

MINUTES

Tuesday, November 13, 2012

**East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California**

Regular Closed Session Meeting

President John A. Coleman called to order the Regular Closed Session Meeting of the Board of Directors at 11:04 a.m. in the Administration Center Board Room.

ROLL CALL

Directors Katy Foulkes, Andy Katz, Doug Linney, Lesa R. McIntosh, William B. Patterson, and President John A. Coleman were present at roll call. Director Frank Mellon was absent but excused to attend the International Foundation of Employee Benefits conference in San Diego from November 11-14, 2012.

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins, Manager of Wastewater Environmental Services Bennett K. Horenstein (Item 1a); Attorney Derek McDonald (Item 1a); and Director of Operations and Maintenance Michael J. Wallis (Item 2).

PUBLIC COMMENT

The following persons addressed the Board on their unions' concerns about the impact of the proposed amendments to the EBMUD Retirement Ordinance: 1) Mark Foley, President, AFSCME Local 2019; 2) Chuck Odell, President, AFSCME Local 21; and 3) John Briceno, Vice-President, AFSCME Local 444. President Coleman said that AB 340 requires California public employers to modify existing defined benefit plans to implement new pension requirements for new employees first hired on or after January 1, 2013. To comply with AB 340, the Retirement Ordinance (Ordinance No. 40) must be amended. Union representatives expressed concern that the amendments conflicted with the terms of the Memorandums of Understanding and said that they needed time to review the amendments and continue discussion with staff.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President John A. Coleman announced the Closed Session agenda. The Board convened to Conference Room 8A/B for discussion.

Regular Business Meeting

President John A. Coleman called to order the Regular Business Meeting of the Board of Directors at 1:18 p.m. in the Administration Center Board Room.

ROLL CALL

Directors Katy Foulkes, Andy Katz, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President John A. Coleman were present at roll call. Director Frank Mellon was absent but excused to attend the International Foundation of Employee Benefits conference in San Diego from November 11-14, 2012.

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins, and Secretary of the District Lynelle M. Lewis.

BOARD OF DIRECTORS

President John A. Coleman led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

There was no public comment.

CONSENT CALENDAR

- Motion by Director Foulkes, seconded by Director Linney, to approve Items 1-5 on the Consent Calendar, carried (6-0) by voice vote. Director Mellon was absent (excused).
1. **Motion No. 140-12** -- Approved the Regular Meeting Minutes of October 23, 2012.
 2. The following correspondence was filed with the Board: Slide presentation entitled, "Provisions of AB 340 "PEPRA" and EBMUD Retirement Plan Amendments," dated November 13, 2012.
 3. **Motion No. 141-12** -- Authorized an agreement with Trimark Associates, Inc. in an amount not to exceed \$290,000 to provide Qualified Reporting Entity services and maintenance and inspection services for the power revenue meters and monitoring equipment located at the District's two hydropower facilities and Wastewater's biogas generation facilities for the period November 15, 2012 through December 31, 2022.
 4. **Motion No. 142-12** -- Authorized an extension to the current agreement with AT&T under Board Motion 211-07 dated December 11, 2007 in the estimated annual amount of \$1,300,000 to purchase data and voice communication services under the CALNET II contract and authorize a second agreement with AT&T in the estimated annual amount of \$100,000 for cellular voice and data services under the State's Western States Contracting Alliance contract for a one year period beginning January 30, 2013 through January 29, 2014.

5. **Motion No. 143-12** -- Authorized the Office of General Counsel to continue the employment of the law office of Remcho, Johansen & Purcell, LLP, in an additional amount not to exceed \$40,000 for specialized legal services related to elections and conflicts of interest matters.

DETERMINATION AND DISCUSSION

6. **Legislative Update.**

Special Assistant Marlaigne K. Dumaine presented an update on the results of the November 6th state and federal elections. She summarized the changes in the California state legislature and the U.S. Congress along with the changes impacting representatives in the EBMUD service area. She reported that Proposition 30, Governor Brown's tax initiative, was approved by voters and is expected to relieve pressure on the state budget. Proposition 30 will increase income taxes on Californians earning more than \$250,000 for a seven-year period, and increase sales taxes for all Californians by ¼ cent for four years. She also reported that Proposition 39 was also approved by voters, and from this initiative California will dedicate funds to the general fund to pay for projects that create clean energy and energy efficiency jobs.

At the federal level, Ms. Dumaine reported that Barack Obama was re-elected President of the United States and the balance of control in the House and the Senate remain the same. She said staff will continue to keep EBMUD interests in front of its delegation.

7. **Approve Actions To Make Changes To EBMUD Retirement Programs To Comply With Assembly Bill 340, The California Public Employees' Pension Reform Act.**

Manager of Human Resources Dolores A. Turner presented the recommended actions to ensure compliance with the recently adopted California Public Employees' Pension Reform Act (PEPRA). These actions include: 1) amendments to the EBMUD Employees' Retirement System Ordinance (Ordinance No. 40); 2) amendments to the 415(m) Replacement Benefits Plan; and 3) amending EBMUD Policy 204 (Service After Retirement). Ms. Turner reported that the PEPRA requires all California public employers to modify existing defined benefit plans effective January 1, 2013. She said the required plan changes primarily impact new employees; however there are provisions that apply to all employees.

To comply with AB 340, the Retirement Ordinance (Ordinance No. 40) must be amended to add a new Section 42, applicable to employees hired on or after January 1, 2013, which would:

1. Set the maximum benefit formula to 2.5% at age 67.
2. Limit the amount of pensionable compensation to the social security wage base rate set forth in 42 U.S. Code Section 430(b) to be adjusted annually, currently \$110,100 for 2012.

3. Prohibit the District from making contributions on any portion of compensation that exceeds the amount specified under federal law, currently \$250,000 for 2012.
4. Require that the highest average compensation for purposes of determining the retirement benefit be based on a period of at least thirty-six (36) consecutive months.
5. Require new employees to pay at least 50% of the normal cost of the defined benefit plan.

AB 340 also requires amendments to the Retirement Ordinance that are applicable to all employees which would:

1. Require forfeiture of pension benefits upon conviction of a felony offense in the course of employment.
2. Prohibit retroactive pension benefits increases.
3. Require that the normal cost of the plan be funded annually.

Additionally, to comply with AB 340, the 415(m) Replacement Benefits Plan must be amended. The PEPRa prohibits public employers from offering a plan of replacement benefits for those whose retirement benefits are limited by Section 415 of the Internal Revenue Code and who join a public retirement system on or after January 1, 2013. Amending 415(m) Replacement Benefits Plan would prohibit new employees hired on or after January 1, 2013 to participate in Replacement Plan, and allow the District's 415(m) Replacement Benefits Plan to be established by Resolution. Compliance with PEPRa will also require an amendment to EBMUD Policy 2.04 pertaining to service after retirement.

The amendments to the Retirement Ordinance required by AB 340 must take effect on January 1, 2013 to comply with state law. In order to meet the January 1, 2013 deadline, staff presented the introduction and first reading of the Ordinance and the second reading is scheduled to occur at the meeting of the Board of Directors on November 27, 2012. It was noted that the scheduled first and second reading dates are the latest scheduled Board meeting dates at which these actions can occur to meet the deadline because ordinance amendments generally take effect 30 days after their passage and the Municipal Utility District Act requires that ordinance amendments be published once a week for two successive weeks in a newspaper of general circulation published in the district.

Ms. Turner reported that all unions and unrepresented employees have been notified of pending amendments. The Unions were offered the opportunity to meet and confer, and discussions are in progress. It was noted that the unions have raised concerns about whether PEPRa can override the provisions of the current Memorandums of Understanding. The Board requested that staff promptly notify the Board if a special meeting will be required to consider issues related to compliance with AB 340.

7a. **Amend The East Bay Municipal Utility District 415(m) Replacement Benefits Plan To Comply With AB 340.**

- Motion by Director McIntosh, seconded by Director Foulkes, to approve the recommended action, carried (6-0) by voice vote. Director Mellon was absent (excused).

Resolution No. 33903-12 -- Amending The 415(m) Replacement Benefits Plan To Effect Changes Required By AB 340, The California Public Employees Pension Reform Act.

7b. **Introduction And First Reading On An Ordinance Amending The EBMUD Employees' Retirement System Ordinance (Ordinance No. 40) In Order To Comply With AB 340.**

Ordinance No. 356-12 -- An Ordinance, Effective As Of January 1, 2013, Adding A New Section 42 Of Ordinance No. 40, Which Is The East Bay Municipal Utility District Employees' Retirement System Ordinance, Which Establishes The Retirement System.
(Introduction and First Reading Only)

REPORTS AND DIRECTOR COMMENTS

8. **General Manager's Report.**

General Manager Coate noted that the October 2012 Monthly Report provided highlights of District activities. He also noted that the information on October 2012 main breaks included estimated water loss.

9. **Committee Reports.**

- Filed with the Board were the Finance/Administration Committee Minutes of October 23, 2012.

10. **Director Comments.**

- Director Foulkes reported participating in the following meetings/events: Freeport Regional Water Authority (FRWA) teleconference call on October 11; Asian Pacific Employees' Association Luncheon on October 17; Pardee Home Museum meeting on October 22; phone interview with Cal student regarding EBMUD on October 26 and; the ACWA Membership Committee teleconference call on October 29.
- Director Katz reported attending the Environmental Law Conference October 25-28 in Fish Camp.
- Director Linney had no comment.
- Director McIntosh had no comment.
- Director Mellon was absent (excused).

- Director Patterson reported that he had received the Pioneer Award from the NAACP on October 27 and the 2012 Man of the Year Award from the Black Women Organized for Political Action.
- President Coleman reported attending/participating in the following events: ACWA Executive Committee teleconference call on October 29; ACWA Executive Committee conference call on November 6; agenda review meeting with General Manager Coate on November 7; and an ACWA Executive Committee teleconference call on November 13. He reported on plans to attend/participate in the following upcoming events: ACWA California Water Task Force meeting November 19 in Sacramento; DERWA Special Meeting in Dublin on November 19; agenda review meeting with General Manager Coate on November 21; and the Lafayette City Council meeting on November 26.

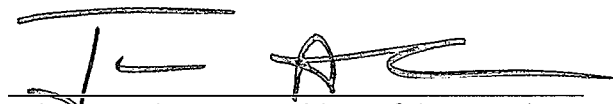
ADJOURNMENT

The meeting was adjourned at 2:00 p.m.

SUBMITTED BY:


Lynelle M. Lewis, Secretary of the District

APPROVED: November 27, 2012


John A. Coleman, President of the Board