

BY-LAWS

BOARD OF RETIREMENT

COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA

Amended, Revised and Approved
Adopted by the Board of Retirement on January 7, 2010
Adopted by the Board of Supervisors on March 2, 2010

BY-LAWS

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COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

AS AMENDED, REVISED AND APPROVED

BY THE BOARD OF RETIREMENT ON JANUARY 7, 2010

AND

BY THE BOARD OF SUPERVISORS ON MARCH 2, 2010

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ARTICLE I. ADMINISTRATION

(1) Appointment of Chairman and Vice-Chairman

At the first regular meeting in January the Board of Retirement shall elect one of its members Chairman and one of its members Vice Chairman, each to hold office for a term of one year or until a successor is duly elected and qualified. If the Chairman, for any reason, fails to complete the term, the Vice Chairman shall succeed to the position of Chairman for the remainder of the unexpired term and the Board of Trustees shall elect a Successor Vice Chairman for the balance of the unexpired term.

(2) Executive Director

An Executive Director shall be appointed by the Board in accordance with Government Code Section 31522.1, 31522.2, and 31522.7, and shall be responsible for the management of the retirement office including the retirement fund, operating budget, appointment and management of personnel and the other day-to-day activities of the retirement system. The Executive Director shall serve as Secretary of the Board and as administrative assistant to the Board in its management of the retirement system. Pursuant to Government Code sections 31522.2, 31522.7, and 31590, the Executive Director as Secretary for the Board shall have authority on behalf of the Board: to sign or authorize all warrants, checks, and electronic fund transfers, which are drawn on the retirement fund, and to sign all documents, including contracts, necessary to carry out any decision including investment decision, made or approved by the Board; to negotiate and sign contracts with vendors, consultants, and payees of the system as required by contract or applicable law; and any other decision made or approved by the Executive Director pursuant to a delegation of authority granted by the

Board to the Executive Director for such decision.

The Executive Director shall have the authority on behalf of the Board of Retirement to allow, deny, compromise, or settle any claims, litigation, demands, actions, liabilities, losses, damages, injuries, and expenses (including, without limitation, attorneys' fees and defense costs) in any manner involving the Board of Retirement, the San Bernardino County Employees' Retirement Association, or its trustees, officers, or employees, provided that:

(a) The amount to be paid pursuant to such claim, allowance, compromise or settlement does not exceed \$25,000.00. If the amount to be paid exceeds \$25,000.00, the allowance, compromise or settlement must be approved by the Board of Retirement;

(b) The claim, allowance, compromise or settlement is with the concurrence of the Board's Counsel; and

(c) The claim, allowance, compromise or settlement is not subject to the terms of an insurance policy wherein the insurer is granted the authority to allow, deny, compromise or settle claims or actions within the scope of such policy.

(3) Conflict of Interest and Disclosure Regulations

The Board of Retirement will establish and maintain a *Conflict of Interest Code* applicable to its Board members and designated employees. *Statements of Economic Interests* will be filed with and maintained by the Secretary of the Board.

(4) Governance Principles and Ethics

Each member of the Board of Retirement is bound by the Board's Statement of Governance Principles and Code of Ethics, which are incorporated herein

by this reference.

(5) Subpoenas

(a) The Chairman and Secretary of the Board are hereby authorized to issue and sign subpoenas for attendance at Board hearings on benefit applications upon request of the applicant or member, the applicant's or member's attorney, or the Executive Director.

(b) The Board hereby delegates the subpoena power to each hearing officer appointed to hear a disability retirement application.

(c) Witnesses subpoenaed upon shall be provided a witness fee as follows:

(i) Non-Expert Witnesses - Non-Expert witnesses shall be paid fees and mileage as provided in Government Code section 68093.

(ii) Expert Witnesses - Expert witnesses shall be paid fees and mileage as provided in Government Code section 68092.5.

(iii) Medical Experts - Medical experts testifying in hearings on disability retirement applications shall be paid fees and mileage as provided in Government Code section 68092.5 and as further provided in the Procedures for Disability Retirement Applications and Formal Hearings, Board of Retirement County of San Bernardino, which is incorporated herein by reference.

ARTICLE II. MEETINGS

(1) Regular Meetings

Regular meetings shall be held on the first Thursday in each month at

9:00 a.m. in the Board of Retirement Board Room, 348 West Hospitality Lane, City of San Bernardino. The regular meeting may be rescheduled for an earlier or later time or day by majority vote of members present at a regular meeting of the Board of Retirement.

(2) Special Meetings

Special meetings may be called at any time on the request of the Chairman or any four members of the Board. Notice shall be provided as required by the RALPH M. BROWN ACT.

(3) Rules of Order

The Chairman shall preside at meetings. The order of business shall be determined by the Chairman.

(4) Decisions

Majority vote of those eligible to attend and vote shall govern the decisions of the Board, unless otherwise specifically provided herein or by law. The Chairman shall have a vote on all questions to the extent permitted by law.

(5) Quorum

Five members of the Board shall constitute a quorum.

(6) Amendment of By-Laws

The By-laws may be amended from time to time by the Board, subject to approval by the Board of Supervisors of San Bernardino County, as required by Government Code Section 31525.

(7) Communications and Requests

Communications and requests to the Board shall be made in writing, and

the substance of such requests and the action of the Board thereon shall be noted in the minutes.

(8) Minutes

The Secretary shall cause to be recorded in the minutes the time, date and place of each meeting of the Board, the names of members present, all official acts of the Board, the votes given by members of the Board except when the action is unanimous, and when requested, a member's dissent or approval with the reasons, and shall cause the minutes to be written-up forthwith and presented for approval at the next regular meeting. The minutes or a true copy thereof, submitted by the Secretary and signed by the Secretary and the Chairman, shall form a part of the permanent records of the Board. A copy of the minutes shall be given to each member of the Board.

(9) Public Meetings

Regular meetings and special meetings shall be open to the public as provided by the RALPH M. BROWN ACT. Meetings shall be closed when medical and personnel information or reports pertaining to disability retirement applicants are being discussed.

(10) Committees

(a) The Chairman shall appoint an investment committee to advise the Board on investment matters, an audit committee to advise the Board on audit matters, and an administrative committee to advise the Board on administrative matters and a compensation and benefits committee to advise the Board on matters involving the compensation and benefits of the Board's employees. Each committee shall consist of

no fewer than three and no more than four Board members and include at least one elected Board member and one appointed Board member. Committee meetings shall be called by the committee Chairman or Board Chairman.

(b) The Chairman shall appoint ad hoc committees as deemed necessary.

(11) Removal from the Board Room

(a) The Chairman shall order removed from the Boardroom any person who commits one or more of the following acts:

(i.) Disorderly, contemptuous or insolent behavior toward the Board, staff or any member thereof, tending to interrupt the due and orderly course of the meeting.

(ii.) Boisterous conduct or violent disturbance, tending to interrupt the due and orderly course of the meeting.

(iii.) Any other unlawful interference with the due and orderly course of the meeting.

(b) Removal of a person from the Boardroom shall be executed by the Sergeant-at-Arms or Safety Member upon being so directed by the Chairman. Any person so removed shall be excluded from further attendance at the meeting from which he or she was removed, unless permission to attend is granted upon motion adopted by a majority vote of the Board.

ARTICLE III. MEMBERSHIP

(1) Sworn Statement

Every employee of the County of San Bernardino or District whose employees are made members of the San Bernardino County Employees' Retirement Association shall, upon entry into said Association, fill out and properly execute a sworn statement showing date of birth, department or District, type of membership, date of appointment to regular position, social security number, and name, relationship and date of birth of beneficiary.

(2) Regular Members

Employees appointed to a regular (classified or unclassified) position shall become members of the San Bernardino County Employees' Retirement Association effective on the date of their appointment unless excluded from membership by the provisions of this article. In addition, employees may delay the effective start date of their membership in the Association up to six weeks after appointment, for the purpose of establishing reciprocity with another public retirement system as described in the 1937 Act.

(3) Temporary, Intermittent and Part-time Employees

Temporary, intermittent and part-time employees are excluded and exempt from membership in the San Bernardino County Employees' Retirement Association.

(a) Temporary Employees shall be construed as being:

(i) Employees appointed to a nonregular position including extra help.

(ii) Any employee who is hired by contract for a fixed term.

(iii) Employees appointed to a position which is intended to be on less than a year-round basis.

(b) Intermittent Employees are those whose service for the County of San Bernardino or District is not regular in nature but periodic and recurrent on an on-call basis.

(c) Part-time Employees are those whose service for the County of San Bernardino or District is less than fifty percent (50%) of the full standard of hours required in the County of San Bernardino or District service.

(4) Seasonal Employees

Seasonal Employees, for the purpose of these By-laws shall mean those whose service for the County of San Bernardino or District is at certain specified periods each year or every second year. Seasonal employees are excluded and exempted from membership in the San Bernardino County Employees' Retirement Association.

(5) Waiver of Membership

Pursuant to Government Code Section 31552, each employee who attained the age of 60 prior to employment may waive membership in the San Bernardino County Employees' Retirement Association within 90-days following initial appointment to a position that would include the employee in the field of membership of the Association.

(6) Termination of Membership

A person is no longer a member as defined in Government Code Section

31470 effective with termination of employment with the County of San Bernardino or District except when deferred retirement is requested and is approved by the Board. When a member terminates employment and is appointed to the same or another regular position in County of San Bernardino or District service in the same or next succeeding payroll period, membership shall be deemed continuous unless accumulated contributions have been refunded.

(7) Type of Membership

(a) "General." Includes all eligible County of San Bernardino and District employees except those identified as "Safety."

(b) "Safety." Eligible County of San Bernardino or District employees whose principal duties are described in Government Code sections 31470.2 and 31470.4.

(8) Re-entrance into Retirement System

The period of time in which a member may redeposit in the retirement fund, through installment payments as provided in Government Code Section 31648, may be over a period of one year or a period of time equal to the length of service the redeposit represents, not to exceed five years.

(9) Retired Member

Upon retirement, a member of the Association shall be furnished:

(a) Completed copy of Application for Retirement.

(b) Signed copy of Election of Retirement Allowance.

(c) Certification of Retirement authenticated by the Executive Director or representative. The Certification of Retirement shall indicate the effective date of

retirement, the retirement allowance, the total amount contributed by the member at date of retirement, and the total interest credited to the member's account at date of retirement. The Certification of Retirement shall serve as an annuity certificate.

(d) Certificate of Retirement authenticated by the Chairman of the Board.

ARTICLE IV. COMPENSATION EARNABLE

(1) Compensation Earnable (Definition): For purposes of calculating retirement benefits, "compensation earnable" means the average "compensation" (see Gov. Code, section 31460) as determined by the Board of Retirement, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. Compensation earnable will not include true overtime pay or expense reimbursements.

(2) Basis Of Contributions/Benefits: The amount upon which appropriate member contribution rates are applied or upon which retirement benefits are calculated shall be based upon compensation earnable as determined by the Board of Retirement in a manner consistent with applicable law. The Board of Retirement will coordinate pay-code items included in compensation earnable with the County of San Bernardino or District.

ARTICLE V. CONTRIBUTIONS

(1) Member Contributions

(a) Member contributions shall be deducted from each salary or wage warrant drawn in favor of each member for each pay period. The pay period shall be as determined by the Board of Supervisors or District governing body.

(b) Where the total salary or wage payable for a pay period is less than the normal contribution amount, no deduction shall be made from the salary or wage warrant.

(c) Normal contributions for members who are terminated for any reason prior to the ending date of a pay period shall be pro-rated to the date of termination except when all earnable compensation, less mandatory and voluntary deductions, for the pay period is paid to the member.

(2) Withdrawal of Contributions and Deposits

(a) For the purpose of determining eligibility to withdraw accumulated contributions pursuant to Government Code Section 31628, service shall not be considered to have been discontinued if:

(i) Prior to termination of employment the member entered into an agreement with a County of San Bernardino or District appointing authority to be appointed to the same or another regular position in the same or next succeeding payroll period and is so appointed, or

(ii) Termination of employment was for the purpose of establishing eligibility to withdraw accumulated contributions and the member is appointed to the same or another regular position in the County of San Bernardino or

District service in the same or next succeeding payroll period.

(b) **Withdrawal Charge**

A withdrawal charge of one-half of interest credited to members account, not to exceed \$40.00, shall be charged at the time members withdraw their accumulated contributions as provided for in Government Code Section 31628.

(c) To the extent authorized by both federal and state law, when refunding overpayments the Association will do so on the same tax basis as deposited by the member.

(3) **Redeposit of Contributions Withdrawn**

An active or deferred member may redeposit, in the retirement fund, at any time prior to retirement, an amount equal to all of the accumulated normal contributions he or she has withdrawn, plus regular interest thereon from the date of separation from the Retirement Association. Such redeposit may be made by lump-sum payment or by payroll deductions over a period of not to exceed 60 months, unless otherwise authorized by applicable law, but in no event shall the payroll deduction for this purpose be less than \$50.00 per month, and payment shall be completed within 120 days after the effective retirement date. When payment is complete, the member shall receive credit for the same number of months of service as was represented by the withdrawal.

(4) **Acceptance of Plan-to-Plan Transfers and Direct Rollovers**

(a) County of San Bernardino and District 401(k) Plans - To the extent authorized by federal and state law and the San Bernardino County Board of Supervisors or the District Board of Directors, the Association shall accept plan-to plan

fund transfers and accept direct rollover funds from eligible 401(k) plans of the County of San Bernardino and Districts to satisfy all or part of the payment of contributions for the limited purposes of redepositing withdrawn contributions and purchasing prior public agency service, additional retirement credit, temporary time, permanent time in a non-covered position, credit for service as an unpaid city councilman, time as an elective officer with break in service, military service, and sick leave without pay. The amount transferred or directly rolled over from the applicable 401(k) Plan shall not exceed the amount required for the applicable purpose. Further, all transfers must be timely made in the form and manner established by the Executive Director. Transfers and rollovers may be voided, see subparagraph (c) below. No transfer or rollover shall be accepted if, or to the extent, that it does not comply with federal tax law.

(b) County of San Bernardino and District 457(b) Plans - To the extent authorized by both federal and state law and the San Bernardino County Board of Supervisors or the District Board of Directors, the Association shall accept plan-to-plan fund transfers and accept direct rollover funds from eligible 457(b) plans of the County of San Bernardino and Districts to satisfy all or part of the payment of contributions for the limited purposes of redepositing withdrawn contributions and purchasing prior public agency service, additional retirement credit, temporary time, permanent time in a non-covered position, credit for service as an unpaid city councilman, time as an elective officer with break in service, military service, and sick leave without pay. The amount transferred or rolled over shall not exceed the amount required for the applicable purpose. Further, all transfers must be timely made in the form and manner established by the Executive Director. Transfers and rollovers may be voided, see

subparagraph (c) below. No transfer or rollover shall be accepted if, or to the extent, that it does not comply with federal tax law.

(c) True-Up of Plan-to-Plan Transfers and Direct Rollovers

(i) Effective February 1, 2003, the Association will apply applicable interest on plan-to-plan transfers and direct rollovers based upon the date in which the funds were effectively received by the Association and the agreed upon date of transfer or rollover in the member's purchase agreement.

(ii) If the member does not pay the amount owed for the applicable purpose by the date required by the redeposit agreement, the Executive Director shall as soon as reasonably possible inform the member of the additional amount owed to complete the redeposit agreement. The member will have 30 days to pay the additional amount owed by cash or personal check. If cash or a personal check for the additional amount is not received by the Association within 30 working days after the date that the Executive Director notifies the member of the additional amount owed, then all of the transferred or rolled over funds will be returned to the qualified 457(b) or 401(k) plan and the purchase will be voided and treated as never having occurred. However, no cash or check shall be accepted if, or to the extent, that it does not comply with federal tax law.

(iii) If the member pays more than the amount owed for the applicable purpose by the date required by the redeposit or purchase agreement, the Association will return the excess amount immediately and directly to the transferring 457(b) or 401(k) plan.

(5) Under-payment of Employee Contributions – The amount of any under-

payment of employee contributions must be made to the Association prior to retirement through the employer's payroll system. If the under-payment of employee contributions is discovered at or after termination of service, the amount of the under-payment will be deducted from the member's monthly retirement check.

(6) Over-payment of Employee Contributions – In accordance with Title 26 of the U.S. Code, overpayment of employee contributions made on a pre-tax basis will be returned to the employee by the Association on separation from service with all employers that contribute to the Association or after the employee reaches normal retirement age. Prior to that time, the employer may correct the overpayment through its payroll system and the Association will credit the employer with the amount of the correction.

(7) Agent for the Employer – In the collecting, withdrawing, redepositing, and returning of employee contributions, whether for mandatory or permissive employee contributions, the Association will act as an agent for the member's employer in arranging for the collection of employee contributions (and redeposits) that are made through the employer's payroll system.

ARTICLE VI. BENEFITS

(1) Benefit Payments

Benefit payments are made monthly. For members retiring after March 6, 2003, benefit payments will be made via electronic fund transfers only. Unless otherwise determined by the Board or the Executive Director, voluntary deductions as described in Government Code section 31452.5, and approved by the Board, and

withholding tax shall not be in such an amount as to reduce the net monthly payment to an amount less than \$10.00.

(2) Cost of Living Allowances and Adjustments

(a) Pursuant to Government Code section 31874, the San Bernardino County Board of Supervisors, through San Bernardino County Ordinance 2764, approved an annual cost of living allowance for every retirement allowance, optional death allowance or annual death allowance, not to exceed 2% per year in accordance with the provisions of Government Code section 31870, effective April 1, 1984.

(b) Pursuant to Article 16.6 of the 1937 Act, the San Bernardino County Board of Supervisors, through San Bernardino County Ordinance 2019, approved an annual cost of living adjustment of 7% for all retired members who were members on or before August 18, 1975.

(3) Article 8.5 - Discretionary Subsidy

Pursuant to Article 8.5 of the 1937 Act, a subsidy may be paid from the "excess earnings" of the fund, when "excess earnings" are available. This discretionary subsidy is not a vested benefit and the amount paid, if any, shall be determined on an annual basis by the Board.

(4) Errors and Omissions

Pursuant to Government Code sections 31525 and 31539 for the purposes of payments into or out of the retirement fund for adjustments of errors or omissions:

(a) No action may be commenced by or against the Board or the system more than three years after all obligations to or on behalf of the member, former

member, beneficiary, or annuity beneficiary have been discharged.

(b) If the retirement system makes an error that results in incorrect payment to a member, former member, beneficiary, or annuity beneficiary, the retirement system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, beneficiary, or annuity beneficiary to receive benefits, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, annuity beneficiary, or other party in relation to or on behalf of a member, beneficiary, or annuity beneficiary, then the board may commence an action up to 10 years from the date of the payment or upon discovery of the facts, fraud, or intentional misrepresentation, whichever is later.

(e) Collection for Overpayments – less than \$50.

For overpayments less than \$50, the Executive Director shall make no demand and write off the account.

(f) Collections for Overpayments – Recipient Receiving an On-Going Benefit

(i). If the recipient is receiving an on-going benefit and the Board, system, or employer error caused an overpayment in a benefit, then the Board may collect from the recipient's on-going benefit up to 5% of the gross monthly benefit,

until discharged.

(ii) If the recipient is receiving an on-going benefit and the member/recipient error caused the overpayment in a benefit, then the Board may collect from the recipient's on-going allowance up to 15% of the gross monthly benefit until discharged.

Notwithstanding (i) or (ii) above, the Executive Director has the discretion to set up a contract or repayment plan with the recipient to collect the overpayment from on-going benefit, allowing payment terms of up to five (5) years.

(g) Collections for Overpayments – Recipient Received a Lump Sum

(i). If the recipient is not receiving an on-going benefit and has received an overpayment in a lump sum benefit of up to \$25,000, then the Executive Director shall have authority pursuant to Article I, section (2) of these By-laws to take action to recover the overpayment.

(ii). If the recipient is not receiving an on-going benefit and has received an overpayment in a lump sum benefit of more than \$25,000, then the Executive Director will pursue collection efforts after consultation with the Board of Retirement.

(5) Public Safety Officer Benefits

(a) Pursuant to the Pension Protection Act of 2006 (26 U.S.C. 402(1)) a retired Public Safety Officer (PSO), as that term is defined by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A) and 71 Fed. Reg. 46028 (August 10, 2006) et. al., may elect to have pension benefits up to a specified maximum amount, as set by Congress, excluded from income for federal

tax purposes, if that amount is directly paid by the pension fund to an insurer for qualified health insurance premiums.

(b) An active SBCERA member, not on deferred status, who retires out of a qualifying PSO position, may elect after retirement to receive this benefit by submitting a written application on forms provided by the SBCERA Executive Director directing SBCERA to pay part of the retired member's pension benefits to an insurer for qualified health premiums. In no event will the retired member directly receive the monies used to pay the qualified health premiums.

(c) The PSO benefit is an annual election and is automatically renewed each year unless otherwise revoked or changed in writing during the retiree open enrollment period.

(6) Normal Retirement Age

For purposes of applying the Pension Protection Act of 2006 and complying with other applicable tax-related law, such as the in-service distribution rules, the "normal retirement age" for SBCERA general members is the later of 55 years of age or the member's age when the member would otherwise vest for purposes of benefit payment, and the "normal retirement age" for SBCERA safety members is 50 years of age or the member's age when the member would otherwise vest for purposes of benefit payment. In addition, normal retirement age shall not be later than 70 years of age. The normal retirement age for each class of membership (general and safety) is based on the average age at the time of retirement, as determined by SBCERA's actuary and has been determined by the Board to be reasonably representative of the typical retirement age for California public employees similarly situated. The Board may

periodically review and change the normal retirement age of its members based on this criteria as deemed necessary by the board, or based on any other criteria established by the Internal Revenue Code, Treasury Regulation, or other applicable law.

For purpose of this Article, "safety member" shall mean employees who, immediately prior to retirement, were employed as a safety member and were eligible for retirement allowance from SBCERA as a safety member pursuant to the County Employees' Retirement Law of 1937. "General member" shall mean all other SBCERA members.

(7) Bona Fide Separation from Service

(a) In order to comply with federal tax law restriction on in-service distributions, a member who retires at an age younger than the "normal retirement age," as defined herein, may not enter into a prearrangement, either oral or written, prior to the date the member's retirement commences, to be reemployed while retired by any SBCERA employer, regardless of the length of the member's break in service after retirement. A member who retires at an age younger than the normal retirement age, as defined herein, also must have at least a continuous 60-day break in service from the date of the member's last day of employment prior to being reemployed while retired by any SBCERA employer. A "break in service" is defined as separation from employment in any and all positions held with an SBCERA employer, including but not limited to extra help under the "960 hour" provisions of the '37 Act, seasonal, temporary, part-time, reserve, and paid-call positions.

(b) The member must acknowledge in writing to SBCERA at the time of retirement that the member has been informed of the requirement set forth in this

section imposing limitation on post-retirement employment and that no prearrangement to be reemployed while retired exists. The member must also agree that, if any of the provisions of this section regarding bona fide separation from service are violated as determined by the Board, the member's retirement allowance shall be suspended immediately and shall not be reinstated until the member has bona fide separation from service or reaches normal retirement age, whichever occurs first.

**ARTICLE VII. REQUESTS FOR PENSION BENEFITS AND THE
PRESENTATION OF SUPPORTING INFORMATION**

(1) General Instructions: Requests for the award or change of any pension benefit should begin with the member consulting the Executive Director's staff.

(2) Disability Benefits: Requests for disability benefits shall be made according to the forms provided by the Executive Director and by following the procedures set forth in Articles VIII and IX of these By-laws.

(3) Other Benefits:

(a) Requests for the award or change of pension benefits, other than disability benefits, should be made by completely filling out forms provided by the Executive Director. The Executive Director will provide a recommendation on the requested benefits to the member prior to the Board's decision.

(b) If the member disputes the Executive Director's recommendation, the member may submit additional documentation, including affidavits, to the Executive Director. The Executive Director will provide copies of member's written request for benefits, staff recommendation and supporting documentation, along with any

additional documentation from the member to the Board at the next regularly scheduled Board Meeting. The member may attend the Board meeting and the Board, in its discretion, may invite the member to briefly address the issue, prior to its decision on the matter.

(c) A decision by the Board is final.

(d) Judicial review of final retirement decisions shall be subject to Code of Civil Procedure Section 1094.6, as provided by San Bernardino County Ordinance No. 2161 (Sections 11.0501 and 11.0502) and these By-laws. Following final decision on disputed matters, the Executive Director shall send to the member written notice as follows:

“Pursuant to the Retirement Board's By-laws and San Bernardino County Ordinance No. 2161 (Sections 11.0501 and 11.0502), action to seek judicial review of this decision is governed by the provisions of Section 1094.6 of the Code of Civil Procedure of the State of California. You are advised that any such petition must be filed not later than the ninetieth (90th) day following the date a decision becomes final.”

ARTICLE VIII. DISABILITY RETIREMENT

(1) Procedures for Disability Retirement Applications and Formal Hearings

The Board shall promulgate rules to ensure the fair and efficient proceedings of disability cases. These rules shall be referred to as Procedures for Disability Retirement Applications and Formal Hearings, Board of Retirement County of San Bernardino and are incorporated herein by reference.

(2) Submitting Applications - Disability retirement application shall be submitted while a member, as defined in Government Code Section 31470 and By-laws Article III, and while in service, as defined in Government Code Section 31641; or while

a member and within four months after discontinuance of service; or within four months after the expiration of any period during which a presumption is extended beyond the discontinuance of service; or while a member and while from the date of discontinuance of service to the time of the application the member is continuously physically or mentally incapacitated to perform duties. Applicants for service retirement and applicants for refund of accumulated retirement contributions shall be advised, in writing, at the time of application of their ineligibility to apply for disability retirement after membership is terminated.

(3) Facts And Circumstances, Attending Physician's Report

Each member applicant for disability retirement shall furnish a Statement of Facts and Circumstances and an Attending Physician's Report. The Statement of Facts and Circumstances and the Attending Physician's Report shall become a part of the application and shall be in a format prescribed by the Board.

(4) Release of Medical Records

Each member applicant for disability shall authorize the release of all medical information relating to the course of all treatments, consultations or evaluations with respect to any physical or mental illness or injury of applicant and shall waive any physician-psychotherapist/patient privilege connected therewith, and shall authorize the Board to assess from the County of San Bernardino or District all records related to the applicant's employment. Each member applicant for disability shall also authorize the release of all medical information relating to any and all Workers' Compensation Claims and the award of any disability retirement benefits from other retirement systems. Said authorizations and waivers shall be given on forms approved by the Board, and all

information received by the Board or its agents shall be treated as confidential and not be 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.

(5) Medical Examinations

Each member applicant shall, upon request of the Executive Director, submit to one or more medical examination(s) to determine the existence of a disability. Failure to submit to one or more medical examinations shall be a cause for dismissal with prejudice.

(6) Employer's Statement of Facts and Circumstances

A Department Statement of Facts and Circumstances shall be provided by the employing department or District and shall accompany each disability retirement application. As part of the Department's Statement of Facts and Circumstances, the department will certify that no alternative light duty can be assigned. The format shall be as prescribed by the Board.

(7) Accepting Applications

(a) The Executive Director shall accept all applications subject to rejection.

(b) Complete and Timely - The Executive Director will accept and process an application that is both complete, as determined by the Executive Director pursuant to Article VIII of these By-laws, and filed while the applicant is in service, within four months after discontinuance of service, or within four months after the expiration of any expiration of any period during which a presumption is extended

beyond the discontinuance of service. The Executive Director will reject any application that is incomplete as determined by the Executive Director pursuant to Article VIII of these By-laws.

(c) Additional Information Required If Greater than Four Months from Discontinuance of Service - The Board has determined that applications filed more than four months from discontinuance of service may prejudice the Board's ability to provide the applicant due process and to make a fair decision on the benefit request. Therefore, if the disability application is filed more than four months after discontinuance of service or more than four months after the expiration of any period during which a presumption is extended beyond the discontinuance of service, then the applicant must supply additional information with his or her application in the form of one of the following options:

(i) Option 1: The applicant must include with the application the following:

- A statement(s) by the applicant's attending (treating) physician(s) on the Attending Physician's Report(s) indicating that the attending physician(s) has continuously treated the applicant from the day four months after the applicant's last day worked to the date the application was filed. The statement must indicate that the applicant has been continuously physically or mentally incapacitated to perform his or her duties during the period of time from the day after the last day worked to the date the application was filed. The entire period of time from the day four months after the applicant's last day worked to the date the application was filed must be covered by one or more Attending Physician's Reports.

and

- Copies of all of the attending physician(s) treating medical records regarding applicant during the time period in question.

(ii) Option 2: The applicant must include with the application the following:

- A statement by a forensic (examining) physician that the forensic physician has examined the applicant and reviewed the applicant's medical records during the period of time from the day four months after the applicant's last day worked to the date the application was filed and that the applicant has been continuously physically or mentally incapacitated to perform his or her duties during the period of time from the day after the last day worked to the date the application was filed.

and

- Copies of all medical records that the forensic physician relied upon to render such an opinion.

The Executive Director will reject any application that is filed more than four months after discontinuance of service that fails to provide additional information required in Option 1 or Option 2 above.

(d) Applications filed more than four months, but less than two years after discontinuance of service - If a disability application is filed more than four months but less than two years after discontinuance of service, if the additional information in Option 1 or Option 2 above is provided and the application is otherwise complete pursuant to Article VIII of these By-laws, the application will be accepted and processed

by the Executive Director. But, if not, the application will be rejected.

(e) Applications filed two or more years after discontinuance of service -- If the disability application is filed more than two years after discontinuance of service, if the additional information in Option 1 or Option 2 above is provided; if the application is otherwise complete pursuant to Article VIII of these By-laws; and if, in the determination of the Executive Director, the delay and information or lack of information provided in the application does not prejudice the Board's ability to provide due process and to make a fair decision on the benefit request, then the application will be accepted and processed by the Executive Director. But, if not, the application will be rejected.

(8) Rejecting Applications

If the Executive Director has rejected the application pursuant to subsection (7) above, then the matter will be referred to the Board of Retirement. Such matters will be placed on the Board's agenda in closed session with a recommendation from the Executive Director. If the Board determines that the application is complete and that there is no prejudice to the Board's ability to provide due process and to make a fair hearing on the benefit request, then the application will be accepted and processed. But, if the Board determines that the application is incomplete, as described in subsection (7) above, and that the application prejudices the Board's ability to provide due process and to make a fair decision on the benefit request, then the application will be rejected.

A decision by the Board is final. Judicial review of final retirement decisions shall be subject to Code of Civil Procedure Section 1094.6, as provided by San Bernardino County Ordinance No. 2161 (Sections 11.0501 and 11.0502) and these By-laws.

Following final decision on disputed matters, the Executive Director shall send to the member written notice as follows:

“Pursuant to the Retirement Board's By-laws and San Bernardino County Ordinance No. 2161 (Sections 11.0501 and 11.0502), action to seek judicial review of this decision is governed by the provisions of Section 1094.6 of the Code of Civil Procedure of the State of California. You are advised that any such petition must be filed not later than the ninetieth (90th) day following the date a decision becomes final.”

(9) Determinations by the Board

Disability retirement applications shall be considered by the Board in a four-step process, based on the evidence presented.

(a) Determination of whether the member is permanently incapacitated for the performance of assigned duties. If permanent incapacity is not found, the application shall be denied.

(b) Determination of whether the incapacity is a result of injury or disease arising out of and in the course of the member's employment for the County of San Bernardino or District.

(c) Determination of whether the disability is such that the member is incapable of gainful employment. This determination shall be made only for "General" members.

(d) Determination of whether a medical examination following retirement shall be required. This determination shall be made for members under age 54 1/2.

(10) Initial Hearing

Initial disability retirement hearings shall be conducted informally. The

presence of the member being considered shall be required only when determined by the Board. A decision of the Board made at an initial hearing shall be final on the thirty-first (31st) day after it is made, except as follows:

(a) If an application for administrative review is made before an initial hearing decision becomes final, then such decision shall never become final and shall be void and of no effect. However, pending the outcome of the administrative review, temporary benefits will be awarded to the applicant based upon the Board's determinations at the initial hearing.

(b) The Board may, by action reflected in its minutes, make the initial hearing decision or any portion thereof, final at an earlier date.

(c) If a member applicant files with the Executive Director a written waiver of applicant's right to apply for administrative review of an initial hearing decision, then such decision shall be final on the date said waiver is filed.

(11) Administrative Review of Initial Hearings

An applicant or the member may seek administrative review of disability retirement and supplemental disability retirement decisions made by the Board at an initial hearing by filing a request for administrative review with the Board of Retirement not later than the thirtieth (30th) day following the decision of the Board. Such request must be in writing and contain a statement indicating the retirement benefit(s) which the applicant or the member is seeking to obtain through the administrative review process.

Notice of the decision the Board made at an initial hearing, together with notice of the applicant's right to seek administrative review, shall be addressed to the applicant's last known address and placed in the U.S. mail, postage prepaid, not later than five (5)

working days following the decision of the Board.

(12) Reconsideration

Upon receipt of a request for administrative review, the Board shall either grant a benefit requested or schedule a formal hearing. A decision made to grant a benefit upon reconsideration shall be considered an initial hearing decision.

(13) Formal Hearing

An applicant has the burden of proving, by a preponderance of the evidence, that the applicant is entitled to the benefit. The hearing will not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

Findings of fact and conclusions of law shall be adopted by the Board following each hearing. A decision made following a formal hearing shall be final when findings of fact and conclusions of law relative to the decision have been adopted by the Board.

(14) Judicial Review

Judicial review of final retirement decisions shall be subject to Code of Civil Procedure Section 1094.6, as provided by San Bernardino County Ordinance No. 2161 (Sections 11.0501 and 11.0502) and these By-laws. Following each final decision, the Executive Director shall send to the applicant or the applicant's attorney written notice as follows:

“Pursuant to the Retirement Board's By-laws and San Bernardino County Ordinance No. 2161 (Sections 11.0501 and 11.0502), action to seek judicial review of this decision is governed by the provisions of Section 1094.6 of the Code of Civil Procedure of the State of California. You are

advised that any such petition must be filed not later than the ninetieth (90th) day following the date a decision becomes final.”

**ARTICLE IX. SUPPLEMENTAL DISABILITY RETIREMENT ALLOWANCE
(GENERAL MEMBERS ONLY)**


(1) If at the time of retirement for disability, the Board finds the member is unable to be gainfully employed, the member shall sign a declaration stating that the member understands that supplemental disability retirement allowance will continue only so long as the member is incapable of gainful employment; that the member is under obligation to inform the Board immediately if engaged in any gainful employment; that the member shall be under obligation to refund to the Association any supplemental disability retirement allowance improperly received as a result of failure to notify the Board of gainful employment; and that the member shall be required to execute a declaration every six months in order to continue to qualify for supplemental disability retirement allowance, except that no declaration will be required of those retired members who reach full retirement age as defined by the Social Security Administration. "Gainful employment" is defined as the performance of any service for compensation with the exception of service as a juror or witness in a court proceeding, or service as an election official.

(2) The Board may require a recipient of supplemental disability retirement allowance to undergo periodic medical examination. The examination shall be made by a physician determined by the Board. Upon the basis of the examination the Board shall determine whether the member remains incapable of gainful employment. If the member refuses to submit to medical examination, the supplemental disability

retirement allowance shall be discontinued until the member undergoes such examination.

BOARD OF RETIREMENT

BY: 
Chairman, ELLEN WEISSER

BY: 
Secretary, TIMOTHY BARRETT

BOARD OF SUPERVISORS

BY: 
Chairman GARY C. OVITT

ATTACHMENT: SBCERA Conflict of Interest Code

CONFLICT OF INTEREST CODE

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

The Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached APPENDIX in which members and employees are designated and disclosure categories are set forth, constitute the conflict of interest code of the San Bernardino County Employees' Retirement Association.

The terms of the conflict of interest code amended or adopted and promulgated pursuant to Section 18730 are as follows:

Section (2) Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests. Designated employees shall file statements of economic interests with Secretary of the Board who will make the statement available for public inspections and reproduction. (Government Code section 81008.) Statements for all designated employees will be retained by the Secretary of the Board.

Section (3) Disclosure Categories

All designated employees shall file pursuant to the disclosure categories set forth in the Appendix, which specify the kinds of economic interests that are reportable. Such a designated employee shall disclose in his or her statement of economic interest those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200

APPENDIX A – DESIGNATED EMPLOYEES

	DISCLOSURE CATEGORY
I. BOARD OF TRUSTEES	5
II. EXECUTIVE / ADMINISTRATIVE GROUP	
A. Executive Director/Chief Investment Officer	1
B. Chief Counsel	1
C. Chief of Member Services	2
D. Chief of Fiscal Services	2
E. Chief of Information Services	2
F. Executive Assistant	2
G. Executive Secretary II	2
III. LEGAL GROUP	
Retirement Counsel I-IV	2
IV. FISCAL GROUP	
V. INFORMATION SERVICES GROUP	
A. Applications Specialist	2
B. Automated System Analyst II	2
VI. INVESTMENT GROUP	
A. Investment Officer	2
B. Investment Analyst	2
VII. MEMBER SERVICES	
A. Disability Benefits Officer	2
B. Communications Officer	2

APPENDIX B – DISCLOSURE CATEGORIES

CATEGORY 1.

Designated employees in this category shall disclose all sources of income, interests in real property, investments and business positions in business entities. Designated employees in this category shall complete all schedules of Form 700, if applicable.

CATEGORY 2.

Designated employees in this category shall disclose sources of income, investments, and business positions in business entities which provide services, supplies, materials, machinery or equipment of the type purchased or utilized by the department in which the designated employee is employed. Designated employees in this category shall complete all schedules of Form 700 except schedule C, if applicable.

CATEGORY 3.

Designated employees in this category shall disclose all sources of income, investments, and business positions in business entities which engage in land development, construction, or the acquisition or sale of real property, and shall disclose all interests in real property. Designated employees in this category shall complete all schedules of Form 700, if applicable.

CATEGORY 4.

Persons in this category shall disclose all investments, income, and business positions in business entities which are subject to the regulatory, permit, or licensing authority of the department in which the designated employee is employed. Designated employees in this category shall complete all schedules of Form 700 except schedule C, if applicable.

CATEGORY 5.

Persons in this category are required to make disclosure pursuant to Government Code Sections 87200 and 87202. No additional disclosure obligations are imposed under this code. Designated employees in this category shall complete all schedules of Form 700, if applicable.