

RESOLUTION NO. 071247

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

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RESOLUTION APPROVING AMENDMENTS TO THE BOARD OF RETIREMENT REGULATIONS WHICH (1) AMEND REGULATION 3.11 AND 3.13 OF ARTICLE III "ELECTION OF TRUSTEES"; (2) AMEND REGULATIONS 5.1(e)(f), 5.3(b) AND 5.6 OF ARTICLE V "DISABILITY RETIREMENT"; AND (3) REPEAL AND REPLACE ARTICLE VI "PURCHASE OF CREDIT FOR PUBLIC SERVICE" CONSISTING OF REGULATIONS 6.1 THROUGH 6.7

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

WHEREAS, Article III of the Regulations of the Board of Retirement governs the election of trustees and the Board of Retirement has determined that the use of an electronic voting system for trustee elections should be authorized to allow the County Elections Officer to utilize electronic voting procedures and has amended regulations 3.11 and 3.13 of Article III; and;

WHEREAS, Article V of the Regulations of the Board of Retirement governs the disability retirement application process and the Board of Retirement has determined that regulations 5.1(e)(f), 5.3(b) and 5.6 should set forth certain requirements for the application process and has amended them accordingly; and;

WHEREAS, Article VI of the Regulations of the Board of Retirement governs purchase of credit for public service and the Board of Retirement has repealed and replaced Article VI in order to address all permitted types of purchases of service credit, the procedures to complete such purchases and the nature of the funds that employees

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can use to make such purchases; and;

WHEREAS, this Board of Supervisors has reviewed the amendments and finds them to be in the best interests of the members, retirees and beneficiaries of the San Mateo County Employees' Retirement Association;

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the amendments to regulations 3.11 and 3.13 of Article III "Election of Trustees" of the regulations of the Board of Retirement are approved and shall read as follows:

3.11 Ballots: The Elections Officer shall certify for inclusion on the ballot the names of qualified candidates who submitted Nominating Petitions containing the number of qualified signatures specified in section 3.5. The Elections Officer shall determine by lot the order in which candidates shall appear on the ballot. There can be elections for multiple trustee positions on a single ballot. There is no provision for write-in candidates.

(a) **Mail Ballots:** The Elections Officer shall provide for the preparation of a number of ballots sufficient to supply one to each *SamCERA* Member eligible to vote in each election. The Elections Officer shall provide for the mailing of ballots to the member's home address. Ballots shall be mailed no earlier than the third Friday in May and no later than the fourth Friday in May. Ballots mailed shall include a return envelope bearing prepaid postage. The Elections Officer shall make available a replacement ballot upon request by any eligible member who lost or did not receive his or her ballot. Requests may be made in person, in writing, by e-mail, fax or by telephone. A replacement ballot will not be provided to anyone other

than the member who requested the replacement ballot. Candidates are specifically prohibited from handling ballots, whether voted or unvoted, sealed or unsealed, other than their own. Voted ballots must be received by the Elections Officer on or before Election Day. Any voted ballot that is U.S. Postmarked on or before Election Day and received by the Elections Officer on or before 5:00 P.M. on the Friday following the Election Day shall also be counted.

- (b) Electronic voting: Upon request of the Board, the Elections Officer shall provide for the distribution of ballots and voting through an electronic voting system in addition to or in lieu of mailed ballots. The Elections Officer shall make available a replacement ballot upon request by any eligible member who lost or did not receive his or her electronic ballot. Requests may be made in person, in writing, by e-mail, fax or by telephone. A replacement ballot will not be provided to anyone other than the member who requested the replacement ballot. Candidates are specifically prohibited from handling electronic or replacement ballots, whether voted or unvoted, sealed or unsealed, other than their own. Voted ballots must be received by the Elections Officer on or before Election Day. Any voted electronic ballot sent electronically on or before Election Day and received by the Elections Officer on or before 5:00 P.M. on the Election Day shall be counted.

3.13 Qualification of Voters: For mailed ballots, the Elections Officer shall confirm the name on the outer ballot envelope with the "List of Eligible Voters." For electronic voting, the Elections Office shall confirm the name of the electronic ballot recipient with the "List of Eligible Voters." *SamCERA's* General Members are qualified to elect the

Second and Third Trustees. *SamCERA's* Safety members are qualified to elect the Seventh Trustee. *SamCERA's* Retired Members are qualified to elect the Eighth Trustee and Eighth Trustee Alternate. To be eligible to vote, a member shall be a part of his or her respective group at the close of the pay period immediately preceding the first day that ballots may be mailed or sent electronically per these regulations.

IT IS FURTHER DETERMINED AND ORDERED, that amendments to regulations 5.1(e)(f), 5.3(b) and 5.6 of Article V "Disability Retirement" of the regulations of the Board of Retirement are approved and shall read as follows:

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

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- (e) 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 consultant for his or her evaluation of the applicant's condition.
- (f) After the record has been forwarded to the Board's medical consultant, 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; member must file a new application which would be subject to all regular statutory deadlines.

5.3 Submission of Application to the Board: All applications for service retirement shall be subject to review and consideration of approval by the Board. The Board

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consideration process shall be as follows:

- (b) Hearing is Limited to the Disability Set Forth in the Application: Both the informal and formal hearing shall be limited to the disability set forth in the application for disability retirement.

5.6 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.

IT IS FURTHER DETERMINED AND ORDERED, that Article VI "PURCHASE OF CREDIT FOR PUBLIC SERVICE" is hereby repealed and replaced with regulations 6.1 through 6.7 which shall read as follows:

6.1 Compliance with Internal Revenue Code: All service credit purchases and redeposits of previously withdrawn contributions are to be made in accordance with the Internal Revenue Code ("IRS Code"), the Treasury Regulations promulgated thereunder, and the County Employees' Retirement Law of 1937 ("Government Code").

If there is a conflict between federal and state law, federal law will govern in order to maintain *SamCERA's* tax qualified status.

6.2 Permissive Service Credit and Applicable Federal Statutory Tax Limits:

Service Credit purchases may be limited by the applicable requirements set forth in IRS Code Section 415. IRS Code Section 415 tax limits do not apply to the redeposit of previously withdrawn contributions and related interest. Service Credit purchases must comply with the provisions of Government Code §31482.5.

6.3 Service Credit Available for Purchase by Active Members:

- (a) Prior Public Service: Any active member who is a County employee or a member of a participating employer and was a member prior to January 1, 1970 may purchase service credit for service performed for military or federal, state, and other public agencies credited in California that do not qualify for reciprocity. Such public service may be purchased pursuant to the terms of Government Code §31641.1 & §31641.2.
- (b) Employment through CETA: Any active member (1) who was employed by the County or a participating employer while compensated pursuant to the provisions of the Comprehensive Employment Training Act (CETA) and (2) who subsequently became a permanent employee of the County or District, is eligible to purchase credit for the Public Service performed for the County or District while a CETA participant. Applications for the purchase of such CETA public service must include a detailed documentation accounting the period of service and compensation in the form and manner prescribed by the Chief Executive Officer.

Such public service may be purchased pursuant to the terms of Government Code §31641.5.

- (c) **Service Credit.** In accordance with Government Code §31641.5, a member may purchase service he or she rendered with San Mateo County or another employer participating in *SamCERA* prior to the member's membership in *SamCERA* during which time the member was ineligible for membership. A member must make this service purchase at the time they are employed with that participating employer.
- (d) **Leave of Absence Credit.** In accordance with Government Code §31646, an eligible member may purchase his or her uncompensated leave of absence on account of illness, not to exceed 12 consecutive months, provided the eligible member returned directly to active service following such uncompensated leave.
- (e) **Plan 3 Noncontributory Plan Credit.** Members currently in a *SamCERA* contributory plan contained in Government Code §31496, et seq. may upgrade their past service credit in the *SamCERA* noncontributory plan by paying the difference between the employer contributory and noncontributory plan contributions plus the member's contributions for the contributory plan for the period of service being upgraded along with the interest the contributions would have earned had they been on deposit with *SamCERA*. Contributions are based on the current entry age.
- (f) **Redeposit of Previously Withdrawn Contributions.**
 - (1) An active member may redeposit to *SamCERA* an amount that is equal to all previously withdrawn contributions, plus interest, in accordance with Government Code §31652. *SamCERA* will charge interest for the period

from the date of separation from *SamCERA* until the member has paid the required redeposit amount.

- (i) A member's age for purposes of calculating contribution rates will be based on the member's age at the nearest birthday at the time of the member's reentrance into employment, unless the member is otherwise eligible under Government Code §31652 to have his or her original entrance age reinstated.
 - (ii) *SamCERA* will treat a member who does not redeposit all contributions previously withdrawn plus interest as a new member without credit for any previous service.
 - (iii) If for any reason a member fails to complete the redeposit of previously withdrawn contributions plus interest, *SamCERA* will not reinstate the member's related prior service credit in accordance with Government Code §31652. *SamCERA* will instead return the eligible member's related payment in a manner and at a time permitted under federal tax law.
 - (iv) *SamCERA* will credit the member's related service credit upon completion of full payment of all previously withdrawn contributions plus interest.
- (2) Prior to filing an application for retirement, an eligible former member may redeposit to *SamCERA* an amount that is equal to all previously withdrawn contributions, plus interest, in accordance with Government Code §31652. The former member must qualify for this type of redeposit under the terms of

Government Code §31831.3. Under the provisions *SamCERA* will charge interest for the period from the date of separation from *SamCERA* until the member has paid the required redeposit amount. Redeposits of this type may only be executed by lump sum payment.

- (3) **Additional Retirement Credit (ARC):** Eligible active members in a contributory plan who have completed at least 5 years of credited service with *SamCERA* may purchase up to 5 years of ARC in increments of one year. ARC cannot be used to meet the minimum eligibility requirements for either a service retirement, a non-service disability retirement, additional ad hoc cost-of-living benefits based on service credit, or eligibility for any other benefits based on service credit or toward a cancellation of contributions for certain members who attain 30 years of service credit. Service may include purchased extra-help time, upgraded Plan 3 service, and redeposited time. Reciprocal service is not included in Government Code §31658.
- (4) **Prior Military Service.** See Regulation 6.7 for purchase of prior military service.

6.4 Payment Options: Eligible members may purchase Permissive Service Credit or make a redeposit of previously withdrawn contributions plus required accumulated interest using the following payment methods or a combination thereof. Payments are subject to the rules and/or conditions set forth below and any applicable tax limits under IRS Code section 415. All purchase agreements containing installment payments will include interest calculated using the actuarially assumed rate of earnings in effect as of the date each agreement is signed.

- (a) **Lump Sum After-Tax Payments and Terminal Pay:** An eligible member may pay with a single lump sum payment of after-tax dollars. Terminal Pay (the cash out of accrued hours of compensation paid to a member by the member's employer after terminating employment) can be used for lump sum after-tax payments. Terminal pay must be received by *SamCERA* by a separate payment issued after termination and not as a part of the member's last pay check.
- (b) **Pre-Tax Rollover Contributions:** An eligible member may pay with a pre-tax rollover contribution to *SamCERA* from a qualified retirement plan, an individual retirement account or annuity, an annuity contract described in IRS Code section 403(b), or a governmental 457(b) plan.
- (c) **Plan-to-Plan Transfers:** An eligible member may pay with an in-service trustee-to-trustee transfer from a governmental eligible deferred compensation plan described in IRS Code Section 457(b) or an annuity contract described in IRS Code Section 403(b), provided the transfer plan or annuity contract provides for such transfers. Such transfers are subject to the requirements of IRS Code Section 457(e)(17) or 403(b)(13), as applicable.
- (d) **Payroll Deductions:** An eligible member may elect to pay installments by post tax payroll deduction.

6.5 Time Limitations for Installment Payments: The time period over which a member may make installment payments is subject to the following limitations:

- (a) **Prior Public Service:** For a purchase of service credit for prior public service under Government Code §31641.1 and §31641.2, installment payments may be made over a period of time not to exceed five years.

- (b) Service Credit, including employment through CETA: For a purchase of service credit for prior service under Government Code §31641.5, installment payments may be made over a period of time that does not exceed the length of time for which the member has elected to receive service credit, as determined by *SamCERA*.
- (c) Leave of Absence Credit: For a purchase of service credit for an unpaid leave of absence under Government Code §31646, installment payments may be made over a period of time that does not exceed the length of unpaid leave that the member has elected to purchase, as determined by *SamCERA*.
- (d) Plan 3 Service Credit Upgrade: For upgrades of Plan 3 service credit pursuant to Board of Supervisor's Resolution 64827, installment payments may be made over a period of time that does not exceed twice the length of service being upgraded.
- (e) Redeposit of Previously Withdrawn Contributions: For redeposits of previously withdrawn contributions under Government Code §31652, installment payments may be made over a period of one year.
- (f) Additional Retirement Credit: For a purchase of ARC under Government Code §31658, installment payments may be made over a period not to exceed 10 years.
- (g) Completion of Purchase after separation of service: If a member terminates, retires or goes into deferred retirement before the purchase has been completed, the purchase must be completed no later than the date specified in the purchase agreement or 120 days after the effective date of retirement, whichever date is earlier.

6.6 Procedures

- (a) **Administrative Procedures:** *SamCERA* will establish administrative procedures for processing service credit purchases and redeposits of previously withdrawn contributions and will determine the amounts required for service credit purchases and redeposits, including required interest.
- (b) **Required Documentation:** All purchases and redeposits shall be set forth in a written *SamCERA* election form and agreement. Members shall provide any required documents and information associated with their purchase or redeposit in a manner and form acceptable to *SamCERA*.
- (c) **Requirement To Complete Purchase:** Except as otherwise provided below, service credit will not be credited to a member's account until the entire purchase has been completed. If for any reason a member fails to complete his or her service credit purchase, credit will be given in accordance with the contract or applicable provisions of the Government Code. *SamCERA* or the employer may return the eligible member's related overpayment in a manner and at a time permitted under federal tax law.
- (d) **Partial Service Credit:** *SamCERA* will allow partial service credit for purchases of prior public service credit under Government Code §31641.1 and §31641.2 even though the member has not completed payment of the entire period he or she has elected.

6.7 Prior Military Service: Eligible active members can purchase prior military service in accordance with the provisions of Government Code §31641.97.

- (a) **Notice:** Eligible members will have given written notice when they file with

SamCERA a signed Purchase of Military Service Credit Application form as prescribed by the Chief Executive Officer.

- (b) Certification: The Application must include verification of military service (DD214 or its equivalent) and an affidavit that the applicant is not eligible to receive credit for this service under any other retirement plan.
- (c) Calculation of Cost to the Member: Government Code §31641.97 requires that the full cost, including interest, of the employee and county liability for the additional credit under this section shall be determined by the Board of Retirement on actuarial advice, and shall be the actuarial equivalent of the difference between the retirement benefits the person will receive with and without the credit for military service.
- (d) Actuarial Assumptions: The actuarial factors used shall be those used for the actuarial valuation of the Retirement Fund at the time of the calculation, except that the member shall select the age of retirement.
- (e) Method Used to Determine the Cost: The cost shall be the Actuarial Equivalent of the Difference between the benefit the member will receive with and without the credit for military service.
- (f) Lump Sum Purchase: Eligible persons may purchase credit for their Military service at any time prior to the effective date of their retirement by lump-sum payment of an amount equal to the full cost, including interest, of the employee and county liability for the additional credit within 180 days prior to receipt of the lump-sum payment.
- (g) Installment Purchase: Eligible persons may purchase credit for their military

service at any time prior to the effective date of their retirement by authorizing biweekly post-tax payroll deductions over a period not to exceed five years in equal payments which will accumulate the full cost, including interest, of the employee and county liability for the additional credit within 180 days prior to commencement of the deductions.

- (h) Purchase of Partial Credit: Eligible persons may purchase less than the full credit for which they are eligible, so long as the payment, or payments, accumulate the full cost, including interest, of the employee and employer liability for the additional credit. Additional credit may be purchased at any time prior to the effective date of retirement, so long as the payment or payments are based on the full cost within 180 days prior to receipt of the lump-sum payment or commencement of biweekly payroll deductions.
- (i) Recording of Members' Assets & Crediting of Interest: All funds deposited into the Retirement Fund pursuant to this regulation shall be recorded in individual Military Service Credit Reserve accounts established in the name of the member. Funds on deposit shall be credited on the same terms and at the same rate of interest as the county's accounts in the Retirement Fund, regardless of the subsequent status of the member. On the effective date of retirement, all principal and interest in the Reserve will be transferred to the member's regular account in the Retirement Fund.
- (j) Calculation of Benefit Payable at Time of Retirement: When the member files an application for retirement there shall be a recalculation of the Military Service Benefit and Member Service Credit Reserve as set forth in Step 2 and Step 3 of

subsection (e), using the information then available and the assumptions in effect at the time of recalculation.

- (k) Surplus: If the calculations performed pursuant to subsection (j) indicate that the principal and interest in the Military Service Credit Reserve exceeds the amount required, the surplus balance will be refunded to the member, at a time and in a manner that complies with applicable tax laws.
- (l) Deficiency: If the calculations performed pursuant to subsection (j) indicate that the principal and interest in the Military Service Credit Reserve is not sufficient to fund the full Military Service Benefit, the Chief Executive Officer shall allow the member to make one of the following two elections: (1) Lump Sum Purchase: The member may immediately purchase the unfunded military service credit and receive the full Military Service Benefit; or (2) Pro Rata Credit: The member may elect to not purchase the unfunded military service credit and receive a reduced Military Service Benefit.
- (m) Payment of Military Service Benefit: On the effective date of retirement, the years of military service for which payment-in-full has been received shall be added to the member's years of county service in the computation of the retirement allowance and will, thereafter, be an integral part of the base allowance for the purpose of calculating cost-of-living increases and survivor benefits.
- (n) Disability: The member who retires on account of disability may elect either (1) a refund of all principal and interest in the account maintained pursuant to subsection (i), or (2) an annuity based upon the years-of-military-service for which payment-in-full has been received. If the member elects an annuity, all principal

and interest in the account on the effective date of the Disability Retirement shall be converted to an annuity which will be based on the Board's Actuarial Assumptions, including Disability Retirement Life Expectancy Factors, in effect at that time. Subject to applicable tax laws, the annuity shall be payable for life in equal monthly installments, plus annual cost-of-living adjustments equal to those granted to retirees in the member's Plan. An eligible surviving spouse shall receive the applicable survivor allowance. The Chief Executive Officer shall determine the amount of the annuity on the effective date of the Disability Retirement.

- (o) **Death Before Retirement:** If the member was not eligible to retire, all principal and interest in the account maintained pursuant to subsection (i) will go the member's beneficiary. If the member was eligible to retire, the surviving eligible spouse may elect to receive (1) a refund of all principal and interest in the account maintained pursuant to subsection (i), or (2) a monthly allowance which includes military service credit based on the provisions of subsections (j) and (l). The surviving eligible spouse may elect to receive any surplus, make a lump-sum payment for any deficiency, or accept pro-rata credit, as provided for in subsection (j).
- (p) **Death After Retirement With a Surviving Spouse:** The Military Service Credit Reserve has been merged with the member's regular account. Therefore, the surviving eligible spouse will receive a monthly allowance based on the same survivor option formula elected by the member at the time of retirement.
- (q) **Death After Retirement Without a Surviving Spouse:** The Military Service Credit Reserve has been merged with the members' regular account and, therefore, the

balance, if any, goes to the beneficiary.

- (r) Termination of Employment: Upon termination of employment, a member may elect to withdraw the funds; or, if eligible, may elect a deferred retirement, in which case the funds will remain on deposit and will continue to be subject to the provisions of subsection (i) until the effective date of retirement.
- (s) Election to Discontinue Installment Purchase Plan: The decision to purchase military service credit is irrevocable. However, unless otherwise prohibited by law, any member may discontinue the installment purchase plan at any time. All funds on deposit will continue to be subject to the provisions of subsection (i). Unless otherwise prohibited by law, the member may elect to reinstate the purchase plan at any time prior to the effective date of retirement, but shall be subject to re-computation of the balance due as calculated pursuant to subsections (c)(f)(g)(h). At the time of retirement, the member will receive proportional military service credit, as provided for in subsection (j) and (m).
- (t) Dissolution of Marriage: If the final decree does not specifically identify the member's Military Service Credit Reserve, the Chief Executive Officer shall administer the assets in the account in the same manner as stipulated in the final decree for the disposition of the member's retirement benefits.

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Regularly passed and adopted this 25th day of January, 2011.

AYES and in favor of said resolution:

Supervisors:

CAROLE GROOM

DON HORSLEY

ROSE JACOBS GIBSON

ADRIENNE J. TISSIER

NOES and against said resolution:

Supervisors:

NONE

Absent Supervisors:

NONE

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President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Marie L. Peterson

Marie L. Peterson, Deputy
Clerk of the Board of Supervisors

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