

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**September 6, 2007**

### **CALL TO ORDER**

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:49 a.m., on Thursday, September 6, 2007, in regular session in the Department of Retirement Services' Conference Room, 1737 North First Street, Suite 600, San José, California.

### **ROLL CALL**

#### **Present:**

**KEN HEREDIA**

**BRET MUNCY**

**BILL BRILL**

**DAVE CORTESE**

**VICE CHAIR**

**Trustee**

**Trustee**

**Trustee**

### **NOT PRESENT:**

**MARK J. SKEEN, CHAIR**

**SCOTT JOHNSON**

**FORREST WILLIAMS**

**Trustee**

**Trustee**

**Trustee**

### **ALSO PRESENT:**

**Russell Crosby**

**-SECRETARY**

**Susan Devencenzi**

**-City Attorney**

**Russ Richeda**

**-Saltzman & Johnson**

**Amanda Ramos**

**-Staff**

**Judy Powell**

**-Staff**

**Ron Kumar**

**-Staff**

**Susan Perriera**

**-Staff**

**Jim Jeffers**

**-Attorney**

**Linda Charfauros**

**-SJFD**

**Colleen Hy**

**-Staff**

**Lt. Dale Morgan**

**-SJPD**

**Marty Hogan**

**-POA**

**Matt Stanek**

**-Attorney**

**David Wysuph**

**-SJPD**

**Tom Jensen**

**-SJPD**

**Mike Rosingana**

**-Retirees Assoc.**

**Aracely Rodriguez**

**-OER**

**Ernest Hernandez**

**-SJPD**

**Edward Overton**

**-Staff**

**Sam Swift**

**-Attorney**

**Debbi Warkentin**

**-Staff**

**Tamasha Johnson**

**-Staff**

**Donna Busse**

**-Staff**

**Rudy Cabigas**

**-SJFD**

**George Cravalho**

**-SJFD**

**Gary Bertelsen**

**-SJPD**

**Kirk Seal**

**-SJFD**

**Toni Johnson**

**-Staff**

**Rajiv Das**

**-Board Doctor**

**Thomas J. Boyle**

**-Attorney**

**Bruce DeMers**

**-PF Retirees**

**Maria Loera**

**-Staff**

**Robert Bledsoe**

**-Attorney**

**Eric Ramones**

**-SJFD**

**Karin Carmichael**

**-Staff**

**Randy Sekany**

**-L230**

## **REGULAR SESSION**

### **ORDERS OF THE DAY**

**Vice-Chair Heredia** called the meeting to order at 8:49 a.m. He stated that Chair Skeen had informed the Board and staff that he was ill and unable to attend the meeting. He then introduced and officially welcomed the new Director of Retirement Services, Russell Crosby. Then he stated Item 3d has been deferred.

### **RETIREMENTS**

Service

**James H. Caddell, III**, Police Officer, Police Department. Request for Service Retirement effective September 22, 2007; 25.62 years of service.

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

**Ernest A. Hernandez**, Police Officer, Police Department. Request for Service Retirement effective August 25, 2007; 26.12 years of service. **(SCD Pending)**

For the record *Officer Hernandez* was present and **the Board** wished him a happy retirement.

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

**Virgilio Hernandez**, Firefighter, Fire Department. Request for Service Retirement effective August 24, 2007; 27.35 years of service. **(SCD Pending)**

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

**Manuel M. Jurado**, Police Officer, Police Department. Request for Service Retirement effective September 22, 2007; 27.26 years of service.

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

**Lorenzo S. Sánchez**, Sergeant, Police Department. Request for Service Retirement effective August 13, 2007; 28.48 years of service **(SCD Pending)**

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

Disabilities (Out of Order)

**Kirk A. Seal**, Firefighter, Fire Department. Request for Service-Connected Disability Retirement effective September 6, 2007; 11.89 years of service.

**Firefighter Seal** was present and was represented by *Mr. Stanek*.

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

<u>Doctor's Name</u>	<u>Report Date</u>
Stephen Conrad, M.D.	5/7/07; 1/9/07
M. Norsell, PH.D.	4/18/07; 2/16/07
Jeffrey Reinking, M.D.	2/26/07; 1/3/07
Karanjit Basrai, M.D.	10/25/06
Lee Snook, Jr., M.D.	9/2/06; 8/4/06
Ken Hsu, M.D.	5/1/06; 3/24/04; 7/22/02; 3/1/02; 2/26/02
Douglas Bourgon, M.D.	5/1/06 (Two Reports)
Calvin Wang, M.D.	3/3/05; 3/3/05
Ronald Embry, M.D.	12/20/04
Robert Millard, M.D.	7/25/03; 2/18/02; 2/12/02; 1/4/02; 11/27/01
Daniel Lentz, M.D.	7/22/02
Joseph Dixon, M.D.	6/19/02
Robert Hart, M.D.	6/3/02
Murray Solomon, M.D.	1/4/02

Medical Director  
Dr. Rajiv Das

Report Date  
8/8/07

*Dr. Das* stated that the applicant has significant symptoms in the low back and has undergone surgery. His restrictions are based on the continued medical treatments and symptoms.

*Mr. Stanek* briefly gave a synopsis of the applicant's career, a history of his injuries, and then he described the medications the applicant is using.

*Firefighter Seal* discussed his current medications and his injuries.

**Vice-Chair Heredia** stated for the record that a request has been submitted to change the effective date of this retirement to be July 16, 2006, so it would be retroactive.

*Mrs. Charfauros* reported that the Fire Department has no permanent modified duty positions available. She noted that Mr. Seal's last day of work was in October 2004, and he has been on lost time since then.

(M.S.C. Cortese/Brill) to continue the application until such time as additional medical information can be provided to the Board for review. Motion carried 4-0-3.

**(Back on Agenda)**

**Thomas C. Jensen**, Police Officer, Police Department. Request for Service-Connected Disability Retirement effective September 6, 2007; 26.52 years of service.

**Police Officer Jensen** was present.

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

<u>Doctor's Name</u>	<u>Report Date</u>
Joseph Grant	8/16/06; 6/14/06; 1/21/00; 3/2/99; 9/16/98; 8/5/97
Advanced MRI	8/14/06
Sharain Khalil	1/17/00
Walter Silberman	8/3/99
Allen Havener	9/3/97
Robert Rovner	3/27/97
Devandra Chhatre	3/24/97
<u>Medical Director</u>	<u>Report Date</u>
Dr. Rajiv Das	9/26/06

*Dr. Das* stated that the applicant has complications of the low back and had been working in a permanent modified duty position.

*Lt. Morgan* discussed the provisions of the Consent Decree and noted that as a result of that agreement Officer Jensen was offered and took advantage of retirement.

*Police Officer Jensen* stated that he saw his physician yesterday and the restrictions are still in place for no more than a four hour work day.

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

**Change in Status**

**Gary Bertelsen**, Retired Sergeant. Request for change in status to Service-Connected Disability Retirement effective August 12, 2006; 25.88 years of service.

**Retired Sergeant Bertelsen** was present and was represented by *Mr. Stanek*.

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

<u>Doctor's Name</u>	<u>Report Date</u>
Hamid Mehdizadeh, M.D.	2/5/07
Raymond Chyu, M.D.	1/30/07
John Smith, M.D.	8/17/06; 8/16/06; 6/26/06; 6/1/06; 4/25/06; 1/23/06; 9/10/04; 8/26/03
William Breall, M.D.	4/19/06; 3/13/02
Renee Ownbey, D.C.	4/5/06; 6/13/05; 10/5/03; 2/20/02
Richard Levy, M.D.	Not Dated
Robert Blau, M.D.	3/28/06; 3/3/06
Donald Pang, M.D.	1/31/06
Lucy Lin, M.D.	10/18/05
Keth Ford, M.D.	9/15/04
Joseph Tison, M.D.	8/26/04
Stanley Harmon, M.D.	12/20/88; 11/3/88
<u>Medical Director</u>	<u>Report Date</u>
Dr. Rajiv Das	5/30/07; 9/18/06

*Dr. Das* stated that the applicant suffers from neck, low back, and high blood pressure problems. He also has a history of heart arrhythmia.

*Mr. Stanek* went through a history of the applicant's career and gave a history of his injuries. He added that the recommendation from the cardiologist to avoid undue stress should be a part of the applicant's restrictions. He said the applicant was working in a modified duty position, which was very stressful, and after retiring from that his blood pressure has decreased and his medication intake has been reduced.

*Lt. Morgan* stated that there was and is currently no light duty sergeant position available.

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

**Rudy Cabigas**, Retired Fire Captain. Request for change in status to Service-Connected Disability Retirement effective January 28, 2006; 29.80 years of service.

**Retired Fire Captain Cabigas** was present and was represented by *Mr. Bledsoe*.

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

<u>Doctor's Name</u>	<u>Report Date</u>
Michael Newman, D.C.	7/9/07
David Mednick, DPM	2/14/07; 1/23/07; 2/14/05; 1/20/05; 10/8/04; 3/10/04
Rajiv Das, M.D. (Ltr to Dr. Nchekwube)	2/1/07
Emeka Nchekwube, M.D.	1/25/07 (2 Rpts); 12/7/06; 9/1/05; 7/28/05; 7/7/05; 2/26/04;

	1/11/01; 1/9/01
Dr. Tabel	1/24/07
Mohammad Tavakol, M.D.	8/30/05
Mark Culton, M.D.	7/13/05
Donna Hickox, M.D.	7/1/05
Daniel Braslau, M.D.	1/13/04
Satish Sharma, M.D.	12/3/03; 9/30/02
<u>Medical Director</u>	<u>Report Date</u>
Dr. Rajiv Das	8/14/07; 7/10/07

*Dr. Das* stated that his restrictions were based on the injuries to the back, neck, and ankle.

*Mr. Bledsoe* stated that the applicant has a disability that precludes him from doing his job and the department has indicated that they have no modified duty positions available. He then summarized the applicant's injuries that occurred over the course of his career.

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

**George F. Cravalho**, Retired Fire Engineer. Request for change in status to Service-Connected Disability Retirement effective January 27, 2007; 32.96 years of service.

**Retired Fire Engineer Cravalho** was present and was represented by *Mr. Swift*.

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

<u>Doctor's Name</u>	<u>Report Date</u>
Patrick McCreesh, M.D.	3/14/07; 10/5/06; 8/21/06; 7/17/06; 6/8/06; 12/8/05; 11/3/05; 5/11/05; 2/10/05; 12/29/04; 11/8/04
Sue Marshall, PTA	12/29/06; 12/22/06
Jack Emery, PT	12/18/06; 12/4/06; 11/27/06
Lawrence Chan, M.D.	11/3/06
Charles Aring, M.D.	8/21/06
Harjit Sekhon, M.D.	6/8/06
Elizabeth Kaiser, M.D.	10/25/05
Lavanya Kailar, M.D.	10/20/05
Michael Hallenbeck, M.D.	12/23/04
John Colman, M.D.	6/22/04
Martin Engel, M.D.	5/13/04
Rupina Mann, M.D.	4/5/04
<u>Medical Director</u>	<u>Report Date</u>
Dr. Rajiv Das	8/7/07; 8/6/07

*Dr. Das* stated that the applicant has degenerative changes in his neck and spine. The restrictions are based on his symptoms.

*Mr. Swift* described the history of the applicant's most recent injuries and the medical findings, and reported that the department did not have any permanent modified duty positions now or at the time of retirement.

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

**Deferred Vested - None**

**DEATH NOTIFICATIONS**

**Notification of the death of Dorothy H. Miller, Retired Police Officer; retired 3/16/80, died 8/8/07. No survivorship benefits to be paid.**

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

**Notification of the death of Glenn V. Sinnott, Retired Firefighter; retired 4/1/75, died 8/8/07. Survivorship benefits to Esther Sinnott, spouse.**

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

**NEW BUSINESS**

**Approval to excuse the absence of Vice Chair Ken Heredia from the Board's May and June Board meetings and adoption of the proposed absences policy.**

**Vice-Chair Heredia** requested that a revised policy be developed, and that considerations be made for excused and unexcused absences. He requested that staff use his memorandum as a basis for a revised policy.

This item will be continued to the next Board meeting.

**Authorization to reimburse the City for relocation expenses incurred by Russell U. Crosby, Director – Retirement Services, cost not to exceed \$20,000 (50/50 split w/Federated Retirement System).**

**Member Brill** stated analysis language should be amended to reflect the stated amount to not exceed “x”.

*Mrs. Devencenzi* stated that she contacted Human Resources for the back up documentation. Also, she requested a copy of the policy that deals with this issue; however this is not a written policy but it is just regular practice in the budget office. When a high level executive is hired, relocation costs are charged back to the department, and then approved by City Council.

*Mr. Overton* stated that part of the documentation would be available, but some of it is just what was negotiated in the contract with the individual.

**Vice-Chair Heredia** said that no one informed the Board about the compensation package, but expects them to pay. He requested the underlying documentation and the details of the compensation package.

**The Secretary** suggested that the City and the trust fund develop an administrative service agreement to clearly define services being provided by the City staff to the Trust Fund and the payments the Trust Fund will make for those services.

**Vice-Chair Heredia** stated that the Board has tried to not have the issue of who's in charge (City or Board), so that the Board could take care of business and administer the Plan, however consideration needs to be given when spending Plan money.

(M.S.C. Brill/Muncy) to approve. The trustees requested a breakdown of expenses, details of the compensation package, and an explanation of who offered the package. Motion carried 4-0-3.

**Request to rescind service retirement application of Fire Engineer Rudolph Arroyo.** Application approved at August 2<sup>nd</sup>, 2007 retirement meeting.

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

**Request to rescind service retirement application of Fire Captain David Moore.** Application approved at August 2<sup>nd</sup>, 2007 retirement meeting.

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

**Request for action on Chair's establishment of a committee named Solutions to Retiree Health Care Security Committee.**

*Mr. Sekany* stated that L230 fully supports the formation of the committee and appreciates that the Board is looking into this matter.

**Member Brill** expressed his appreciation for Chair Skeen's initiative on this issue.

*Mr. DeMers* – President of the Retirees Association – thanked Chair Skeen for his efforts, and said he would like to be involved in any discussions on this topic. The Association believes that these benefits are important part of the workers contract with the City, they are a form of deferred compensation, and the benefits are crucial – as they provide much needed retirement security.

**Vice-Chair Heredia** stated that the Committee should consist of three members from each Board.

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

**Approval of draft agenda for the Board's October 15, 2007 retreat.**

*Mr. Richeda* suggested that the Secretary contemplate some ideas to add to the agenda to fill in some of the time, as currently the topics have too much time allocated to them.

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

**Re-election of directors as follows:**

- a. **Re-elect Mark Skeen & Ken Heredia and to elect Board Secretary as directors of 1737 N. First St. Corp**
- b. **Re-elect Mark Skeen & Ken Heredia and to elect Board Secretary as directors of 3169 Dodd Rd. Corp.**
- c. **Re-elect Mark Skeen & Ken Heredia and to elect Board Secretary as directors of 3201 C Street Corporation**
- d. **Re-elect Mark Skeen & Ken Heredia and to elect Board Secretary as directors of 3301 C Street Corporation**

(M.S.C. Muncy/Brill) to approve re-election for the above mentioned corporations. Motion carried 4-0-3.

**Adoption of Police & Fire Board Public Records Policy and discussion of recent Supreme Court decisions regarding release of public information.**

*Mrs. Devencenzi* noted the language in brackets or italicized for possible deletion, as suggested by Vice-Chair Heredia. She stated that one problem she can foresee is the coordination of requests with the Chair, due to possible unavailability.

*Mr. Richeda* observed that this item is one of the topics for the Trustees' retreat. Also, there is more detail to be worked through in particular with regards to the Public Records Act. He suggested that at the retreat the Trustees discuss the Supreme Court ruling with regard to retirees, survivors, pensions, and salary information. The Trustees should also discuss fees for information requests.

**Vice-Chair Heredia** stated that this is an interim policy the Trustees should adopt today, and then it can be changed as necessary. He also said that when a request comes to staff they should notify legal counsel, the Chair and Vice-Chair, and if there is a conflict between them then the item has to be brought to the Board.

**The Board** discussed a timeline for implementation of fees for requests, and to charge for extraordinary requests only at this time until they understand the volume.

**Member Cortese** stated that there should be communication about the item being requested, and that coordination should be done with the City Manager's office because often times the same item has been requested from multiple departments. This way the Board knows how it is being handled by the City and if that issue exists.

(M.S.C. Cortese/Brill) to approve amending the policy to temporarily vest authority to the Chair, Vice-Chair, Director, and legal counsel, and if there is an objection between them then the issue is to be brought to the Board. Motion carried 4-0-3.

**OLD BUSINESS / CONTINUED ITEMS**

**Report out of closed session held Thursday, 2 August 2007, re: existing litigation: Mark Bell v. Board of Administration, et al.**

**Vice-Chair Heredia** stated that the Board voted not to proceed with the matter, and to approve attorney fees in the amount of Four Thousand Dollars (\$4,000.00).

**Mark S. Bell, Deferred Vested Police Lieutenant. Request for change in status to Service- Connected Disability Retirement effective October 28, 2002; 28.17 years of service (Pursuant to Court Order).**

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

**Approval of Sunshine Review Task Force Policy Feedback Form and request for direction to staff to complete the Ancillary Policy Body Feedback Form.**

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



## **ADJOURNMENT**

There being no further quorum, the Vice-Chair stated that business Items 14, and 17-24 would be deferred to the October Board meeting, at 11:11 a.m., **The Vice-Chair** adjourned the meeting.

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

**ATTEST:**

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