

**MINUTES OF THE RETIREMENT BOARD**  
**January 18, 2024**

A regular meeting of the Retirement Board convened on Thursday, January 18, 2024 at 8:33 a.m.

The meeting was called to order by Retirement Board President Tim McGowan. This meeting was conducted with Retirement Board Members physically present in the Administration Building **Training Resource Center**, 375 Eleventh Street, Oakland, California. This location served as the physical location for members of the public who wish to attend the meeting in person. Please note, however, that members of the public were also provided the opportunity to participate via video and teleconference.

**Roll Call** – The following Retirement Board Members were present: Clifford Chan, Marguerite Young, Tim McGowan, Jae Park, and Elizabeth Grasseti. April Chan joined the meeting at 8:41 a.m.

The following staff members were present: Cindy Charan, Sophia Skoda, Lisa Sorani, Lourdes Matthew, Robert Hannay, Steven Goodman-Leibof, and Valerie Weekly.

The following consultants were present: Meketa-Colin Bebee, Sarah Berstein, Jonathan Camp, Eric Larsen. Segal-Andy Yeung and Dirk Adamsen. Alliant-Billie Brown and Tom Sher.

**PUBLIC COMMENT:** The Retirement Board is limited by State Law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

Diane Eggering – Spoke on behalf of Local 2019 in support of increasing HIB. The current amount does not show the true cost. Conveyed appreciation to Lisa, Valerie, and Joey for their openness to discuss her recommendations. She would like HR contacts to be added in Splashpad.

There was a written public comment related to HIB. That comment is included at the end of these minutes.

**REGULAR BUSINESS MEETING**

**CONSENT CALENDAR:**

A motion was made to approve items 1-5 of the consent calendar by Clifford Chan and seconded by Marguerite Young. The motion carried (4-0) by the following vote: AYES (C. Chan, T. McGowan, J. Park, M. Young), NOES (none), ABSTAIN (none), ABSENT (A. Chan).

**ACTION:**

**6. Approve Resolution honoring the 10+ years of service provided by Eric White of Meketa to the Retirement Board – S. Skoda**

Action Item #6 Commending Eric White’s 10+ service to Retirement System, Eric formerly of Meketa Investments LLC. The plan assets when Eric took over at the start of 2011 until November 2022 increased from 910.4 million to 2.27 billion. Colin Bebee of Meketa thanked the Retirement Board on behalf of Eric White.

Tim McGowan provided some history of Eric White's support to the District. He began analyst work with PCA in 2009 and in 2011 took over lead consultant for the District.

Moved by M. Young; seconded by J. Park. Motion passed 5-0 by the following vote: AYES (McGowan, C. Chan, Park, Young, A. Chan), NOES (none), ABSTAIN (none), ABSENT (none).

**7. Adopt the Actuarial Valuations of the Retirement System as of June 30, 2022, and Recommend the Fiscal Year 2025 Employer Contribution Rates for the Pension and the Health Insurance Benefit Plans – S. Skoda**

Andy Yeung from Segal reported an increase in both active and retired participants in the plan with an aim to eliminate unfunded liability. Despite outperforming assumption rates, market value isn't used to control volatility. The current funding level is at 75.0%, or 73.6% combined with HIB, triggering an increase in employer contribution rates due to higher-than-estimated salary bases and COLA. A new actuary disclosure suggests an increase in liability to approximately 4.515 billion dollars from the Actuarial Accrued Liability (AAL) of 2.994 billion.

Tim McGowan emphasized the importance of understanding other funds' actuarial assumptions. Sophia Skoda recommended adopting rates based on evaluation, with discussion about potential changes to HIB percentages and implications on employer contributions.

Andy Yeung highlighted the importance of considering unfunded liability rather than the funded ratio as a measure of pension plan health. The meeting also discussed discrepancies in contribution rates compared to peer agencies and the complexity of different plan structures.

Regarding Health Insurance Benefits (HIB), it was noted that an increase in COBRA would cause a percentage decrease and HIB funding wasn't initiated until 2002 or 2003.

Moved by M. Young; seconded by C. Chan. Motion passed 5-0 by the following vote: AYES (McGowan, C. Chan, Park, Young, A. Chan), NOES (none), ABSTAIN (none), ABSENT (none).

**8. Approve Resolution Amending Retirement Board Meeting Schedule – C. Charan**

Marguerite Young questioned the necessity of holding two advance meetings to decide on the schedule change and suggested starting meetings at 9 am. Lourdes Matthews clarified that while not legally required, it's beneficial for notification and participation. Lourdes proposed regular meetings at 9 am and including the 3rd Thursday of odd-numbered months as an alternative date when needed.

Clifford Chan agreed with the proposal but suggested eliminating the need for two advance meetings. Elizabeth Grassetti preferred an 8:30 am start. Tim summarized the discussion, noting the proposed changes.

Marguerite Young noted that changing meetings may inconvenience some members. Lisa Sorani mentioned the ongoing nature of this item and the possibility of requiring a special meeting for approving changes. The motion was amended to accept the second half of the memo. Marguerite motioned to adopt regular meetings at 9 am on, and including the 3rd Thursday of odd-numbered months as an alternative meeting date. The motion was amended to eliminate the memo's second half regarding the need for two advance meetings. Marguerite Young indicated there was no need for so much notice as long as the Brown Act was followed. Clifford Chan agreed.

Moved by M. Young; seconded by C. Chan. Motion passed 5-0 by the following vote: AYES (McGowan, C. Chan, Park, Young, A. Chan), NOES (none), ABSTAIN (none), ABSENT (none).

**10 MIN break here 10:11am -10:26am**

**9. Confirm Retirement Board Meeting Date for May 2024 – C. Charan**

Item to move the May 9<sup>th</sup> meeting to May 23<sup>rd</sup>, presented by Lisa Sorani. Board agreed to change March meeting date to May 23, 2024. HIB meetings are February, April and June. Moved by C. Chan; seconded by A. Chan. Motion passed 5-0 by the following vote: AYES (McGowan, C. Chan, Park, Young, A. Chan), NOES (none), ABSTAIN (none), ABSENT (none).

**10. Approve Additional Asset Allocation Training – S. Skoda**

Director A. Chan asked to pull this item. April Chan wants staff to know that she is always available to call and discuss if the item was a request from her. No vote taken.

**INFORMATION:**

**11. Performance Report and Economic Review (Meketa Investment Group) – S. Skoda**

The Q3 report was discussed noting its "stale" nature. It ended with a total value of approximately 2.2 billion with Q3 being the only rough spot of the year. Colin Bebee of Meketa highlighted factors driving good performance in US equities, including the "magnificent 7" in the US and strong performance in Japan, along with a decline in the dollar. Key points included a big rebound across markets in 2023, projected interest rate cuts, and expectations of economic slowdown translating into lower rates. Colin expressed confidence in consumer debt due to full employment. Discussion touched on inflation, wage growth, and the impact of COVID-related supply chain issues on cost pressures. Eric Larsen of Meketa provided insights on asset allocation with domestic and equities overperforming benchmarks while real estate struggled in a rising interest rate environment. Further analysis will be conducted on underperforming sectors such as Federated, with commentary provided in a follow-up. Despite challenges, the portfolio showed strong performance, outperforming benchmarks and achieving a year-end increase of about 15%.

**12. Introduction to Capital Market Assumptions (training) – S. Skoda**

Colin Bebee of Meketa introduced Capital Market Assumptions which form the basis of asset liability studies, projecting future asset performance and volatility over different timeframes. Return expectations are based on recent market trends and historical data with private markets relying on historical data, economic theory, and current measures. Colin clarified that the Horizon Survey includes diverse clientele, both public and private. Factors affecting each asset class and return models were discussed, including credit risk for bonds and return drivers for covered calls. Discussion highlighted higher yields and market volatility in real estate in 2023. Colin emphasized focusing on straightforward investments in private credit rather than high-risk special situations. The discussion provided insights into Capital Market Assumptions, emphasizing the importance of historical data and current measures in projecting future asset performance across various asset classes.

Break was taken at 11:40 and the meeting started again at noon.

**13. HIB Study: Retiree Demographics and HIB Utilization – C. Charan**

Lisa Sorani outlined the study schedule, focusing on off-month sessions in February, April, and June, with sample costing from Segal presented at the May meeting. Final proposals will be developed in June and presented to the Board of Directors thereafter. Marguerite Young raised a query about costing both Option A and Option B if they are similarly attractive. Lisa clarified the importance of presenting multiple options to the Board for consideration. Tom Sher from Alliant Consultants was introduced, emphasizing his extensive experience as a benefit consultant including work with joint powers authority. Discussion centered on the data related to retirees, eligibility, and enrollment in district health plans. Analysis revealed that 65% of eligible retirees are enrolled in district-sponsored health plans, with a majority over 65 years old.

Marguerite emphasized the importance of considering future benefits for PEPRAs retirees in the next 10-15 years especially as retirees make decisions about their plans. Tom Sher addressed premium projections, noting historical trends and the impact of recent increases particularly in Medicare premiums. He highlighted the self-selection process and the attractiveness of richer plans despite higher premiums. Discussion extended to the design of the plan and its target audience, considering the implications for retirees and beneficiaries.

Public Comments: Questions were raised about the cost of providing similar benefits to PEPRAs employees as in Contra Costa, with considerations for reduced benefits and retirement age.

Tim McGowan emphasized the need to understand the demographics of those not using the benefit with further analysis planned after June. The discussion highlighted the complexity of designing healthcare plans for retirees with considerations for costs, demographics, and benefit structures. Further analysis and discussions will continue after June to address these concerns.

**14. Announce Timelines for Employee and Retiree Retirement Board Seat Elections – C. Charan**

Valerie Weekly presented. There will be two elections this year: Tim McGowan's seat expires June 24, 2024; Elizabeth Grasseti's retiree seat expires September 23, 2024. The timelines for both elections were provided.

**15. Update on the Pension Gold (LRS) Implementation Project – C. Charan**

This item will carry over to the March Retirement Board meeting.

**REPORTS FROM THE RETIREMENT BOARD:**

McGowan would like to attend a training in March and mentioned value of CALAPRS trainings.

**ITEMS TO BE CALENDARED:**

No new items to be calendared.

**MEETING ADJOURNMENT:** Meeting adjourned at 1:25pm Moved by M. Young; seconded by J. Park. Motion passed 5-0 by the following vote: AYES (McGowan, C. Chan, Park, Young, A. Chan), NOES (none), ABSTAIN (none), ABSENT (none).

**The next meeting of the Retirement Board is a Special Meeting that will be held at 9:00 a.m. Tuesday, February 6, 2024. The next regular meeting of the Retirement Board will be held on Thursday, March 21, 2024.**

### **Retirement Board Meetings**

- February 6, 2024 (Special)
- March 21, 2024
- April 16, 2024 (Special)
- May 9, 2024
- June 4, 2024 (Special)
- July 18, 2024
- September 19, 2024
- November 21, 2024

## APPENDIX

Retirement Board Meeting  
Thursday, January 18, 2024  
8:30 a.m.

This meeting will be conducted with Retirement Board Members physically present in the Administration Training Resource Center, 375 Eleventh Street, Oakland, California. Members of the public are welcome to attend in person or virtually as described below.  
Please note that Retirement Board meetings are recorded and live-streamed.

To view the livestream of the Retirement Board Meeting, without making public comment, please visit: <https://www.ebmud.com/about-us/board-directors/board-meetings/retirement-board-meetings/>

If you wish to join the meeting, or to make public comment, please visit this page beforehand to familiarize yourself with Zoom. <http://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

### **Zoom Webinar**

When: Jan 18, 2024 08:30 AM Pacific Time (US and Canada)  
Topic: January 18, 2024 EBMUD Retirement Board Meeting

Please click the link below to join the webinar:

<https://ebmud.zoom.us/j/83057548782>

Or One tap mobile :

+16694449171,,83057548782# US

+16699006833,,83057548782# US (San Jose)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

Webinar ID: 830 5754 8782

International numbers available: <https://ebmud.zoom.us/u/kV8ZTfHsS>

### **Providing Public Comment**

The EBMUD Retirement Board is limited by State Law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

**If you wish to provide public comment, please:**

- Use the raise hand feature in Zoom to indicate you wish to make a public comment  
<https://support.zoom.us/hc/en-us/articles/20055661-Raising-your-hand-in-a-webinar>
  - If you participate by phone, press \*9 to raise your hand
- When prompted by the Asst. Secretary, please state your name, affiliation if applicable, and topic
- The Assistant Secretary will call each speaker in the order received
- Comments on non-agenda items will be heard at the beginning of the meeting
- Comments on agenda items will be heard when the item is up for consideration
- Each Speaker is allotted 3 minutes to speak; The Retirement Board President has the discretion to amend this time based on the number of speakers
- The Assistant Secretary will keep track of time and inform each speaker when time is up

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EBMUD Retirement Board

As a current retiree (#14620 – Retirement Date 02/01/2011) I offer my suggestions for the Board’s future consideration of changes to the Health Insurance Benefit (HIB).

I support the current scheme of a health insurance benefit for retirees vesting over their working life. This set benefit protects the District and current employees from increased contributions from insurance plan rate hikes or surges in early retirements. Many pension plans put their retirees’ pensions at risk by offering unsustainable medical benefits to their retirees. I point the Board to Retirement Ordinance Section 36(j)(3): “Health Insurance Benefits provided under the Retirement System are subordinate to the retirement benefits provided under the Retirement System.”

I commend the Board’s proactive inclusion of a secondary health benefit for dependent domestic partners (DDP) in 1999 (Ord. 337), more than five years before the passage of AB 205 (Ordinance 339) that mandated all benefits to registered domestic partners (RDP) as well as spouses.

#### **Need for Board Action**

The increases in health care costs and changes to retiree families over the thirty-five-years (see below) the District has offered a HIB calls for review of the District’s Health Insurance Benefit for the first time in almost twenty-years including considering an increased primary benefit and an increase in and expansion of the HIB’s secondary benefit to ease the burden of health care costs on retirees with responsibility for younger and older dependents rather than solely for their spouse or RDP.

#### **Inclusion of dependent(s) in addition to HIB benefit for spouse or RDP**

I urge the Board to consider changes to the HIB’s secondary benefit recognizing changes in family composition and responsibilities and increased health care costs since District first offered its HIB.

In 1999 and 2004 the District changed the HIB to accommodate domestic partners (DP, later RDP) as well as legally married spouses but has yet to recognize that retirees may find themselves with responsibilities for both younger and older family members irrespective of marital status. The District’s retiree health plans recognize the complexity of American families by setting rates for ‘Families’ or ‘Dependents’, but the HIB still sets primary eligibility to a “single” retiree with a small (\$100) benefit increase for a retiree with a legally married spouse or Registered Domestic Partner (Ord. 348, 2004).

I urge the District to expand eligibility for its secondary benefits to a total of two secondary benefits; continuing to offer a secondary benefit to a spouse or RDP, but also to offer secondary benefit(s) to families with person(s) younger than 26-years old with coverage under the District health plans or persons declared as dependents on their Federal income taxes (<https://www.irs.gov/publications/p501>).

Documentation required for HIB benefits either upon retirement or under the annual HIB audit would expand to require submission of the latest year’s income tax return in addition to already filed birth and marriage certificates if benefits are requested for dependent persons. Termination of secondary benefits would occur once the qualifying relationship ended, as it is today after a divorce.

### **Consider long overdue increases in the District's HIB benefit**

Along with the issue of increasing family responsibilities that many retirees face is the fact that the HIB level has not changed in twenty years since 2004 (Ord.348). While a Single retiree qualifying for 100% of their HIB has most or all of their Kaiser and Medicare Part B covered, the attached spreadsheet illustrates the situation many other retiree families face, best seen in the columns showing percentage of family insurance costs covered by the current HIB and even an increased HIB level.

I urge the Board to consider a modest \$50 increase to the primary HIB benefit and allow up to two \$250 secondary benefits for a spouse/RDP and/or financially dependent persons. How many retirees would find themselves in a situation where they could or would claim more than one of the two possible additional benefits is unknown, but undoubtedly some retiree families have children under 26-years of age or parents in care. Staff and the District's consultants can, at the direction of the Board, offer their comments about the cost and feasibility of expanding secondary benefits to dependents.

The attached spreadsheet presents the current situation after twenty years of a static HIB given increased health plan premiums and Medicare Part B rates. The table further demonstrates the result of the above proposed increase in both the single HIB and an increased single secondary benefit. The addition of a second secondary benefit is not modeled, as how the District's retiree health plans structure and price these varies from plan to plan, thus how much of a retiree's health care cost cover two secondary benefit recipients cannot be captured in simple spreadsheet.

s/ Stephen Henning Wollmer

#### Attachments:

Spreadsheet showing HIB benefit and health insurance costs both today and with above increases.  
PDF of Ordinance Section 36 (HIB), and Section 39 (incorporating changes required by AB 205).

#### \*Amendments to the Retirement Ordinance that changed the HIB:

#309, July 1989	Establishes Health Insurance Benefit at \$50
#313, January 1991	Benefit increase to \$100
#325 June 1986	Amends Section 36
#331 July 1998	Amends Section 36 to ensure HIB is tax exempt.
#335 January 1999	Amends Section 36 extends HIB to separated members.
#337, July 1999	Benefit increase to \$200, adds spouse and Domestic Partners (DP)
#339, November 2000	Benefit increase to \$250
#344, July 2002	Benefit increase to \$400, changes vesting schedule.
#345, July 2003	Benefit increase to \$450
#348, January 2004	Benefit increase to \$550 for members with spouses or DPs.
#349, November 2004	Adds Section 39 to comply with AB 205 in defining domestic partnerships.
#360-13 September 2013	Contributions to 401H for HIB only, affirms primacy of retirement,

**2024 Retiree Health Plan and 2024 Medicare Part B Premiums Versus 20-Year-Static HIB.**

**Proposed HIB Increase**

Kaiser Senior Advantage HIGH (<65 Kaiser Permanete HMO)	2024 Insurance Premium	Medicare Part B	Total Premiums	Current HIB	Net after HIB	HIB Covers
Single - Medicare Eligible	\$304.56	\$174.70	\$479.26	\$450	\$29.26	94%
Single - Pre-Medicare	\$931.22	\$0.00	\$931.22	\$450	\$481.22	48%
Couple (1 Senior Advantage +1 < 65)	\$1,235.78	\$174.70	\$1,410.48	\$550	\$860.48	39%
Couple (both Senior Advantage)	\$609.12	\$349.40	\$958.52	\$550	\$408.52	57%
Couple (Both Pre-Medicare)	\$1,862.44	\$0.00	\$1,862.44	\$550	\$1,312.44	30%

Proposed HIB	Net after New HIB	New HIB Covers
\$500	(\$20.74)	104%
\$500	\$431.22	54%
\$750	\$660.48	53%
\$750	\$208.52	78%
\$750	\$1,112.44	40%

Kaiser Senior Advantage LOW (<65 Kaiser Permanete HMO)	2024 Insurance Premium	Medicare Part B	Total Premiums	Current HIB	Net after HIB	HIB Covers
Single - Medicare Eligible	\$245.71	\$174.70	\$420.41	\$450	(\$29.59)	107%
Single - Pre-Medicare	\$931.22	\$0.00	\$931.22	\$450	\$481.22	48%
Couple (1 Senior Advantage + 1 < 65)	\$1,176.93	\$174.70	\$1,351.63	\$550	\$801.63	41%
Couple (both Senior Advantage)	\$491.42	\$349.40	\$840.82	\$550	\$290.82	65%
Couple (Both Pre-Medicare)	\$1,862.44	\$0.00	\$1,862.44	\$550	\$1,312.44	30%

Proposed HIB	Net after New HIB	New HIB Covers
\$500	(\$79.59)	119%
\$500	\$431.22	54%
\$750	\$601.63	55%
\$750	\$90.82	89%
\$750	\$1,112.44	40%

UnitedHealthcare Medicare PPO (<65 Anthem BlueCross)	2024 Insurance Premium	Medicare Part B	Total Premiums	Current HIB	Net after HIB	HIB Covers
Single - Medicare Eligible	\$412.45	\$174.70	\$587.15	\$450	\$137.15	77%
Single - Pre-Medicare	\$981.81	\$0.00	\$981.81	\$450	\$531.81	46%
Couple (1-Medicare PPO, 1<65)	\$1,050.63	\$174.70	\$1,225.33	\$550	\$675.33	45%
Couple (both Medicare eligible)	\$824.90	\$349.40	\$1,174.30	\$550	\$624.30	47%
Couple (Both Pre-Medicare)	\$1,963.62	\$0.00	\$1,963.62	\$550	\$1,413.62	28%

Proposed HIB	Net after New HIB	New HIB Covers
\$500	\$87.15	85%
\$500	\$481.81	51%
\$750	\$475.33	61%
\$750	\$424.30	64%
\$750	\$1,213.62	38%

Section 36  
HEALTH INSURANCE BENEFIT

a) The Retirement Board is authorized to administer a Health Insurance Benefit through the account described in Subsection (j) of this section.

b) The Health Insurance Benefit may be used for the payment of sickness, accident, hospitalization, and medical expense to the extent permitted under the Internal Revenue Code ("Code") and as authorized by the Retirement Board.

c) The following individuals are eligible to receive a Health Insurance Benefit in an amount determined pursuant to Subsection (c)(1), (c)(2), or (c)(3), as applicable:

1. A Member is eligible to receive a Health Insurance Benefit of \$550.00 per month if the Member: (i) became a Member on or before June 30, 1996, (ii) has at least five (5) full years of Continuous Service with the District or its equivalent, (iii) retires for service or for disability from the District, (iv) did not make an election to remain a Member pursuant to Section 12(b)(2), and (v) has a spouse, or a registered domestic partner, who is not otherwise eligible to receive a Health Insurance Benefit under Section 36.

2. A surviving spouse of a Member described in Subsection (c)(1) is eligible to receive a Health Insurance Benefit of \$450 per month, provided that the spouse is eligible for benefits under Section 20.

3. A Member is eligible to receive a Health Insurance Benefit of \$450.00 per month if the Member: (i) became a Member on or before June 30, 1996, (ii) has at least five (5) full years of Continuous Service with the District or its equivalent, (iii) retires for service or for disability from the District, (iv) did not make an election to remain a Member pursuant to Section 12(b)(2), and (v) is either (I) unmarried without a registered domestic partner, or (II) has a spouse, or a registered domestic partner, who is a Member eligible to receive a Health Insurance Benefit under Section 36.

(d) A Health Insurance Benefit shall be payable in an amount determined under Subsections (d)(1), (d)(2) and (d)(3) with respect to a Member who either (i) became a Member on or after July 1, 1996 and retires for service or for disability, (ii) made an election to remain a Member pursuant to Section 12(b)(2) and who retired on or before January 1, 1999; or (iii) made an election to remain a Member pursuant to Section 12(b)(2) and who retires after January 1, 1999:

1. If such Member has a spouse, or a registered domestic partner, who is not otherwise eligible to receive a Health Insurance Benefit under Section 36:
  - i. the Member is eligible to receive a Health Insurance Benefit equal to a percentage (specified in Subsection (d)(3)) of \$550.00; and
  - ii. the Member's surviving spouse is eligible to receive a Health Insurance Benefit equal to a percentage (specified in Subsection (d)(3)) of \$450.00, provided that the spouse is eligible for benefits under Section 20.
2. Such Member is eligible to receive a Health Insurance Benefit equal to a percentage (specified in Subsection (d)(3)) of \$450.00, if the Member is either (I) unmarried without a registered domestic partner, or (II) has a spouse, or a registered domestic partner, who is a Member eligible to receive a Health Insurance Benefit under Section 36.

3. The individuals described in Subsections (d)(1) and (d)(2) shall receive the corresponding Health Insurance Benefit specified in those Subsections, multiplied by the applicable percentage below based upon the number of years of the Member's Continuous Service with the District:

<u>Number of Years of Continuous Service</u>	<u>Percent of Health Insurance Benefit</u>
Less than five (5) years	No benefit (0%)
Five (5) years to less than ten (10) years	No more than twenty-five percent (25%)
Ten (10) years to less than fifteen (15) years	No more than fifty percent (50%)
Fifteen (15) years to less than twenty (20) years	No more than seventy-five percent (75%)
Twenty (20) years or more	No more than one hundred percent (100%)

(e) As of July 1, 1999, eligible Retired Members (but not Surviving Spouses) may use the Health Insurance Benefit for the payment of health insurance premiums or similar coverage costs incurred by the Retired Member's current spouse or current registered domestic partner during the Retired Member's lifetime, provided that the provision of such benefits is permitted under the Code and is pursuant to regulations promulgated by the Retirement Board.

(f) Individuals shall receive a Health Insurance Benefit only to the extent that they incur expenses described in Subsection (b) or, in the case of eligible Retired Members, as described in Subsection (e), and only if they provide substantiation in a form satisfactory to the Retirement Board.

(g) Amounts payable as Health Insurance Benefits shall not be included in the calculation of benefits payable under Section 20 or Section 21(b) or Section 33(a), but shall be included in "total gross income" used in determining eligibility for low-income adjustments provided by Section 35.

(h) The Retirement Board shall adopt rules governing administration of the Health Insurance Benefit, including provisions for the schedule and methods of payment of the Health Insurance Benefit. The Retirement Board shall annually review the costs, funding, and administration of the Health Insurance Benefit.

(i) All Health Insurance Benefit payments shall comply with all applicable federal laws, including Section 401(h) of the Code. To the extent there is any conflict between this section and Section 401(h) of the Code or regulations issued thereunder, the Code & Regulations shall govern.

(j) The Health Insurance Benefit shall be paid solely from a Section 401(h) account hereby established pursuant to Code Section 401(h) and any regulations issued under that section.

1. No health benefits provided under the 401(h) account shall discriminate in favor of highly compensated employees.

2. The 401(h) account shall be a separate account to be used solely for providing the Health Insurance Benefit and shall be established and maintained by the Board to reflect the amounts contributed for the payment of the Health Insurance Benefit. The 401(h) account shall

be for record keeping purposes only. Amounts credited to the 401(h) account may be invested with other Retirement System funds set aside for retirement purposes, without identification of which investments are allocable to each account. Earnings on each account, however, shall be allocated to each in a reasonable manner.

3. Contributions to the 401(h) account shall be made by the District solely to pay to or reimburse Retired Members or Surviving Spouses for health insurance premiums or similar coverage costs. Contributions shall be reasonable, ascertainable, necessary, and appropriate. Health Insurance Benefits provided under the Retirement System are subordinate to the retirement benefits provided under the Retirement System. The aggregate actual contributions for retiree Health Insurance Benefits, when added to the actual contributions for any life insurance provided under the Retirement System, are limited to twenty-five percent of the total actual contributions made to the Retirement System (other than contributions to fund past service credit) after the later of the adoption or effective date of the amendment first adding Health Insurance Benefits to the Retirement System in accordance with Section 401(h) of the Internal Revenue Code.

4. The District must, at the time it makes a contribution to the 401(h) account, designate that portion of the contribution allocable to the 401(h) account to be used solely for the Health Insurance Benefit.

5. Prior to the satisfaction of all liabilities under the Retirement System to provide for health benefits, no part of the 401(h) account shall be used for or diverted to any purpose other than providing health benefits, except that amounts credited to the 401(h) account may be used to pay for necessary and appropriate administrative expenses related to the Health Insurance Benefit.

6. Any amounts contributed to the 401(h) account and which remain in the 401(h) account after the satisfaction of all liabilities for health benefits (including but not limited to benefits payable in the future for existing members) shall be returned to the District.

7. This section does not require separate accounts for key employees because no member of the Retirement System is a key employee under the applicable definitions in the Code.

8. Assets attributable to any forfeiture of benefits payable under the 401(h) account shall be used to reduce the District's contributions to pay for health benefits provided under the 401(h) account.

(k) The maximum Health Insurance Benefit provided by this section shall not be less than: (i) in the case of individuals described in Subsection (c)(1), \$550.00 per month, (ii) in the case of (k) The maximum Health Insurance Benefit provided by this section shall not be less than: (i) in the case of individuals described in Subsection (c)(1), \$550.00 per month, (ii) in the case of individuals described in Subsections (c)(2) and (c)(3), \$450.00 per month, or (iii) in the case of individuals to whom Subsection (d) applies, the applicable amount under that Subsection. The Board of Directors of the District, however, may in the exercise of its sole discretion increase or decrease the amount of the Health Insurance Benefit, provided that any decrease may not reduce the Health Insurance Benefit below the amounts set forth in the first sentence of this subsection. Other than as provided in the first sentence of this subsection, no individual, including a Member, Retired Member, spouse, domestic partner, or dependent, shall possess any vested right, contract right, or other right to the Health Insurance Benefit.

(l) The Board of Directors of the District expressly reserves its rights under Section 6(d) to adjust the rates of Retirement Contributions for those Members described in Section 6(d) to fund the Health Insurance Benefit

## Section 39

### DOMESTIC PARTNER BENEFITS

a) Effective January 1, 2005, and in compliance with AB 205, the "California Domestic Partner Rights and Responsibilities Act" (hereafter "AB 205"), domestic partner benefits shall be provided pursuant to this Ordinance according to the definitions set forth below as required by AB 205 to the extent that compliance with AB 205 does not expose the Retirement System to risk of losing its tax qualified status under federal law and subject to the continuing legal validity of AB 205. No individual, including a Member, Retired Member, domestic partner, beneficiary or dependent, shall possess any vested right, contract right, or other right to the benefits set forth in this Section 39 if the District amends or deletes this Section 39 because (a) any part of AB 205 is invalidated by a court of law or (b) compliance with any part of AB 205 exposes the Retirement System to risk of losing its tax qualified status under federal law.

b) Where ever the terms "spouse," "surviving spouse" and "married" appear in Section 20, entitled "Survivorship Benefits and Contributions," and in Section 35(a), entitled "Low-Income Adjustment," the terms "domestic partner," "surviving domestic partner" and "domestic partnership" shall be added, with the understanding that the terms "domestic partner" and "domestic partnership" for purposes of Sections 20 and 35 shall refer to a domestic partnership that has been established solely in accordance with the requirements of section 297 of the California Family Code, as amended.

(c) Where ever the terms "spouse," and "surviving spouse" appear in subsections (c)(2), (d)(1)(ii), and j(3) of Section 36, entitled "Health Insurance Benefit," the terms "dependent domestic partner," and "surviving dependent domestic partner" shall be added, with the understanding that the terms "dependent domestic partner" and "surviving dependent domestic partner" for purposes of these subsections shall refer to a domestic partnership that has been established solely in accordance with the requirements of section 297 of the California Family Code, as amended, and where the domestic partner is also the Retired Member's dependent within the meaning of Section 152 of the Internal Revenue Code.

(d) Where ever the term "registered domestic partner" appears in subsections (c)(1), (c)(3), (d)(1), (d)(2) and (e) of Section 36, entitled "Health Insurance Benefit," the term "EBMUD domestic partner" shall be substituted for and replace the term "registered domestic partnership," with the understanding that the term "EBMUD domestic partner" for purposes of these subsections shall refer to a domestic partnership that has been established either in accordance with an affidavit provided by EBMUD that is filed by the Retired Member with EBMUD or in accordance with the requirements of section 297 of the California Family Code, as amended, and where the domestic partner is also the Retired Member's dependent within the meaning of Section 152 of the Internal Revenue Code. Accordingly, it is understood that as of January 1, 2005, Section 36(e) of the Ordinance shall be interpreted and applied as follows:

(i) As of July 1, 1999, eligible Retired Members (but not surviving spouses or surviving domestic partners) may use the Health Insurance Benefit for the payment of health insurance premiums or similar coverage costs incurred by the Retired Member's current spouse or current EBMUD domestic partner during the Retired Member's lifetime, provided that the provision of such benefits is permitted under the Code and is pursuant to regulations promulgated by the Retirement Board.

(e) Where ever the term "domestic partner" appears in subsection (k) of Section 36, the term "domestic partner" shall refer to "domestic partner," "dependent domestic partner," and "EBMUD domestic partner" as these terms are defined in this Section 39.