

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**BOARD OF RETIREMENT  
REGULATIONS**

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**CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT  
ASSOCIATION  
BOARD OF RETIREMENT  
REGULATIONS**

**I. ADMINISTRATION**

**1. Name**

The name of this Association is "The Contra Costa County Employees' Retirement Association" ("CCCERA" or the "Association").

**2. Board**

Whenever used in these Regulations, unless otherwise stated, "Board" and "Board of Retirement" mean CCCERA's Board of Retirement as defined in California Government ("Gov.") Code beginning at Section 31459.

**2.1 Alternate Board Members**

- A. The alternate safety, alternate appointed and alternate retiree members shall be provided with the same conference, education and manager on-site visit opportunities as all other Board members.
- B. The alternate safety, alternate appointed and alternate retiree members may participate in the deliberations of the Board or its committees including those deliberations held in closed session.
- C. Neither the alternate safety member, the alternate appointed member nor the alternate retiree member shall be entitled to serve as an officer of the Board.
- D. The alternate retiree member shall be entitled to the same compensation as the retiree member for attending a meeting, pursuant to Gov. Code Section 31521, whether or not the retiree member is in attendance at that meeting.
- E. The alternate appointed member shall be entitled to the same compensation as the fourth, fifth, sixth or ninth member, pursuant to Gov. Code Section 31520.12, whether or not the fourth, fifth, sixth or ninth members attend the meeting.

### **3. Election of Officers**

At the first regular meeting in July, as the first order of business, the Board shall elect a Chairperson, Vice-Chairperson, and Secretary, each to hold office for a term of one year or until a successor is duly elected and qualified. The newly elected officers shall immediately be seated. The Chairperson shall establish the agenda as it relates to administrative or investment matters with the assistance of the Chief Executive Officer. Should an officer for any reason fail to complete his/her term, the Board shall select a successor for the balance of the expired term at its next regular meeting.

### **4. Delegation to Chief Executive Officer**

In addition to the normal duties required to administer the Association on a day-to-day basis, the Chief Executive Officer is authorized to perform the following duties which are otherwise reserved for the Board:

- A. Issue subpoenas and subpoenas duces tecum under Gov. Code Section 31535.
- B. Release unclaimed funds under Gov. Code Section 31629 provided the claimant has adequately established his/her identity and makes application for the funds.
- C. Determine, under Gov. Code Section 31724, that the effective date of a member's disability retirement is a date earlier than the date the application was filed if the delay in filing was due to administrative oversight or inability to ascertain permanency and where credible documentation exists to support this fact.
- D. Accept elections for deferred retirement under Gov. Code Section 31700 and affidavits of membership under Gov. Code Section 31526.
- E. Correct prospectively any administrative error in the calculation of retirement benefits, with the issue of retroactive corrections, if any, to be reserved for the Board's exercise of discretion in accordance with the law.

### **5. Fiscal Year**

The fiscal year for budget purposes shall be the calendar year.

## II. MEETINGS

### 1. Regular Meetings

Regular meetings shall be held on the second and fourth Wednesday of each month at 9:00 a.m. in the Board Room of the Contra Costa County Employees' Retirement Association, 1200 Concord Avenue, Suite 350, Concord, California 94520, unless changed by the Board.

### 2. Quarterly Investment Review

The Board shall review investment manager performance on a quarterly basis, unless changed by the Board.

### 3. Special Meetings

Special meetings may be called in accordance with the Ralph M. Brown Act.

### 4. Rules of Order

Unless otherwise provided herein, the general conduct of the Board shall be guided by Robert's Rules of Order, Revised, 1915 edition. All other proceedings, including those of motions and decorum, shall be guided by those provisions pertaining to an "Assembly" as specified in Robert's Rules of Order.

The Chairperson will:

- A. Vote on all Questions
- B. Recognize a member or non-member entitled to speak
- C. Enforce the rules and decorum specified in these Regulations

A motion for the "Previous Question" (to "call" or cut off debate of the immediate pending question) may be made by any member without a second. If no objections are made by the members, the Chairperson will immediately "put", without debate, the question. If an objection is made, a vote is immediately required, without debate, regarding the "previous question". A vote of 2/3 of the votes cast is necessary for adoption. If adopted, the Chairperson immediately "puts", without debate, the pending question.

**4.a. Order of Business, First Meeting of the Month**

The usual order of business at the first meeting of the month, subject to the final setting of agenda matters by the Board Chairperson and the CEO is as follows:

- A. Public Comment
- B. Approval of minutes
- C. Routine items approval
- D. Closed Session for disabilities, litigation, and personnel matters.
- E. Report out of Closed Session
- F. Unfinished administrative business
- G. New administrative business
- H. Fiduciary/Staff education
- I. Miscellaneous
  - (i) Staff Report
  - (ii) Outside Professionals' Reports
  - (iii) Trustees' comments

The Chairperson may modify the order of business in his or her discretion at any time during the course of the Board meeting. The Agenda may provide for reasonable time limits on any item, including public comment, and the Board Chairperson may establish reasonable time limits on discussion items during the course of the meeting.

**4.b. Order of Business, Second Meeting of the Month**

The usual order of business at the second meeting of the month, subject to the final setting of agenda matters by the Board Chairperson and the CEO is as follows:

- A. Public Comment
- B. Approval of minutes
- C. Investment performance review
- D. Investment matters
- E. Actuarial matters
- F. Unfinished administrative business

G. New administrative business

H. Miscellaneous

- (i) Staff Report
- (ii) Outside Professionals' Report
- (iii) Trustees' comments

The Chairperson may modify the order of business in his or her discretion at any time during the course of the Board meeting. The Agenda may provide for reasonable time limits on any item, including public comment, and the Board Chairperson may establish reasonable time limits on discussion items during the course of the meeting.

**5. Quorum**

Five voting Members of the Board present at the meeting shall constitute a quorum. No motion may be passed or business transacted without five affirmative votes.

**6. Communications and Requests**

Communications and requests should be made in writing and any action of the Board thereon shall be noted in the minutes.

**7. Minutes**

The minutes or a true copy thereof, prepared in accordance with the Ralph M. Brown Act, shall be signed by the Secretary and the Chairperson, and shall form part of the permanent records of the Board. The reason for a Board member's vote on a Board action shall be included in the minutes when requested by the member.

**8. Committees of the Board**

The Chairperson shall appoint committees as deemed necessary to carry out the business of the Board. A quorum for a Committee meeting shall consist of three Board Members. Committee meeting will be open to the public, except for meetings of ad-hoc advisory committees consisting of less than a quorum of the full Board. A Chairperson and Vice-Chairperson for each Committee will be appointed by the Board of Retirement Chairperson.

### III. MEMBERSHIP

#### 1. Exclusion from Membership – By Type of Employment

- A. All officers and employees of the County or districts shall be members of the association as provided in Article 4 under Sections 31550-31567 of the County Employees' Retirement Law of 1937 (Gov. Code Secs. 31450, et seq. "CERL"), unless excluded from membership by this Section.
- B. The following employees shall be excluded from membership:
  - ( i) Temporary, seasonal or independent contract employees who are employed or re-employed for temporary service or at certain specified periods each year.
  - ( ii) Intermittent or permanent-intermittent employees who are appointed to serve less than 80% of the full number of working hours required of regular employees or who actually serve less than 80% of such full number of working hours in one year as certified by their appointing authority.
  - (iii) Part-time employees whose service for the County or district is less than fifty (50) percent of the full number or working hours required of full-time employees at that employer.
  - ( iv) Project employees, unless the appointing authority certifies that the project is expected to be of one year or more in duration on a greater than part-time basis.
  - ( v) Provisional employees, unless they otherwise meet the requirements for reciprocal benefits with other retirement systems under Article 15 of CERL.
- C. In making its determination regarding an employee's inclusion in or exclusion from membership, the Board will not rely solely upon the term given to the type of employment. Rather, the Board will rely upon such additional facts such as the nature of the employment, its expected or actual duration, and its relationship to what is considered full-time, permanent employment.

#### 2. Exclusion from Membership – by Compensation

Except as otherwise herein provided, all employees of the County or district who receive compensation amounting to less than one-hundred (\$100) dollars per month, and in the case of employees paid on other than a monthly basis an average of one-hundred (\$100) dollars per month for the preceding year, including maintenance valued according to the schedule adopted by the governing



body, are hereby excluded and exempted from membership in the Retirement Association. Any member of the Retirement Association whose salary is reduced to an amount less than one-hundred (\$100) dollars per month shall have the option of continuing or discontinuing his/her active membership in the Association.

**3. Exclusion from Membership – by Waiver**

Newly hired employees age 60 and older may waive membership as authorized by Gov. Code Section 31552. Any such waiver of membership shall be effective only if it is submitted to the CCCERA Chief Executive Officer within 90 days of the employee's date of hire; provided, however, that the Chief Executive Officer may, in his/her sole and reasonable discretion, waive the time limitation if the newly hired employee establishes good cause for such a waiver.

**4. Certifications**

Every employee of the County or district within the county whose employees are members of the Association shall, upon entry into the Association, complete a sworn statement as provided for in Gov. Code Section 31526(b). A certified copy of the member's birth certificate or other evidence of birth may be required by the Board.

It shall be the employer's responsibility to assure compliance with this section. The Board shall assess the employer five hundred (\$500) dollars per employee for every month or fraction thereof that the required certification is not submitted. The Board shall notify the employer in writing of the imposition of assessment at least thirty days before the assessment.

**5. Electronic Signatures**

Pursuant to Government Code Section 31527(i), the Board may use and accept a document requiring a signature that is submitted by a member using an electronic signature, if the document and electronic signature are submitted using technology the Board deems sufficient, as set forth in a policy adopted by the Board, to ensure its integrity, security, and authenticity. A document submitted pursuant to the Board-adopted policy shall be given the same force as a signed, valid original document.

## IV. CONTRIBUTIONS AND REPORTING

### 1. Leave of Absence

When a leave of absence without pay is less than a full calendar month, the full monthly contribution, if available from the member's salary, shall be deducted from the member's earnable compensation and service credit shall be given for a full calendar month. If the amount of the member's salary for the applicable period is less than the contributions due, then no deduction shall be made for service credit. (Gov. Code section 31527, subd. (a).)

Members on stipendiary educational leaves shall continue to make contributions.

### 2. Due Dates

Each employer shall report to the Association in a manner and frequency as determined by the Board sufficient for the Board to credit contributions and service to each member's record.

Unless otherwise specified in a written agreement between CCCERA and the participating employer, reports shall be due no later than the tenth of each month for the previous month's payroll and shall be accompanied by member and employer contributions. If the tenth of the month falls on a weekend or holiday, the due date shall be the last working day before the tenth. Reports, which are unreadable or incorrect, shall not be accepted and shall be returned to the employer.

Reports and contributions received after the due date shall be considered late and subject to a late reporting penalty equal to: the prime rate in effect on the due date computed on a daily, non-compounding basis and applied to the contributions due.

### 3. Drops in Payroll

Whenever the employer's reportable payroll drops to a level which is lower than 70% of its payroll during the same period in the preceding year, the Board may investigate the cause. Whenever the employer's reportable payroll drops to a level which is lower than 50% of its payroll during the same period in the preceding year, the Board shall investigate the cause. If the Board determines that the cause is other than temporary it shall determine the amount of contributions due from the employer to continue paying its share of any unfunded liability. This amount shall then be due from the employer in addition to any contributions made on the reduced payroll.

#### **4. Employer Certification**

Each report as specified in Section IV.2 shall include or be accompanied by a certification, under penalty of perjury, as to its accuracy. The certification shall be made by a duly authorized representative of the employer.

### **V. SERVICE**

#### **1. Leave of Absence**

When a member returns from a medical leave of absence without pay, the member shall receive credit for up to 12 months of the leave time if the member pays an amount equal to what he or she would have paid, including any amount that would have been paid by the member's employer on the member's behalf (i.e., subvented), had he or she not taken the leave together with the interest that such amount would have earned had it been on deposit. Calculation of the cost of the leave purchase and the method of payment for such leave shall be as provided in Gov. Code Section 31646.

#### **2. Prior Service**

In establishing the length of prior service for any member entitled to credit therefor, official payroll records or other official records shall be controlling. In the event that any of such records are unavailable, the Board, in its discretion, may accept affidavits of the employee, affidavits of the employee's employer, affidavits of fellow employees or such other sworn evidence as the Board determines to be pertinent.

For the purpose of these Regulations, credit for prior service for a per diem employee entitling the employee to a full year's credit towards retirement shall mean 200 or more workdays of service rendered in any one calendar year including leave of absence, vacation and sick leave duly granted, but not more than one year of credit shall be allowed for service in any one calendar year. Service of less than 200 workdays in any one calendar year shall be credited on the pro-rata basis of 250 workdays per year.

Prior service shall include all service for the employer and all service while on leave from the employer for military duty, which is prior to the establishment of the retirement system.

#### **3. Sick Leave Credit**

The following provisions govern the use of sick leave credit toward service credit at retirement under Government Code Sections 31641.01 as adopted by the County Board of Supervisors.

- A. The total hours of sick leave accumulated by the member on the date of retirement, at the rate of one day for each one day earned, shall be certified as to its accuracy in writing under penalty of perjury by the duly authorized representative of the employer.
- B. The Association shall convert the total sick leave into years and fractions of a year using the following equivalencies:
  - ( i) For firefighters, accumulated sick leave hours at retirement shall be divided by 2,912 (average number of working hours per year for a firefighter).
  - ( ii) For all other members, the accumulated sick leave hours at retirement shall be divided by 2,000 hours (average number of working hours per year).
- C. The formula used to determine the sick leave service credit value shall be the same as used for the member's service category at the time of retirement.

#### **4. Service Purchase**

Any member who elects to purchase prior public service under Government Code Section 31641.2, prior nonmembership service under Government Code Section 31641.5, prior service under Government Code Section 31648, or military service under Government Code Section 31649.5, shall be eligible to make the purchase anytime before applying for retirement.

Any member who elects to purchase prior public service under Government Code Section 31641.2, prior nonmembership service under Government Code Section 31641.5, prior service under Government Code Section 31648 or military service under Government Code Section 31649.5 shall be permitted to make such purchase in installment payments as provided for in Section V, paragraph 6 of these Regulations.

#### **5. Redeposit of Withdrawn Contributions**

On redeposit, a member must pay withdrawn contributions plus any interest as defined in Gov. Code Section 31472.1, subject to Section V, paragraph 8.

The redeposit will exclude contributions subvented by the employer under Gov. Code Secs. 31581.1 31581.2 and 31630, and exclude any Cost of Living (COL) contributions that were not otherwise paid by members as a result of a transfer of excess surplus funds for that year.

## **6. Installment Payments**

Whenever a member elects to purchase prior public service (Gov. Code Sec. 31641.2), prior nonmembership service (Gov. Code Sec. 31641.5), prior military service (Gov. Code Sec. 31649.5), prior service (Gov. Code Sec. 31648), or leave of absence service (Gov. Code Sec. 31646), or elects to redeposit withdrawn service (Gov. Code Sec. 31652), and the member elects to make such purchase or redeposit in installment payments, the following shall govern:

- A. The amount of service represented by each installment payment shall be computed by dividing the amount of the installment payment by the total cost of purchase or redeposit, and multiplying the resulting percent by the total service being purchased or redeposited.
- B. The member's service credit record shall be increased to reflect each installment payment as it is received and shall be applied to the most recent service for which credit is available.
- C. The member's account balance shall be increased to reflect each installment payment as it is received. Unless otherwise certified by the employer, the installment payment will be deemed and credited as after-tax member contributions.
- D. If the member dies, requests a refund, or retires either for service or disability, no further installments shall be accepted. Any benefit payable thereafter shall recognize or include service purchased or redeposited and account balances to date.
- E. If multiple periods of service are eligible for purchase or redeposit, the cost of each period shall be separately computed and any installments shall apply to the most recent service period first.
- F. Unless otherwise prohibited by law (leave of absence without pay under Gov. Code Sec. 31646, prior public service under Gov. Code Sec. 31641.2, and prior nonmembership service under Gov. Code Sec. 31641.5), the member shall be eligible to make installment payments so long as he or she continues to be actively employed.

As for service purchased under Government Code Sections 31641.5 and 31646, such payments may be made by lump sum or by installment payments over a period not to exceed the length of time for which the member has elected to receive credit, in the manner otherwise provided for in this paragraph 6.

As for service purchased under Government Code Section 31641.2, such payments may be made during active employment as a member by lump sum or by installment payments over a period not to exceed five years.

- G. A member may elect installment payments by monthly payroll deductions on a post tax basis.
  - (i) A Purchase Contract must be signed for payroll deductions.
  - (ii) All payroll deduction Purchase contracts must be paid in full by the member's retirement date or within 120 days of termination.
  - (iii) Service credit is posted to member's account at the completion of the contractual payments.

#### **7. Conversion of Tier II Service Credit**

Once a member elects or by resolution has been placed into Tier III membership under Gov. Code Sec 31755 he or she is eligible to convert all or any part of Tier II service credit to Tier III service credit.

The member's cost shall be the difference between the total amount he or she and the employer paid into the Association under Tier II and what would have been contributed during the same time if the employee had been under Tier III, together with interest as defined in Section 31472.1, subject to Section V, paragraph 8.

#### **8. Forgiveness of Interest**

In cases where a member is redepositing withdrawn contributions, purchasing service credit or converting service credit in accordance with this Section V, interest shall not include the most recently credited interest amount if all of the following conditions are met:

- A. The member requested a calculation of the cost of the purchase or conversion more than three months prior to the June 30 or December 31 interest crediting date.
- B. The member received the requested calculation after the June 30 or December 31 interest crediting date.
- C. Within 30 days of receipt of the requested calculation the member pays all or a part of the cost with a lump sum payment.

## VI. COMPENSATION

### 1. Compensation for Retirement Purposes.

The Board has adopted a Board Compensation Policy listing items of compensation that are included in “compensation”, “compensation earnable”, and “final compensation” as defined in Government Code Sections 31460, 31461, and 31462.1. The Retirement Association will provide each employer with a copy of the Board Compensation Policy. Each employer is required to transmit promptly to the Retirement Association, contributions on each item of compensation listed in the Compensation Policy as includible in “compensation”.

### 2. New or changed pay items.

Each employer shall report to the Association in writing within 30 days of any of the following events:

- A. A new pay item is created.
- B. There has been a change in either an existing pay item or the conditions under which the pay item is computed, accrued or paid.
- C. Notification received after the 30 days adoption shall be considered late and shall be assessed as defined in Section IV.2.
- D. Upon notification, the Board shall determine whether the pay item is included in “compensation” as defined in Section 31460.

## **VII. NORMAL RETIREMENT AGE AND BONA FIDE SEPARATIONS**

### **Normal Retirement Age**

For purposes of applying the Pension Protection Act of 2006 (“PPA”) and complying with other applicable tax-related laws (such as restrictions on in-service distributions), effective July 1, 2007, the “Normal Retirement Age” for CCCERA members shall be the age set forth in CERL retirement formula for an unreduced benefit that applies to each CCCERA member immediately preceding the effective date of his or her retirement from a CCCERA employer. For example, the Normal Retirement Age for a member who earns retirement service immediately before retirement under a “3% at 50” retirement formula (Gov. Code section 31664.1) is 50 years of age. The Normal Retirement Age for a member who earns retirement service immediately before retirement under a “2% at 55” retirement formula (Gov. Code section 31676.16) is 55 years of age.

Notwithstanding the foregoing, Normal Retirement Age for CCCERA members shall in no event be earlier than (i) age 55 for CCCERA members who are not Qualified Public Safety Employees (as defined in Internal Revenue Code section 72(t)(10)(B)) immediately prior to their retirement; and (ii) age 50 for CCCERA members who are Qualified Public Safety Employees.

The Board may change or further refine its determination of Normal Retirement Age as described herein in order to comply with any rules or regulations of the Internal Revenue Service or other applicable law. The Board’s current determinations of Normal Retirement Age are based upon the findings and conclusions set forth in Board of Retirement Resolutions 2007-1 and 2007-2.

### **Bona Fide Separation from Service**

A) In order to comply with tax law restrictions on in-service distributions, a member who retires at an age younger than Normal Retirement Age, as defined herein, may not enter into an agreement, either oral or written, prior to the date the member's retirement commences, to be reemployed while retired by the same CCCERA employer, regardless of the length of the member's break in service after retirement. The member must acknowledge in writing to CCCERA at the time of retirement that the member has been informed of these requirements and limitations on post-retirement employment and that no prearrangement to be reemployed while retired exists.

B) A member who retires at an age younger than Normal Retirement Age, as defined herein, must have at least a continuous 90-day break in service from the date of the member's last day of employment prior to being reemployed while retired by the member’s prior CCCERA employer.



C) If a member is reemployed without compliance with subsections (A) and (B) above, the retired member's retirement benefits from CCCERA must cease as soon as practicable upon discovery by CCCERA and will not resume until the member has a bona fide separation from service or reaches Normal Retirement Age, whichever occurs first.

D) A member may return to work prior to the time specified in section (B) above for emergency situations as defined in Government Code Section 8558 and under the return to work restrictions specified in Government Code Section 7522.56 *et seq.* However, prior to returning to work, the retiree must have incurred a bona fide break in service and cannot have entered into a prearranged agreement to be reemployed by the same employer.

E) The definitions, limitations and requirements contained herein shall be provided to every CCCERA member who inquires about retirement.

## VIII. WITHDRAWALS

### 1. Discontinued Service

The service of a member will be considered “discontinued” under Gov. Code Section 31628 only if the member has actually terminated employment and either the termination is due to lay-off or the member is not reemployed by that employer for a period of 45 days.

The service of a member will not be considered discontinued if the member continues to work for the employer or for another participating employer, even if the member’s work schedule is below the minimum number of hours required to qualify for coverage. In these cases interest will continue to be credited to the member's account.

### 2. Account Withdrawals

All requests to withdraw an account must be in writing.

All payments of an account balance shall be in the form of either or both of the following:

- A. A lump sum distribution
- B. A rollover to an IRA or a new employer’s Qualified Plan per current IRS guidelines.

**3. Interest Crediting**

Interest is credited to the account of a pending refund request on June 30<sup>th</sup> or December 31<sup>st</sup> if the funds have been on deposit for six months or more in accordance with Gov. Code Section 31591.

A member who continues employment in a non-covered position will have interest credited to his/her account.

**4. Account Reinstatement**

A member who has appealed a dismissal and has been reinstated by the employer is allowed to redeposit withdrawn retirement contributions, plus interest, and will be reinstated as of the original date of membership in the Association.

**IX. NEW PARTICIPATING EMPLOYERS (Section 31557)**

All officers and employees of any newly participating district shall become members of the Association as provided in Section 31557.

- A. An actuarial valuation shall be made to determine liability.
- B. The district shall pay the cost of the valuation.

**X. PARTICIPATING EMPLOYER WITHDRAWAL  
(SECTIONS 31564 AND 31564.2)**

An employer, by resolution, may withdraw its employees from membership in the Association as provided in Government Code sections 31564 and 31564.2.

- A. Upon notification by an employer that it is considering withdrawing from the Association, the Association will provide the employer with a copy of the Association's Employer Termination Policy.
- B. An employer shall comply with the Association's Employer Termination Policy to ensure the actuarial soundness of the retirement system.

**XI. DISPENSING WITH RECALCULATION FOR MINOR DISCREPANCY**

**1. Closed Accounts**

The Board authorizes the Chief Executive Officer to refrain from collecting an under payment or refunding an overpayment of accumulated contributions from

a member who has terminated from the association and cannot be located, whenever the amount is fifty dollars (\$50) or less.

**2. Active, Deferred and Retiree Accounts**

The association may dispense with issuing any check whenever the retroactive liability is less than five dollars (\$5).

**XII. APPLICATIONS FOR DISABILITY RETIREMENT**

(Adopted: Retirement Board – June 14, 1977)

(Approved: Board of Supervisors – June 28, 1977)

**1. Application Form**

An application for service-connected or nonservice-connected disability retirement shall be filed on the Application for Disability Retirement form prescribed by the Board of Retirement, and shall include either a completed Physician's Statement or another form of medical report to support the Application.

**2. Effective Date Of Disability Retirement Allowance**

(a) The effective date of a disability retirement allowance shall be established pursuant to Gov. Code Section 31724.

(b) The applicant may apply to have the disability retirement allowance become effective earlier than the date the application is filed upon a showing the application was delayed due to administrative oversight or by the inability to determine the permanency of the disability until after the date following the last day for which the applicant received regular compensation, by completing the applicable section of the Application for Disability Retirement form. The failure of the applicant to apply for an earlier effective date at the time the application is filed shall constitute a waiver of the right to apply for an earlier effective date.

**3. Denial Without Prejudice**

(a) In the event the medical advisor's recommendation is to deny the disability application (without prejudice), the member may submit additional medical information to support the application and/or request a hearing within six (6) months of notice of the denial.

(b) In the event the medical advisor's recommendation is to grant the disability application, the Board of Retirement will review the recommendation and take action on the application for disability retirement. If the Board denies the

application (without prejudice), the member may request a hearing within six (6) months of notice of the denial.

**4. Request For Hearing**

Any applicant for disability retirement shall, upon request, be entitled to a hearing, at the sole discretion of the Board of Retirement, before the Board, or before a referee appointed by the Board pursuant to Gov. Code section 31533. Any such request for hearing shall be in writing, and shall be made within 30 days after notice of the Board's action denying the application is mailed by certified or registered mail to the applicant. An application is deemed made on the date mailed if mailed by certified or registered mail, on the date postmarked if mailed by first class mail and received, or on the date received by the Association, whichever is earlier.

**5. Judicial Review**

In any matter in which the party or applicant is entitled to judicial review of any action taken by the Board of Retirement, the petition to the court must be filed within 90 days from the date the notice of the Board's decision is delivered to the party or applicant, or served by certified or registered mail upon the party or applicant or the party's or applicant's attorney.

The procedure for hearings on disability retirement applications that the Board of Retirement or a Referee holds in connection with determination of disability retirement benefits under CERL shall be set forth in the Board of Retirement's separate policy regarding the same.

### **XIII. CONTINUED EMPLOYMENT OF PARTIALLY DISABLED EMPLOYEES**

(Approved: Board of Supervisors – May 9, 1972)

#### **Section 10.1 – Purpose**

This regulation governs the procedures for the continued employment of partially disabled members pursuant to Government Code Section 31725.5 and County Ordinance Code Section 38-4.402.

#### **Section 10.2 – Definitions**

In this regulation, unless otherwise specifically provided, or required by the context, these terms have these meanings:

- A. “Reassignment” means the appointment (pursuant to the Statute, the ordinance and this regulation) of a member to a position, with duties different from, and compensation earnable higher, lower, or the same as, the position for which he is incapacitated.
- B. “Board” means the Board of Retirement (Retirement Board).
- C. “Chief Executive Officer” means the Retirement Administrator as defined in Government Code Section 31522.
- D. “Incapacitated for the performance of his/her duties” means the permanent inability of the member, due to physical or mental causes, to perform the duties of his/her specific position.
- E. “Committee” means the Rehabilitation Committee.
- F. “Governing Body” means the Board of Supervisors or the elected officials governing a district.
- G. “District” is defined in Government Code Section 31468.

#### **Section 10.3 – Rehabilitation Committee**

- A. A Rehabilitation Committee is hereby established for the purpose of recommending whether a member shall be reassigned.
- B. Except as provided by Section 10.7, this committee shall consist of the following:

- a. The permanent members are a member of the Board designated by it; and the County Administrator, Director of Personnel and County Health Officer or their designees; and the Chief Executive Officer or his/her designee, who serves as secretary without a vote.
- b. The appointing authority within the department or district to which the reassignment is proposed or his/her (its) designee.
- c. The employee and/or his/her designee, unless he waives membership.

#### Section 10.4 – Procedure

- A. After an application for disability is filed, the Chief Executive Officer shall consult with the Board’s medical advisor, the member employee and others as necessary, to determine whether a reassignment appears feasible (in view of the members employee’s condition) if the Board later finds the member employee to be incapacitated for the performance of his/her duties. If a reassignment appear feasible to the Chief Executive Officer, he shall convene the permanent members of the Committee and the employee or his/her designee, and they shall explore the practicabilities of returning the member employee to his/her previous position or reassigning, rehabilitating and/or retraining him/her.
- B. When a department or district is located to which a reassignment appears feasible, the appointing authority within it shall be added to the Committee (pursuant to Section 10.3B(2) above).
- C. The Committee may make its recommendation to the Board at any time before or after Board action on the application for disability retirement.

#### Section 10.5 – Reassignment

After the Board determines that the member employee is incapacitated for the performance of his/her duties, he shall be reassigned, in lieu of being retired for disability, if the appointing authority in the department or district in which he is to be employed and the Governing Body agree to his/her appointment and the appointment is made in accordance with any applicable merit or Civil Service system rules.

#### Section 10.6 – Later Retirement

If a member who has accepted reassignment is voluntarily or involuntarily separated from the service thereafter, his/her retirement benefits and rights, including those of his/her beneficiaries, shall be determined as if he were being retired on the date of this later separation for the same type of disability retirement as he would have received had he been retired originally instead of reassigned, but a new application may be filed for disability retirement based on his/her job connected injury or disease

occurring after the first application was filed, and his/her rights and benefits (including Cost-of-Living retirement adjustments) shall not be less than those to which he would be entitled if he retires for service on the date of his/her later separation.

Section 10.7

In a district for which the Board of Supervisors is not the governing body, the Chief Executive Officer shall request the district to appoint to the Committee those personnel with functions similar to those of the County Administrator and Director of Personnel; and such other personnel shall then serve on the Committee in lieu of the County Administrator and Director of Personnel.

#### **XIV. AMENDMENT OF REGULATIONS**

Amendments to these regulations require 6 affirmative votes of the Board.

#### **XV. HISTORY**

Adopted: 9/14/1999

Amended: 9/18/2001, 12/11/2002, 2/19/2003, 7/9/2003, 8/11/2004, 2/8/2006, 7/11/2007, 9/8/2010, 1/14/2015, 10/23/2019, 4/8/2020, 7/14/2021