

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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**RESOLUTION APPROVING THE DELETION OF EXISTING REGULATION 5.2 AND
THE AMENDMENT AND RENUMBERING OF REGULATIONS 5.1 THROUGH 5.10
OF ARTICLE V OF THE BOARD OF RETIREMENT REGULATIONS RELATING TO
THE DISABILITY RETIREMENT PROCESS.**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, Government Code §31525 provides that the Board of Retirement, with the approval of the Board of Supervisors, may establish regulations that govern the operation of San Mateo County Employees' Retirement Association ("SamCERA") that are not inconsistent with the County Employees' Retirement Law ("CERL"); and

WHEREAS, Article 10 of CERL commencing with Government Code §31720 et al. sets forth the disability retirement process; and

WHEREAS, the existing Board of Retirement regulations contained in Article V can be clarified to set forth the procedure that SamCERA staff uses when processing and presenting applications for disability retirement to the Board of Retirement and hearing officers; and

WHEREAS, the Board of Retirement has approved the amendments to and renumbering of regulations 5.1 through 5.10 and the deletion of existing regulation 5.2 of the Board of Retirement; and

WHEREAS, this Board of Supervisors has reviewed the proposed amendments

to and renumbering of regulations 5.1-5.10 and the deletion of existing regulation 5.2, and desires to adopt such amendments to Article V.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that existing Board of Retirement regulation 5.2, "Death of Member prior to Completion of Application" shall no longer be applicable to a member who dies after the effective date of this resolution and that regulations 5.1-5.10 of Article V of the Regulations of the Board of Retirement be amended and renumbered to read as follows:

ARTICLE V.

DISABILITY RETIREMENT

5.1 Application Process: The application process for service connected and non-service connected disabilities shall be as follows:

(a) **Submission of Completed Application:** Either the member or the employer, on behalf of the member, can apply for a disability retirement by filing with SamCERA: (1) a completed SamCERA application for disability retirement form and (2) authorizations signed by the member permitting SamCERA and its legal counsel to obtain all medical information relating to the applicant's physical or mental illness or injury and permitting access to records relating to applicant's current and prior employment. Applicant's employer shall complete forms provided by SamCERA and provide information as deemed necessary. All information received by SamCERA or its agents and counsel shall be treated as confidential and not released to anyone except insofar as may be necessary for the administration of the retirement system or upon an order of a court of competent jurisdiction, as provided by Government Code Section 31532.

(b) **Determination of the Disability:** The determination of the member's disability shall be limited to the disability as set forth in the application for disability retirement.

(c) **Additional Information:** If at any point in the process the Chief Executive Officer determines that additional information is necessary, the Chief Executive Officer may ask the applicant or the employer to submit the additional information.

(d) **Medical and Investigatory Services:** The Chief Executive Officer is authorized and directed to secure such medical, investigatory and other services and advice in connection with applications for disability retirement as the Board may require in order to make its decision.

(e) **Review of Information and Records by Medical Advisor:**

SamCERA will inform the member when all information and records requested by SamCERA have been received. When the applicant indicates that all necessary information, including information not requested by SamCERA, has been submitted, the Chief Executive Officer shall forward the complete record to the Board's medical advisor for his or her evaluation of the applicant's condition.

(f) **Cut off for Amendments to Application:** After the record has been forwarded to the Board's medical advisor, the member cannot amend his or her application to add a new disabling condition that is unrelated or not caused by the condition set forth in the application. The member must file a new application which would be subject to all regular statutory deadlines.

5.2 Submission of Application Information to the Board: Staff, in consultation with the medical advisor, shall prepare a memorandum summarizing the application and information received from medical, employment and other records. Staff shall make a recommendation to the Board regarding the approval of the application.

(a) **Notification of Board Review:** The applicant shall be notified in writing when the matter will be submitted to the Board for its consideration and that the matter will be placed on the Board's consent agenda. If staff's recommendation to the Board is to deny the application, the notice shall include a copy of staff's memorandum to the Board summarizing the application and information received from medical, employment and other records. While the applicant is welcome to appear before the Board, the appearance is not mandatory, unless the member would like the matter removed from the consent agenda.

(b) **Board Review of Staff Recommendation:** The matter will be placed on the Board's consent agenda with recommended action by staff. The applicant or any member of the Board can request that the matter be taken off of the consent agenda to be discussed and considered during the regular agenda. If the matter is placed on the regular agenda, it will be heard in closed session, unless otherwise directed by the applicant. For all disability matters heard on either the consent agenda or regular agenda, the Board shall review the information submitted and consider the acceptance of staff's recommendation. The applicant and the employer, shall be notified in writing of the Board's action regarding the application.

(c) **Request For a Formal Hearing:** If the applicant or employer is dissatisfied with the Board's action, the applicant or employer may request a formal hearing. The request for formal hearing must be made in writing, and filed with the Chief Executive Officer, if by the member, within 60 days of the date of the notice of the Board's action; if by the employer, within 30 days of the date of notice of the Board's action. If no request for a formal hearing is filed within the applicable period, the Board's action shall be deemed final and

binding.

(d) **Formal Hearing Process:** Upon the filing of a written request for a hearing, staff will select a hearing officer on a rotational basis from a list of private attorneys who serve as hearing officers, and then will refer the matter to counsel for SamCERA. Counsel for SamCERA will contact the applicant about communicating with the hearing officer regarding the hearing schedule and the preparation of the record. The hearing officer shall schedule the time and place of the hearing with the consent of the parties. The hearing officer shall set a briefing schedule for any briefs to be filed. The hearing shall be limited to the disability as set forth in the application for disability retirement and shall be recorded by a qualified court reporter. The hearing officer shall prepare and submit a proposed finding of fact and recommended decision based upon the evidence considered.

(e) **Objections to Hearing Officer Decision.** The proposed findings of fact and recommendations of the hearing officer shall be served on the parties who shall have 10 days from the date of service to submit written objections. The objections shall be incorporated into the record to be considered by the Board.

(f) **Notice of Submission of Hearing Officer Decision to the Board.** The hearing officer's decision shall be placed on the Board's agenda as soon as administratively possible after the period for objections has run. Staff shall notify the applicant of the time and place of the meeting and staff's recommendation to the Board. The matter will be placed on the Board's consent agenda with the recommended action by staff. The applicant or any member of the Board can request that the matter be taken off of the consent agenda to be considered during the regular agenda. If the matter is to be heard on the regular agenda, it will be heard in closed session, unless otherwise directed by the applicant.

(g) **Consideration of hearing officer decision by the Board.** Upon receiving the proposed findings of fact and recommendations of the hearing officer, the Board may: (1) approve and adopt the proposed findings and recommendations; or (2) require a transcript or summary of all the testimony and evidence, and then take such action as in its opinion is indicated by such evidence; or (3) refer the matter back with or without instructions to the hearing officer for further proceedings, or (4) set the matter for a hearing before itself. The applicant and the employer shall be notified in writing of the Board's action.

(f) **Appeal of the action of the Board:** If the member or the employer is dissatisfied with the Board's action relating to the hearing officer's recommended decision, the applicant or the employer may obtain judicial review by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure within 90 days of the date of the written notice of the Board's action. If a petition for writ of mandate is not timely filed, the Board's action shall be deemed final and binding.

5.3 Effective Date: If the Board approves the application for disability retirement, the effective date of retirement shall be the later of the day following the member's last day on payroll or the day the member filed the retirement application with the Chief Executive Officer.

5.4 Required Documents for Disbursement of Disability Payment: The first disability retirement benefit payment shall not be disbursed until the member has filed the required documents set forth in Article IV Section 5 of these regulations.

5.5 Grounds for Termination of an Application for Disability Retirement: An application for disability retirement may be terminated and considered null and void by the Board one year after the date of its filing for one or more of the following reasons:

(a) Failure of the member to submit to a medical examination at the request of the Board pursuant; or

(b) Any failure to cooperate by the member or applicant or any other act or omission by the member or applicant or member or applicant's representative which prevents the Board from hearing and adjudicating the application for disability retirement within one year of its filing.

5.6 Process to Terminate an Application for Disability Retirement: Before the Board determines whether to void and null a disability application, the applicant shall be given at least 15 days written notice of the proposed action and the date and time of the Board meeting. The applicant shall be granted the opportunity to appear and address the Board regarding the proposed action. The Board may exercise broad discretion in extending the time for the processing of the application. Nothing in this section shall prohibit an applicant from filing a new application, if applicant is eligible to do so.

5.7 Cancellation of Disability benefits After Medical Examination: If the Board requires a disability retiree under the age of 55 to undergo a medical examination and on the basis of such examination determines that it should review whether the disability retiree is still physically or mentally incapacitated for service in the position held when retired for disability, the matter will be placed on the Board's agenda for hearing. The disability retiree will be given written notice of the hearing and be advised that if the Board decides that he or she is no longer incapacitated, and if the employer reinstates the retiree, the disability retirement allowance will be canceled. The notice shall also advise the disability retiree of his or her right to be represented by counsel, to present evidence in his or her own behalf and to cross-examine any witness produced in support of canceling the disability retirement allowance. If the disability retiree is dissatisfied with the Board's action, the disability retiree may obtain judicial review by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure within 90 days of the date of the written notice of the Board's action. If a petition for writ of mandate is not timely filed, the Board's action shall

be deemed final and binding.

5.8 Modified Work Program Pending Determination of Disability: If the Board has not made a determination of eligibility for a disability benefit prior to a member's entry into a Modified Work position designed by the County to accommodate the member's work restrictions, then at the time of the member's retirement, the Board's determination of eligibility for a disability benefit shall be based upon the normal and customary duties of the member's position prior to entering the Modified Work position, unless the member requests that the Board base its decision on the duties of a subsequent position held by the member.

5.9 Modified Work Program -Request For Retirement: If the Board has authorized modified work benefits, then upon the member's subsequent request to retire, the Chief Executive Officer may retire the member with a disability benefit and record the member's name on the consent agenda for Board ratification. However, if the Chief Executive Officer has reason to believe that the member's condition has improved to the point where the member may be capable of performing the normal and customary duties of the position from which the member was previously disabled, then the Chief Executive Officer shall submit the matter to the Board for its independent review and determination.

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