

**MINUTES OF THE ADJOURNED REGULAR MEETING OF THE
GOVERNING BOARD OF THE MIDWAY CITY
SANITARY DISTRICT OF ORANGE COUNTY
14451 CEDARWOOD AVENUE
WESTMINSTER, CA 92683**

April 27, 2010

10:30 A.M.

CALL TO ORDER

President Neugebauer called the adjourned regular meeting of the Governing Board of the Midway City Sanitary District to order at 14451 Cedarwood Avenue, Westminster, on Tuesday, April 27 at 10:30 a.m.

BOARD MEMBERS PRESENT:

Tyler Diep
Grace P. Epperson
Joy L. Neugebauer
Al P. Krippner
Margie L. Rice

OTHERS AT MEETING:

Greg Nordbak, General Manager
Ken Robbins, Assistant General Manager
Robert Housley, Finance Director
Tom Nixon, District Counsel
Julia Sales, Administrative Secretary

PLEDGE AND INVOCATION

President Neugebauer led the Pledge of Allegiance. AGM Robbins gave the Invocation.

PUBLIC COMMENTS:

No public comment.

CLOSED SESSION

President Neugebauer convened the meeting to closed session at 10:32 a.m. pursuant to subdivision (b) Government Code Section 54956.9.

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9

CLOSED SESSION: During the course of conducting the business set forth on this agenda as a regular meeting of the Board, the Chair may convene the Board in closed session to consider matters of pending real estate negotiations, pending or potential litigation, or personnel matters, pursuant to Government Code Sections 54956.8, 54956.9, 54957 or 54957.6, as noted.

Reports relating to (a) purchase and sale of property; (b) matters of pending or potential litigation; (c) employment actions or negotiations with employee representatives; or which are exempt from public disclosure under the California Public Records Act, may be reviewed by the Board during a permitted closed session and are not available for public inspection. At such time as the Board takes final action on any of these subjects, the minutes will reflect all required disclosures of information.

President Neugebauer reconvened the meeting to open session at 11:01 a.m.

District Counsel Nixon stated there was no reportable action during closed session.

OLD BUSINESS

- A. Discussion on Midway City Sanitary District providing an alternative retirement plan (FICA –Substitute) in lieu of social security for part-time employees, employee and employer contribution rates of such plans, and consideration of adoption of such plan.

President Neugebauer asked the Board to approve the Staff to bring current any Social Security previous arrears.

General Counsel Tom Nixon suggested the Board not bring that on board at this time, because Staff is already working on the arrears owed to Social Security and no action is required by the Board right now. Social Security will contact the District with the amount owed. MCSD will then negotiate with Social Security to arrive at a final figure. That information will be brought to the Board for discussion and action at that time.

President Neugebauer stated “regardless of your (Tom Nixon) statement, it is always my challenge/goal as a presiding officer to never put Staff in the position of later having some Board member saying ‘Why did you do that? You were never directed to do that! or You have no authority to do that!’ So she would like, if it cannot be done today, on the next Agenda an Item where the Board will support by a motion supporting what Staff is doing.” I think this is very important, because I have served many years as an elected official and have heard Staff criticized for taking actions that were not supported by Board action.

GM Nordbak said he will get this to the next Agenda.

President Neugebauer reiterated that the next Agenda must have an item for discussion on Staff’s support from the Board to make decisions regarding the Social Security money owed.

GM Nordbak asked if that was President Neugebauer's motion.

Director Rice "If you (to President Neugebauer) really feel that way about it, they have already contacted the State and could get a response any day. You (President Neugebauer) could bring that on as an emergency Item to protect Staff. So the Emergency Motion is to protect MCSD Staff by giving them permission to proceed with this process.

President Neugebauer "So we (the Board) are bringing an Item on the Agenda because it is timely and the Board wants to take action immediately.

A motion was made by President Neugebauer seconded by Director Epperson to approve to support the Staff proceeding with the correspondence and action with Social Security Board to determine the amount MCSD Board Members owes in arrears. The motion was approved by the following vote:

AYES: Directors Diep, Epperson, Krippner, Neugebauer and Rice

B. Consideration of RESOLUTION NO, 2010-10

A RESOLUTION ADOPTING THE PUBLIC AGENCY RETIREMENT SYSTEM 457 TRUST AND DESIGNATING A REPRESENTATIVE OF THE MIDWAY CITY SANITARY DISTRICT TO IMPLEMENT THE PLAN

C. Consideration of RESOLUTION NO, 2010-10

A RESOLUTION ADOPTING AN ALTERNATIVE RETIREMENT PLAN PROVIDED THROUGH NATIONWIDE RETIREMENT SERVICES, INC. AND DESIGNATING A REPRESENTATIVE OF THE MIDWAY CITY SANITARY DISTRICT TO IMPLEMENT THE PLAN

President Neugebauer asked Staff to explain the two options (457 and Alternative Retirement Plan) before the Board.

Finance Director Housley explained both plans: PARS (Public Agency Retirement System) and Nationwide Retirement Solutions. The main difference is the investment options: Nationwide has a fixed fee with guaranteed rate of return and PARS has a flexible fee with a higher risk, more a stock market type. The recommendation is PARS.

President Neugebauer asked which one has the 7.5% cost in from the Boards weekly checks.

Finance Director Housley explained that both plans have same cost in and it is the lowest investment that all Board Members pay equally.

Discussion ensued.

A motion was made by Director Rice seconded by Director Epperson to approve Item “C”, Resolution No. 2010-10, to set up an account with Nationwide Retirement Solutions and pay the 7.5% of the Board’s pay with no MCSD money involved. The motion was approved by the following roll call vote:

AYES: Directors Diep, Epperson, Krippner, Neugebauer and Rice

President Neugebauer thanked the Board, she stated that this is one of the most important actions taken by the Board and it has been delved into as thoroughly as possible and it was constructed and approved in a manner that does not put the burden on the District, but puts the burden to the elected officials.

Director Rice input “And it saves our (the Board) money.

President Neugebauer commended the Board for their patience.

President Neugebauer asked Staff what is the time period before Resolution 2010-10 goes into effect.

Discussion ensued.

Finance Director Housley stated that he will do more research to clarify the effective date and let the Board know.

NEW BUSINESS

- A. Consider the Establishment of a Trust Fund with the California Public Employees Retirement System (CalPERS) to Prefund Other Post Employment Benefits (OPEB) through the California Employer’s Retirement Trust Fund (CERBT).

President Neugebauer asked Staff to give presentation on this Item “A”.

GM Nordbak explained that this is the GASB 45 “pay as you go” that was posted for further discussion, so Finance Director Housley has done all the background checks and is ready to answer any questions for the Board. The Board had asked if this was pre-funded 3.4 million dollars that would go onto MCSD books as a liability, or if MCSD doesn’t pre-fund it then 5.6 million dollars that would go to the books as a debt.

President Neugebauer commented that the Board had received a great presentation on the GASB 45.

GM Nordbak asked the Board if they want to pre-fund the GASB 45 or not. The decision to pre-fund or not is going to affect MCSD's debt ratio and MCSD's credit rating.

President Neugebauer commented that MCSD does have \$826,000.00 in a reserve for this purpose, so while talking about pre-funding and adding 3 million dollars, but that's for a long period of time.

GM Nordbak reminded the Board that they did change the titles of the MCSD reserves: that money, by law, is not currently designated for that because of the fact that MCSD has not passed a Resolution and made that money dedicated. Since the money is not dedicated through a Resolution, it is not protected if the State should come after it, even though MCSD shows the money as GASB 45.

Director Rice confirmed then that MCSD Board needs to dedicate the money.

Director Krippner asked "What does CERBT stand for?"

Finance Director Housley explained CERBT is California Employer's Retirement Benefits Trust.

Discussion ensued.

President Neugebauer asked why there is no Resolution number to use.

General Counsel Tom Nixon explained that the attachment "C" is the exact form that CalPERS wants and cannot be a Resolution, however a cover letter can be and suggested that MCSD assign a Resolution number to a cover letter for attachment "C".

Discussion ensued.

A motion was made by Director Rice seconded by Director Diep to approve Item "A" all 4 parts (part 1 to approve an Agreement to Prefund Other Post Employment Benefits through CalPERS{attachment "B"}: part 2 to adopt a resolution delegating authority to request disbursements from the trust {attachment "C"} cover letter Resolution No. 2010-11: part 3 to approve the certification of the funding policy for the trust {attachment "D"}: and part 4 to approve the transfer of authorized funds from MCSD's OPEB reserve account to CalPERS to establish the trust.). The motion was approved by the following roll call vote:

AYES: Directors Diep, Epperson, Krippner, Neugebauer and Rice

B. Consider Fiscal Year 2010-11 Budget Assumptions and Capital Improvement Projects.

President Neugebauer commented that this is the second of a series of MCSD Mid-Year Budget Review in preparation for MCSD's 2010-2011 Budget.

GM Nordbak stated that Robert has a very good outline, and asked the Board if they want a step by step review or if they want to ask questions.

Discussion ensued.

The Board directed General Counsel Tom Nixon to research Ordinance 64 adopted August 2, 2005 to clarify if MCSD can change the rates without public notice before August 2010 or 2011.

Director Diep (to Staff) "The reason that I am not sympathetic to the debt of MCSD is because the only way to increase expenditures is through salaries/wages."

GM Nordbak explained that the Budget Assumptions and Capital Improvement Projects \$1.7 million dollar deficit does not reflect an increase in salaries/wages.

Discussion ensued.

Director Krippner suggested that if work needs to be done in Midway City, it should be announced publicly immediately. Midway City needs to be aware and recognized.

President Neugebauer commented that MCSD is the best operated Special District in Orange County, because issues are taken seriously and discussed thoroughly.

Director Rice commented that since Finance Director Housley was hired to give advice that MCSD Board should listen to him.

President Neugebauer reminded the Board that all responsibilities fall back to the Board.

President Neugebauer reminded the Board that the Budget is just an estimate of expenditures.

President Neugebauer requested staff look into refinancing the COP.

Finance Director Housley commented that the COP cannot be paid until the year 2015, and in order to refinance, it would have to be through a higher return in yield per Jeff Stahov.

President Neugebauer recommended that Finance Director Housley get advice from someone besides Jeff Stahov as it is always good policy to have more than one opinion.

Director Krippner commented that the Calendars still reflect 5:00 p.m. meeting time not 3:00 p.m.

The Board agreed to set the date for the next Budget Meeting at the Tuesday, May 4, 2010.

BOARD CONCERNS/COMMENT

The Board has no concerns/comments at this time.

STAFF CONCERNS

GM Nordbak informed the Board that he has instructed Refuse Supervisor Nick Castro to replace the numbers on the trucks (3 sets per truck in white both sides and the back). The front of the truck already has the number in black (cab is white). You cannot read the black number on the blue and there are currently no numbers on the sides.

GM Nordbak informed the Board the District has received Notice regarding an increase in the Dental insurance.

GM Nordbak sent out a letter to City of Westminster Councilman Andy Quach, (a copy of the letter is in Board Folder), responding to an email about a Sewer Complaint that was created by a City of Westminster Public Works Project.

President Neugebauer received a fax today, April 27, 2010 from Rich Frischi and Sean DeWayne stating that they are withdrawing their candidacy and she asked that the records show the faxed received today, April 27, 2010 and it states that their principle reason for standing for election to LAFCO was the protracted dissention among certain North/South Water Agencies... (President Neugebauer read the letter). Also in the letter, it states that they are supporting the incumbents and ask that MCSD to also support the challengers. Since MCSD already made the decision to not support the incumbents, then only Director Diep needs to attend the ISDOC meeting. Cancel AGM Robbins and President Neugebauer's attendance to ISDOC.

Director Diep, representing MCSD, will cast the 'NO' vote for John Withers.

INFORMATIONAL ITEMS

There were no informational items on this agenda, other than what is in the Board's yellow folders.

ADJOURNMENT

President Neugebauer adjourned the meeting at approximately 12:20 p.m.

Al P. Krippner, Secretary

