



Tucson Police and Fire PSPRS Boards  
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**MEETING MINUTES**  
**Tucson Police PSPRS Board**  
**Tuesday, April 7, 2020**

**COVID-19 UPDATE**

The Public Safety Personnel Retirement System and the Board of Trustees are committed to helping slow the spread of COVID-19. Following the recommendations from the Center for Diseases Control and Prevention (CDC), to avoid gatherings of 10 or more people, as well as federal and state emergency declarations related to COVID-19, *physical attendance at the meeting held in Fire Central Room 121 was limited to members of the Tucson Police and Fire Public Safety Personnel Retirement System Boards and necessary staff only. Some members of the Boards attended remotely, through technological means.*

**MEETING NOTE:** This meeting was conducted using measures to protect public health. It was held remotely through technological means, as permitted under Arizona law. Specifically, a conference call bridge was established so that members of the public could access the meeting via telephone.

*Access to the meeting by telephone was provided through the conference call bridge, by dialing (978) 990-5000 then entering access code 858020.*

Members of the public were encouraged NOT TO ATTEND THE MEETING IN PERSON but instead to access the meeting via telephone using the conference call bridge.

Public access to the meeting in Fire Central Room 121 was restricted in order to prevent a large or close gathering of the members of the public and to promote social distancing.

Again, in recognition of the current public health emergency, members of the public were encouraged NOT TO ATTEND THE MEETING IN PERSON but instead to access the meeting via telephone by dialing the conference call bridge at (978) 990-5000 then entering access code 858020.

PLEASE BE AWARE THAT THESE MEASURES WERE IN PLACE TO LIMIT THE NEED FOR MEMBERS OF THE PUBLIC TO PARTICIPATE IN A LARGE PUBLIC GATHERING, WHILE ENSURING THAT THE DISCUSSIONS, DELIBERATIONS AND ACTIONS OF THE **TUCSON POLICE AND FIRE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM BOARDS WERE TRANSPARENT AND CONDUCTED OPENLY.**

Vice-Chair Palomares called the Tucson Police PSPRS Board meeting to order at 9:04 a.m.

**1. ROLL CALL**

**Police Board Members:**

**Present:** Thomas Palomares Member  
 James Johnston Member  
 Mickey Petersen Member

**Also Present:** Nathan Weber Fire Board Member  
 Jason Adler Fire Board Member  
 David McEvoy Board Attorney  
 Michael Jesse Board Secretary  
 Susanna Horn Local Board Office  
 Tony Archibald Tucson Police Department  
 Steve Erdman Tucson Police Department

A Police Board quorum was established with Mayor Romero and Ms. Urquijo absent/excused. Mr. Palomares and Mr. Johnston attended in person. Mr. Petersen attended via conference call.

**2. POLICE CONSENT AGENDA: ITEMS A – D**

**A. MINUTES FOR APPROVAL – March 3, 2020**

**B. PENSION PAYROLL – Additions and deletions to benefits**

<u>Name</u>	<u>Transaction Type</u>	<u>LDW</u>	<u>Eff Date</u>	<u>Ben Amount</u>
Zarzyczny, Robert	NSR out of DROP	03/27/2020	04/01/2020	\$ 3,390.36
Glass, Scott	NSR out of DROP	03/20/2020	04/01/2020	\$ 3,266.61
Kingman, Jason	NSR	03/17/2020	04/01/2020	\$ 3,397.03
Garcia, Julian	Death	03/09/2020	04/01/2020	(\$ 3,572.64)
Garcia, Ragenine	Survivor	N/A	04/01/2020	\$ 2,858.11

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**C. ELECTION TO PARTICIPATE IN DROP**

<u>Name</u>	<u>Yrs of Srv</u>	<u>Date</u>	<u>Eff. Date</u>
Fernandez, Guillermo	25.065	03/27/2020	04/01/2020
McCrocklin, Keith	20.942	03/31/2020	04/01/2020
Moreno, Cristina	20.131	03/31/2020	04/01/2020
Bingham, Burke	20.131	03/31/2020	04/01/2020
Escobar, Guadalupe	21.320	03/31/2020	04/01/2020
Luna, David	25.046	03/31/2020	04/01/2020

**D. APPROVAL OF EXPENDITURES**

<u>Company Name</u>	<u>Description</u>	<u>Date</u>	<u>Amount</u>	<u>Method</u>
McEvoy, Daniels, Darcy	April Retainer	04/07/2020	\$ 400.00	DA-23

**Motion** by Mr. Johnston, seconded by Mr. Petersen, that Police Items A-D are adopted as written. Motion **CARRIED** by a roll call vote of 3-0.

**3. FIRE CONSENT AGENDA: ITEMS A – D****A. MINUTES FOR APPROVAL – March 3, 2020****B. PENSION PAYROLL – Additions and deletions to benefits**

<u>Name</u>	<u>Transaction Type</u>	<u>LDW</u>	<u>Eff Date</u>	<u>Ben Amount</u>
Pierotti, Anthony	NSR Out of DROP	03/31/2020	04/01/2020	\$ 4,064.35
Carpenter, Thomas	NSR Out of DROP	03/31/2020	04/01/2020	\$ 4,119.38

**C. ELECTION TO PARTICIPATE IN DROP**

<u>Name</u>	<u>Yrs of Srv</u>	<u>Date</u>	<u>Eff. Date</u>
Caballero, Ronald	27.083	03/31/2020	04/01/2020
Scionti, Stephen	26.136	03/27/2020	04/01/2020
Lopez, Carlos	23.006	03/31/2020	04/01/2020

**D. APPROVAL OF EXPENDITURES**

<u>Company Name</u>	<u>Description</u>	<u>Date</u>	<u>Amount</u>	<u>Method</u>
McEvoy, Daniels, Darcy	April Retainer	04/07/2020	\$ 400.00	DA-23

**No action taken by the Police Board on this Fire Item.**

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#### 4. ANNUAL DISABILITY PHYSICAL – REQUIREMENT

##### Police

<u>Name</u>	<u>DOM:</u>	<u>DOR:</u>	<u>Last Exam</u>	<u>Type</u>	<u>End Date</u>
Daniel, Brian	04/22/2001	05/09/2011	03/08/2018	Ordinary	04/20/2021
Acevedo, Joaquin	06/16/2002	04/30/2019	03/14/2019	Accidental	06/15/2022
Matthews, Timothy	12/31/2000	05/21/2019	03/18/2019	Accidental	12/30/2020

**Motion for this item from the March 3, 2020 board meeting needs to be corrected.**

##### **That motion read:**

**Motion** made by Mr. Johnston, seconded by Mr. Petersen, that Mr. Daniel, Mr. Acevedo, and Mr. Matthews be referred to the board physician for their required bi-annual disability physicals in order to remain in compliance and eligible to continue receiving disability pension benefits. Motion **CARRIED** unanimously.

It was appropriate for Brian Daniel, but not for Joaquin Acevedo and Timothy Matthews.

**Motion** made by Mr. Johnston, seconded by Mr. Petersen, that Mr. Daniel be referred to the board physician for his required bi-annual disability physical in order to remain in compliance and eligible to continue receiving disability pension benefits. Motion **CARRIED** unanimously.

**Motion** made by Mr. Johnston, seconded by Mr. Petersen, that Mr. Acevedo and Mr. Matthews remain in compliance and are eligible to continue receiving disability pension benefits. Motion **CARRIED** unanimously.

#### 5. FUND/OFFICE INFORMATION

- FY 2021 Board Office Budget

Mr. Jesse provided the Police and Fire Boards with the proposed PSPRS Local Board Office Budget Request for Fiscal Year 2021. He indicated he was looking for ratification of the amounts shown for the current staffing model. The current staffing model amounts Mr. Jesse developed were actually less than amounts generated by the City of Tucson budget allocation program. Mr. Jesse noted that he explained at the March 3, 2020 meeting the \$40,000 difference was primarily attributable to the budget allocation program determining costs for Ms. Horn as a 100% FTE (she is actually a 50% FTE) and assessing pension

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contributions on wages for the part-time Administrative Assistant position (which is not eligible for participation in the City of Tucson pension plan).

Mr. Weber expressed concern about adopting the proposed budget before the discussion Mr. Johnston had requested regarding Local Board Office staff job classifications and compensation could be completed. Mr. Jesse explained that the budget could be amended later to reflect any changes that might be required as a result of that discussion.

**Motion** by Mr. Johnston, seconded by Mr. Petersen, to approve the FY 2021 Board Office Budget Request as written. Motion **CARRIED** 5-0 in a joint roll call vote of the Police Board and the Fire Board.

- Candidate Chosen for Part-Time Administrative Assistant Position

Mr. Jesse informed the Police Board and Fire Board that the interview panel had identified Kimberly Larson as the candidate to hire for the part-time Administrative Assistant position.

Mr. Jesse said he informed Tucson Fire HR, who assisted with the search, that Ms. Larson had been chosen. He asked they notify her and explain the first step in hiring her required ratification by the Police and Fire Board. He also asked they inform her that after ratification, the Police and Fire Boards would have to contend with the hiring freeze that had been put in place as a result of the COVID-19 situation.

**Motion** by Mr. Johnston, seconded by Mr. Palomares, to approve hiring Ms. Larson after the hiring freeze has been lifted. Motion **CARRIED** 5-0 in a joint vote of the Police Board and the Fire Board.

After the motion passed, Mr. Weber asked Mr. McEvoy if the Police and Fire Boards were actually beholden to the hiring freeze. Mr. McEvoy said that, as a matter of law, the Police and Fire Boards would not be subject to the hiring freeze. Mr. Jesse said, in spite of that, hiring Ms. Larson right now would not be practical given the efforts to work remotely until the COVID-19 situation clears as there would be nobody in the office to train her. Mr. Weber concurred and further noted that with HR, payroll, and other units working remotely the onboarding process would not be possible.

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- Review of Board Office Staff Job Classifications and Compensation  
(Per motion passed at March 3, 2020 meeting)

Mr. Jesse said that at the March 3, 2020 meeting, Mr. Johnston made a motion that he would like to have a discussion regarding job classification and pay structure for Local Board Office staff at the April 7, 2020 meeting. That motion passed and the issue was placed on this agenda.

A Police Board and Fire Board discussion led to the conclusion that, at this time, it was best to table this item at least until the next meeting.

Mr. Johnston wanted to clarify that he only mentioned Mr. Jesse's name in connection with this item at the March 3, 2020 meeting but it was intent that Ms. Horn was also to be part of the discussion.

**Motion** made by Mr. Petersen, seconded by Mr. Johnson, that this job classification and pay structure discussion for Local Board Office staff be tabled until the next meeting. Motion **CARRIED** 5-0 in a joint vote of the Police Board and the Fire Board.

- PSPRS Accidental Disability-Discussion of Legal Case

Mr. McEvoy revisited the analyses he provided at the March 3, 2020 meeting for the *Todd Pascarella v. Mesa Police Pension Board* and *France v. Industrial Commission of Arizona* legal cases.

*Todd Pascarella v. Mesa Police Pension Board*

Mr. Pascarella supplied medical evidence from his own physician indicating he suffered from PTSD attributable to the on the job incident cited (which he claimed was not normal) in his Accidental Disability Retirement application. The Mesa Police Pension Board denied the claim on the basis that Mr. Pascarella was responding in the normal course of what police officers are expected to do – in apparent recognition of the Sloss case standard of an event having to be unusual, unexpected, or extraordinary to warrant an accidental disability award. The case was appealed to the Superior Court. The Superior Court overturned the board's decision on the basis that medical evidence had to be considered to make such a determination. The Superior Court asserted that

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the board had ignored the medical evidence supplied by Mr. Pascarella in which his doctor stated his PTSD was attributable to the cited incident. The Superior Court ordered the board to send Mr. Pascarella to an IME.

This ruling prompted Mr. McEvoy to send a question to PSPRS legal counsel asking if a local board would still have the authority to deny an Accidental Disability application, should a local board's IME find the applicant did have PTSD attributable to an on the job incident, if that local board determines the incident was not unusual, unexpected, or extraordinary pursuant to the Sloss case. Mr. McEvoy is awaiting a reply.

*France v. Industrial Commission of Arizona*

This case was adjudicated by an Administrative Law Judge. John France filed a workers' compensation claim for benefits due to PTSD he attributed to an on the job incident. The incident involved Mr. France encountering a manic gunman at close range. Although it was agreed that Mr. France did suffer from PTSD attributable to that job related incident, the Administrative Law Judge denied the claim on the basis the event did not meet the unusual, unexpected, and extraordinary standard of the Sloss case.

The ruling was appealed to the court and the decision of the Administrative Law Judge was overturned. The court ruled that the stress experienced from the event is what must be unusual, unexpected, and extraordinary – not the event itself. Mr. McEvoy expressed concern that this ruling moves decisions from objectivity into areas of subjectivity.

Mr. McEvoy pointed out that if you now overlay the France ruling on top of the Pascarella ruling and a board sends an Accidental Disability applicant to an IME with the question as to whether or not the *stress* experienced due to the noted event (not the event itself) was unusual, unexpected, or extraordinary and the doctor's answer to that question is yes, then that board, under the France decision, would be obliged to award the Accidental Disability benefit even if that board determined the incident that gave rise to the PTSD was not unusual, expected, or extraordinary. This basically transforms what had been an objective standard to a subjective standard.

Mr. McEvoy spoke to the legal counsel for Gila County, the employer in the France case, and for the insurance company in the case. She was surprised by the France ruling and indicated her client intends to file a petition for review with the Arizona Supreme Court.

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Mr. McEvoy explained what was involved in filing a petition with Arizona Supreme Court noting that the Supreme Court accepting the petition was a matter of discretion (as opposed to filing for a Court of Appeals hearing which is matter of right).

The legal counsel for Gila County thought it might be a good idea for interested parties to file amicus curiae (“friend of the court”) briefs. The reason for such filing these briefs is to put more “oars in the water” to try to influence the Supreme Court’s awareness of the importance of the issue. The more arguments submitted on the side, the more likely that one of them may resonate.

Unless the Arizona Supreme Court decides to hear the appeal and ultimately overturns the France ruling, it will remain applicable in deciding stress related Accidental Disability retirement applications.

Mr. McEvoy said it would be a decision of the Police Board and the Fire Board as to whether or not to file an amicus curiae brief. If a decision was made to do so, Mr. McEvoy said he would recommend hiring Bosse Rollman (used previously as outside legal counsel). Mr. McEvoy was not sure what the cost would be and guessed it would be in the \$10,000 to \$20,000 range.

Mr. Weber said he was curious about the stance of other boards throughout the state, including the state level PSPRS board.

McEvoy offered to check with legal counsel for Gila County to see what level of interest she has found amongst other entities in filing amicus curiae briefs.

Mr. Weber said he does not see the value in spending money to file an amicus curiae brief unless other entities are also willing to do so as that would be required to demonstrate the high level of interest that might make the case compelling to the Supreme Court.

Mr. Weber asked McEvoy to check with the Gila County legal counsel and even some other boards to see what their stance is. Mr. Weber stated that if there are several boards that pursue this in the same manner it would have more of an impact than if the City of Tucson Local Boards pursue the issue and there are not many others doing so. He just wants to make sure that such an endeavor would be a collective voice. Mr. McEvoy indicated he would follow up.

Mr. McEvoy explained the two ways in which this could proceed. One is that multiple local boards could hire their own law firms and file their own briefs in

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support of Gila County. The other is that multiple boards could hire a single law firm to represent all of them and a single brief would be filed. The upside of that latter is that it would be more cost effective. The downside is that it provides fewer alternative arguments for the Supreme Court to consider.

- Miscellaneous / Other

Mr. Jesse said he received the finalized City of Tucson CAFR after close of business Friday afternoon March 27. He had been awaiting that document in order to submit a filing to participate in the Fire Insurance Premium Tax Credit program again this year. He was able to submit the filing on Saturday March 28 and received a confirmation email that the documents had been submitted. He subsequently received an email confirming that the City of Tucson had secured its participation in the program. Mr. Jesse said this program provides funding to offset Tucson Fire employer contributions. The funding credit has typically been about \$1 million.

Mr. Jesse indicated that Local Board office staff would be making an effort to work remotely to limit exposure due to COVID-19. Further, he provided an explanation of the idea Ms. Horn had to help mitigate the amount of face-to-face contact in dealing with retiring members that need to complete the required paperwork.

Retirement appointments are still scheduled but paperwork is mailed ahead of time. Members work on completing that paperwork and if they have questions they call in during their scheduled appointment. Mr. Jesse admitted he initially had reservations about Ms. Horn's idea, but decided to give it a try. It has been very successful and well received. Mr. Jesse said kudos were in order for Ms. Horn's contribution to the Local Board Office operations.

Mr. Jesse said he had a revised schedule reflecting the new dates for the May through December meetings which will now be held on the first Thursday of the month. He stated he would send it to everyone via email. Mr. Jesse pointed out the meetings scheduled for May 7, August 6, and November 5 would be held in Room 280 as Room 121, the usual meeting location, was not available.

Ms. Horn said she wanted to take a moment to say thank you to the Fire Board and Police Board elected members for what they were doing in the face of the COVID-19 situation.

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Mr. Jesse stated that the request for candidates to run for the seat on the Police Board and the seat on the Fire Board (terms are ending June 30, 2020) had been sent.

Mr. Jesse explored using AZ Jet Mail, a City of Tucson vendor, to assist with the mail ballot election process this year. He was given very reasonable quotes for two different scenarios and said that both fell well within the remaining funds budgeted for the Police Board and Fire Board election. Mr. Jesse said he wished he had known how reasonable the fees were before now. In the past, Mr. Jesse and Ms. Horn had printed the ballots, stuffed the envelopes, and labeled the envelopes manually. Mr. Jesse said he would be engaging the services of AZ Jet Mail for the mail ballot election process.

**6. ADJOURNMENT**

The next regular meeting of the Tucson Police and Fire Public Safety Personnel Retirement System Boards is scheduled for **9:00 a.m.** on **Thursday, May 7, 2020** in Fire Central **Room 280**, Tucson Fire Department, 300 S. Fire Central Place, Tucson, AZ.

Michael J. Jesse, Board Secretary	Date	Regina Romero, Chair	Date	

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