January 2009, or wait 5 years. It is appropriate given the increased IRS interest that we proceed with due diligence to determine if the Plan is aligned with the Internal Revenue Code.

*Ms. Dent* stated that January 2009 is a short deadline, and a memo has been provided outlining some of the advantages and disadvantages to applying for the determination letter. She proposes that the City Attorney's Office work with Saltzman & Johnson to perform internal tax compliance review of the plan to see what needs to be done.

**Vice-Chair Heredia** stated around 4 or 5 years ago the plan had an audit completed, which had significant changes. Since that time the plan has been in compliance with the Code.

**Member Johnson** stated in the Saltzman & Johnson Memo there is a check list; is that the same as the IRS list. He asked if changes are found during the internal review, do those need to be done prior to or concurrent with applying for the determination letter.

*Mr. Richeda* stated that the changes can be done concurrently but would recommend caution.

(M.S.C. Brill/Muncy) to approve direction to City Attorney's Office to initiate an updated internal Tax Compliance Review of the Plan; authorization for Director to negotiate & execute an amendment to the Plan's conflict counsel's agreement with Saltzman & Johnson to amend the scope of work to include providing services related to the internal tax compliance review, at a cost not to exceed \$20,000 and no increase in maximum amount payable under the agreement; and report on a work plan for completion of tax compliance review, including the option of seeking an IRS determination letter. Motion carried 5-0-2.

9. Approval of payment in the amount of \$5,347.54 to Kennedy Associates to meet final audit and tax return expenses of 300 New Sanford Road Corporation.

(M.S.C. Brill/Muncy) to approve. Motion carried 5-0-2.

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

10. Approval of Revised Policy 220.3-P&F-Procurement of Legal Services. **(defer to November)**
11. Rescission of Board action on taken on August 21, 2008 determining lowest cost plan for the purpose of determining the medical insurance premium to be made by the Plan on behalf of retirees for coverage commencing 1 January 2009, to be Kaiser Co-Pay and approval to agendize Lowest Cost Plan in October once rates for CY 2009 have been finalized.

**Vice-Chair Heredia** stated at the Special Board Meeting it was determined that Kaiser would be the lowest cost plan; however since then he realized that they had no information on the new plan costs. He is requesting that the previous action taken be rescinded until they receive the final rates and can act on the item again.

*Mr. Denaj* stated today's action will not delay the City; however it may delay notices sent by Retirement Services. He said the rate renewal process is the same as it has been every year. Internal stakeholders meet at the Benefits Review Forum (which consists of active employees and retiree representatives) and the meetings are open to the public. The discussion regarding rates has been in process, and the Kaiser non Co-pay plan will not be offered to retirees, which was the basis for the City Manager's decision last year to suspend changing the plan. Now there has been a year of communication and education for people to understand and transition to the Kaiser Co-pay plan.

*Ms. Dent* stated she wanted to make clear that this Board action only deals with the part of the premium that the City picks up, but the issue of the retiree paying the difference in premium to select an alternate plan has not been addressed.

*Mr. Roger Pickler*, RSD staff member, stated the Benefits Review Forum meets on the last Wednesday of every month, so the report is usually one month behind.

(M.S.C. Heredia/Muncy) to rescind prior action. Motion denied 3-0-2-2. (No: Cortese, Johnson; absent: Skeen, Williams).

## **12. Update on the status of the Sunshine Reform Task Force.**

*Ms. Dent* stated there is now training for staff taking place to ensure compliance with Sunshine Rules. All guidelines/rules should be fully implemented by the end of the year. She also suggests removing this item unless there's new development.

## **13. Discussion and action on the City Auditor's report on Retirement Board travel and P&F Chair and FCERS Chair's response letter.**

*Sharon Erickson*, City Auditor, stated the Audit Report found that Retirement Services staff and Board members of the Federated and Police & Fire Retirement Boards travel for the benefit of the two pension plans. She stated there are three distinct travel policies governing the travel, and three types of travel occurring, which are for due diligence, training, and retreats. She outlined that the audit objective was to evaluate the effectiveness of internal controls pertaining to Retirement Services travel. They evaluated a traveler's compliance with applicable travel policies, reasonableness of the travel expenditures, adequacy of travel policies, and the controls in place to ensure compliance with relevant laws and regulations. They reviewed the travel that occurred between July 2005 and February 2008, which totaled \$260,000 in expenditures.

*Ms. Erickson* reviewed the top three findings from the report. The first finding was that tighter policies could have resulted in more economical travel. They found that cheaper alternatives could have been used when making travel arrangements. She added that government entities are held to a higher standard in the use of funds since they expend the public's money. The recommendation for finding one is that the Boards adopt the City Employee Travel Policy as their own due to the strength of the controls in place. She suggested several recommendations to the Boards, Retirement Services, and the Finance Department to encourage fiscal prudence among travelers and to reduce the likelihood of excessive travel expenses.

The second finding was that some travelers received more in travel reimbursements than they were entitled to receive, such as extended stays, personal expenses, excessive meals, expenses unsupported by receipts, and inappropriate per diems. Specifically, they found that 6 travelers cumulatively received about \$6,300 in ineligible reimbursements. All have repaid those reimbursements back to the Pension Funds. The incidents of ineligible reimbursements have been referred to the City Attorney's Office and the City Manager. She stated that it was not the City Auditor's practice to provide names within their reports; however, the City Attorney's Office determined that travel requests were public information and regretfully the names were released. The report includes several recommendations to the Boards, Retirement Services, and the Finance Department to improve their travel processing and reimbursement procedures to reduce the likelihood of travelers requesting and receiving ineligible travel reimbursements.

The third finding addressed improvements in the areas of ethics, transparency, and perceived conflicts of interest. She discussed the City's Gift Ordinance and some activities which could potentially be out of compliance. A donation was discovered that was inappropriately handled and presented a potential conflict of interest. Also, upon completion of travel, State law requires Board members to provide a written or oral report.

It was found that Board members were not always providing travel reports. There may have been Brown Act violations in regards to the limits of the number of Board members who travel together. The Federated Board has such a policy in place; the Police & Fire Board does not. The report recommends establishing controls to ensure compliance with San Jose's Gift Ordinance. Board members and staff should complete and submit outstanding Form 700s and consider amending previously submitted Form 700s. The Boards should develop and enforce travel reporting guidelines, publicly post periodic travel expense summaries, and establish limits on the number of Board members traveling together per Brown Act. There were several other recommendations made to the City Clerk.

In conclusion, the Board Chairs have provided a response to the report, which included a number of recommendations that immediately addressed some key issues of the report. They have already implemented the agendaing of travel activity and approval at public meetings. They are exercising fiscal prudence and adherence to travel policies and reconsidering due diligence travel. The audit is to remain a follow up item until all recommendations are implemented and there will be regular status reports on the progress of implementation. She stated further that they made a total of 23 recommendations, and Retirement Services, the Boards, and the City Administration have already begun improving processes, developing controls, and revising policies. On behalf of the Auditors Office she thanked everyone that was involved.

**Member Johnson** stated he feels that finding two is the most troubling. He recognizes and appreciates that repayments have been made to the Plan, but going forward it is important that the Boards move quickly to act on the recommendations of the report.

**The Secretary** stated that several recommendations are already in effect and the rest are going into effect.

*Ms. Erickson* stated it would be desirable to have the Chairs' response adopted as the Board's official response, to accept the audit report, and adopt the report's recommendations. Then the City Auditor's Office would work with the RSD staff and Boards to implement those recommendations. Any items that would require action would be brought back to the Board. She also stated her office intends to follow-up on the status of each department's implementation stage every six months.

(M.S.C. Johnson/Muncy) to accept the Auditor's Report on Travel, adopts the audit recommendations, and accepts the Chairs' response letter and recommendations. In addition, to have legal counsel send a letter to the City Manager, City Auditor, and City Attorney requesting that the report of the investigation into possible inappropriate receipt of travel reimbursements, including the findings and recommendations of the investigation, be provided to the Audit Committee for review. Motion carried 5-0-2. (Absent: Skeen, Williams).

**Member Cortese exited**

**(Out of Order)**

## **STANDING COMMITTEES / REPORTS / RECOMMENDATIONS (Items 15-20)**

### **Investments Committee (Skeen, Heredia, Muncy)**

15. Summary of meeting held 6 June 2008
16. Summary of meeting held 19 June 2008

*These items are note and file.*

### **Real Estate Committee (Skeen, Heredia, Muncy)**

17. Summary of meeting held 19 June 2008

18. Summary of Board of Directors meeting for SJ Progress Point held 19 June 2008
19. Summary of special meeting held 11 August 2008

*These items are note and file.*

**Investment Committee of the Whole (Full Board)**

20. Summary of meeting held 19 June 2008

*This item is note and file.*

**Solutions to Retiree Healthcare Committee (Skeen, Heredia, Muncy) – None**  
**Audit Committee (Vacant, Heredia, Muncy) – last meeting 27 August 2008**

**21. APPROVAL OF MINUTES**

- a. Monthly meeting held 5 June 2008
- b. Monthly meeting held 7 August 2008
- c. Special meeting held 21 August 2008

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3. (Absent: Skeen, Williams, Cortese).

**PENDING ACTION LIST**

22. Updated list as of 27 August 2008

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

**23. BENEFITS REVIEW**

- a. Summaries of meetings held May and June 2008

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

**CONSENT CALENDAR (Items 24-26)**

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

**PROPOSED AGENDA ITEMS - None**

**PUBLIC COMMENTS**

**EDUCATION AND TRAINING**

27. Notification of IMN's 6<sup>th</sup> Annual Alternative Investments Summit to be held September 22 & 23, 2008 in Phoenix, AZ.
28. Notification of IIR's 17<sup>th</sup> Annual Public Fund Boards Forum to be held in San Francisco, December 13 through 16, 2008.
29. Notification of CalAPRS Trustees' Roundtable to be held in Ontario, Friday, 10 October 2008.

**Member Muncy exited**

(Back on Agenda)

14. Introduction to Retirement Services' VoIP Phone System presented by the City's IT staff.

*Mr. Bailey* from the City's ITD presented what VoIP is and how it works. He stated the phone will now be a computer but working just like a regular telephone; however it will provide advanced capabilities such as enhanced voicemail, caller ID, and it will be connected on the City system. Mr. Bailey continued that the service is cost effective since there is only one network to maintain. It has Plug n' Play capability, which means that if a department moves to another location they can pack up their equipment and plug it in at their new location and it will be ready to use. A few of the enhanced features are that the phone will have a personnel directory that can store up to 100 frequently dialed numbers, and can do conference calls with up to five people. He introduced some before and after abilities. Then he stated that the new system will have a phone tree for connecting to appropriate parties. A caller will hear the welcome greeting, and can dial a selection to be routed to the division they need, or they have the option to speak with an operator. He went over the cost associated with the new phones and stated that the return on investment will be seen within 2.2 years. He closed his presentation by stating the VoIP system has a robust foundation for incorporating future features.

**Vice-Chair Heredia** asked if with this system a caller can always be connected to an operator to get out of the tree.

*Mr. Bailey* stated that currently the system is not configured that way, but they can set it up to do so.

**The Secretary** confirmed that the set up will need to be configured to allow for connection to an operator at any time.

## **ADJOURNMENT**

There being no further business, **Vice-Chair Heredia** adjourned the meeting at 10:47 am.

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**KEN HEREDIA, VICE-CHAIR  
BOARD OF ADMINISTRATION**

**ATTEST:**

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