

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

MINUTES OF THE BOARD OF DIRECTORS MEETING OF FEBRUARY 10, 2022

A regular meeting of the Board of Directors of ERMA was held on February 10, 2022. All portions of this meeting were conducted via Zoom in accordance with Government Code Section 54953.

- BOARD MEMBERS PRESENT:** John Gillison, President, CIRA (*left at 1:44 p.m.*)
Stuart Schillinger, Vice President, BCJPIA
Brett Miller, Treasurer, MBASIA
Melissa Guerrero, ERMAC
Bryan Whitemyer, CSJVRMA
Kevin Bryant, PLAN
Roger Carroll, SCORE
Charlene Calica, CCCHA (*left at 11:44 a.m.*)
Drew Felder, OHA (*arrived at 10:10 a.m.*)
Jeremy Wittie, VCJPA
- BOARD MEMBERS ABSENT:** Beth Lyons, PERMA
Linda Cox, MPA
- ALTERNATE MEMBERS PRESENT:** Kin Ong, CIRA
Heather Rowden, BCJPIA
Steve Adams, MBASIA
George Fink, CalTIP
Jamie Scott, VCJPA
Yumi Augustus, PERMA
Becky Ramirez, CSJVRMA
Nataline Jindoaian, CCCHA (*arrived at 11:21 a.m.*)
- ALTERNATE MEMBERS ABSENT:** Reina Schwartz, MPA
George Rodericks, PLAN
Wendy Howard, SCORE
- OTHERS PRESENT:** Jennifer Jobe, Executive Director
Danielle Davis, Board Secretary
Stacey Sullivan, Litigation Manager
Jim Elledge, Interim Finance Manager
Chee Xiong, Senior Accountant
Doug Alliston, Board Counsel
Elizabeth Arce, Liebert Cassidy Whitmore
Michael Christian, Jackson Lewis (*arrived at 10:54 a.m., left at 12:52 p.m.*)
Chrissy Mack, CalTIP/VCJPA
Amy Northam, CIRA
Conor Boughey, MBASIA
Jeanette Workman, CSJVRMA
Marcus Beverly, SCORE/ERMAC
Seth Cole, Alliant
Shadi Jalali, Alliant
Lesley Murphy, PFM (*left at 11:57 a.m.*)
Anne Ambrose, City of California City (*arrived at 10:34 a.m., left at 10:57 a.m.*)

Thomas Smith, City of Antioch (*left at 12:46 p.m.*)
Anthony Morefield, City of Antioch (*left at 12:46 p.m.*)
Byrne Conley, Gibbons & Conley (*arrived at 11:53 a.m.*)
Jason Epperson, Epperson Law Group, PC (*left at 12:55 p.m.*)
Lena Bowen, George Hills (*left at 11:49 a.m.*)

1. CALL TO ORDER/ROLL CALL

The February 10, 2022, Board of Directors Meeting was called to order at 10:02 a.m. by President John Gillison.

2. AUTHORIZATION TO MEET VIA TELECONFERENCE

Jennifer Jobe, Executive Director, reminded the Board that authorization must be sought at meetings every 30 days where teleconferencing occurs, pursuant to California AB 361, section 54953, subdivision (e)(1)(C), where failure to obtain a majority vote would result in immediate adjournment of the meeting to be reconvened at a later date in person. Ms. Jobe stated staff's recommendation to authorize a teleconference meeting.

Kevin Bryant moved, seconded by Brett Miller, to find, as a result of the COVID-19 emergency, meeting in person would present imminent risks to the health or safety of attendees and the meeting should be held by teleconference as authorized by subdivision (e)(1)(C) of section 54953 of the Government Code. A roll call was conducted. The motion passed unanimously with affirmative votes by Robert Thompson, Brian Whitemyer, Melissa Guerrero, Yumi Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Jeremy Wittie, Brett Miller, Heather Rowden, and John Gillison with no nays or abstentions.

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

Brett Miller moved, seconded by Kevin Bryant, to approve the Agenda as posted. A roll call was conducted. The motion passed unanimously with affirmative votes by Robert Thompson, Brian Whitemyer, Melissa Guerrero, Yumi Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Jeremy Wittie, Brett Miller, Heather Rowden, and John Gillison with no nays or abstentions.

4. PUBLIC COMMENTS

None

5. CONSENT CALENDAR

Brett Miller moved, seconded by Yumi Augustus, to approve the Consent Calendar as follows: A) Minutes of November 1, 2021, Meeting of the Board of Directors ; B) Minutes of November 10, 2021, Special Meeting of the Board of Directors ; C) General Warrants from October 1, 2021, through December 31, 2021; D) Claims Payments from October 1, 2021, through December 31, 2021; E) Treasurer's Reports as of September 30, 2021 and December 31, 2021; F) Internal Financial Statement for the Quarter Ended

December 31, 2021; G) Benchmarking Ratio Results as of June 30, 2021; H) Annual Investment Policy Review, PFM Asset Management; I) Excess Coverage and Marketing Strategy for the 2022/23 Program Year; J) Resolution No. 2021-8, Establishing Meeting Dates for the 2021/22 Fiscal Year; and K) ERMA Board Document Review Schedule. A roll call was conducted. The motion passed unanimously with affirmative votes by Robert Thompson, Brian Whitemyer, Melissa Guerrero, Yumi Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Jeremy Wittie, Brett Miller, Heather Rowden, and John Gillison with no nays or abstentions.

6. ADMINISTRATIVE MATTERS

A. Proposal for Financial Audit Services

Ms. Jobe noted Bill Patterson, Sampson, Sampson & Patterson, LLP (Sampson), has conducted auditing services since 2003, with the most recent contract expiring upon completion of the June 30, 2021, audit. At staff's request, Sampson prepared a renewal proposal for independent financial auditing services for years ending June 30, 2022, 2023, and 2024.

Ms. Jobe reviewed the proposed fee schedule, noting an initial 5% increase over the 2021 expiring fee, followed by 4.75% increases annually thereafter. Ms. Jobe confirmed while the proposed incremental increase is a slightly higher percentage than prior years – historically, approximately 3% – this trend is consistent with other service provider cost increases. Ms. Jobe also cited the Board's alternative option to pursue a request for proposal (RFP), but noted that the population of financial auditors familiar with public entity risk pools is limited.

Discussion ensued regarding whether the adoption of Sampson's proposal would be compliant with mandates requiring entities to engage a rotation of audit partners every six years. Jim Elledge, Interim Finance Manager, confirmed that Sampson's depth of staffing would permit the rotation of audit partners, allowing ERMA to maintain compliance. Mr. Elledge also echoed Ms. Jobe's remarks concerning the limited number of potential service providers should the Board decide to issue an RFP.

Roger Carroll moved, seconded by Brett Miller, to approve the renewal of the contract for Financial Audit Services with Sampson, Sampson & Patterson, LLP for three years, with consideration to rotate the lead audit partner and issue an RFP for services prior to completion of the June 30, 2024, audit. A roll call was conducted. The motion passed unanimously with affirmative votes by Robert Thompson, Brian Whitemyer, Melissa Guerrero, Yumi Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Jeremy Wittie, Brett Miller, Stuart Schillinger, and John Gillison with no nays or abstentions.

7. FINANCIAL MATTERS

A. Investment Performance Review, PFM Asset Management

Lesley Murphy, Senior Managing Consultant, Public Financial Management, LLC (PFM), provided an update on ERMA's investment portfolio.

Ms. Murphy provided an overview of the market, explaining that since falling off in 2020,

U.S. Gross Domestic Product (GDP) has increased rapidly. Estimates for 2021 indicate a potential 6% GDP growth from the previous year, driven by increased corporate profits and spending power made possible due to economic stimulus packages. However, growth is expected to moderate in 2022 due to supply chain disruptions and halting stimulus payments.

Ms. Murphy continued by directing the Board's attention to the U.S. Treasury Yield Curve, illustrating interest rate increases from Q4 2021 into 2022. Ms. Murphy then reviewed U.S. Treasury Index Returns, reporting expectations of three to five rate increases from the Federal Reserve in 2022.

Ms. Murphy reported PFM continues to utilize a diversified portfolio management strategy with ERMA's portfolio. She advised in Q4 2021, the Yield at Cost was 1.19%, which is the average yield across all securities in the portfolio based on time of purchase. Ms. Murphy also commented that ERMA's portfolio is of a very high credit quality (AA rating).

A question was raised as to the vulnerability of ERMA's investments during times of Federal Reserve rate increases. Ms. Murphy confirmed PFM's practice of shortening the duration of investments relative to the benchmark to offer protection against negative market value swings, but no major adjustments are made to ERMA's portfolio.

Ms. Murphy concluded by noting PFM maintained broad diversification across permitted investment sectors, with a focus on managing long-term investments amid rising interest rates. Additionally, ERMA's portfolio is in compliance with California Government Code and ERMA's Investment Policy.

No action was taken on this item.

8. MEMBERSHIP MATTERS

A. Update Regarding the City of California City's (CIRA) Performance Improvement Plan

Ms. Jobe reminded the Board that annually, staff reviews performance ratios for the ERMA membership, which includes reviewing historical claims information such as frequency and severity. The purpose of this review is to identify agencies that may need assistance with training and other risks.

Ms. Jobe further recounted the City of California City (City) was identified as one such agency at the June 2021 Board meeting, during which the Board approved the City undergo a risk assessment. At the November 2021 meeting, the Board approved issuance of a formal notice of termination of participation to the City effective June 30, 2022, in accordance with ERMA's six-month notice requirement. During this time, the City was also placed on a Performance Improvement Plan (Plan), which included targeted training and direct assistance from staff in identifying and implementing best practices.

Ms. Jobe provided an update on the City's progress, stating staff will continue to meet with the City and Anne Ambrose, Interim City Manager, to ensure updated personnel policies and procedures are implemented.

Ms. Ambrose then addressed the Board to provide an update on the City's PIP status, noting the City's adherence to regular monthly meetings, providing management training to all leadership staff, and obtaining training for council members regarding governance practices and Council and City Manager relations. Ms. Ambrose also indicated she is presently coordinating with the City's Human Resources staff to review and update personnel rules. Ms. Ambrose concluded by stating the City will soon be reviewing applications for multiple management positions in an effort to identify appropriate leadership for the City moving forward.

No action was taken on this item.

9. LITIGATION MANAGEMENT

A. Report from Stacey Sullivan, Litigation Manager

Stacey Sullivan, Litigation Manager, provided an overview of ERMA loss trends and member support activities over the previous quarter. Ms. Sullivan drew focus to the following three topics of import:

- **Claim Frequency.** ERMA continues to incur a significant number of new claims, with 39 new incidents in the present quarter (a 61% increase over the previous quarter).
- **Claim reporting procedures.** Ms. Sullivan raised specific concerns regarding claim reporting/handling within Police Departments, noting harassment, discrimination, and retaliation claims are frequently addressed internally without being reported to human resources. As a result, ERMA is not made aware of the incident in a timely manner and therefore is unable to provide necessary advice and counsel.
- **California AB 9.** Ms. Sullivan reminded the Board of AB 9, which extends the period for employees to file a charge from one to three years. With greater potential exposure to ERMA, Ms. Sullivan reiterated the importance of proper record retention and documentation.

Following discussion, the Board directed staff to convene the Ad Hoc Training Committee to address training concerns related to proper claim reporting procedures.

No action was taken on this item.

B. Defense Panel Updates

Ms. Sullivan noted two changes to the Defense Panel: The removal of Porter Scott and the addition of Rebecca Green as the primary attorney contact for Richards, Watson, & Gershon.

Ms. Jobe followed by reviewing Resolution 2021-1, Establishing Criteria for Adding and Removing Defense Counsel to the Panel of Approved Attorney Firms, which outlines requirements for participation on ERMA's defense panel. Ms. Jobe noted language in the Resolution specifies that a firm must not represent employees as plaintiffs in employment practices liability matters; however, conflicts may arise in rare instances.

Ms. Jobe recommended the Board direct staff to work with Doug Allison, Board Counsel, to revise the Resolution to clarify the eligibility requirements for defense panel firms for review

at the April 26th meeting.

Kevin Bryant moved, seconded by Brett Miller, to approve the proposed updates to the Defense Panel effective February 10, 2022. A roll call was conducted. The motion passed unanimously with affirmative votes by Robert Thompson, Brian Whitemyer, Melissa Guerrero, Yumi Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Drew Felder, Jeremy Wittie, Brett Miller, Stuart Schillinger, and John Gillison with no nays or abstentions.

10. CLAIMS MATTERS

A. Closed Session Pursuant to Government Code Section 54956.95(a) to Discuss Claims

Pursuant to Government Code Section 54956.95(a), the Board recessed to Closed Session at 11:13 a.m. to discuss the following claims:

- Blanco, Brittney v. City of Antioch
- Oules, Rachel v. City of Mt. Shasta

B. Report from Closed Session

The Board reconvened to Open Session at 11:45 a.m. Doug Alliston, Board Counsel, advised no reportable action was taken in Closed Session.

11. COVERAGE MATTERS

A. City of Antioch (MPA) Appeal of Denial of Coverage

Ms. Sullivan presented the City of Antioch's appeal of denial of coverage and provided background information relating to the coverage denial based upon untimely reporting.

After discussion, the Board advised staff to continue working with the City to review relevant documents and assign ERMA-approved defense counsel, with plans to revisit the appeal at the April 26th meeting.

No action was taken on this item.

B. City of Pleasanton (BCJPIA) Appeal of Denial of Coverage

Ms. Sullivan summarized details regarding the City of Pleasanton's appeal of denial of coverage based upon untimely reporting.

Ms. Sullivan concluded her report stating she did not believe the untimely report of the claim would result in financial or other prejudice to ERMA.

Roger Carroll moved, seconded by Charlene Calica, to grant the City of Pleasanton's appeal of denial of coverage with a 25% increase to the self-insured retention (SIR) from \$75,000 to \$93,750. A roll call was conducted. The motion passed unanimously with affirmative votes by Robert Thompson, Brian Whitemyer, Melissa Guerrero, Yumi

Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Drew Felder, Jeremy Wittie, Brett Miller, Stuart Schillinger, and John Gillison, with no nays or abstentions.

C. City of Scotts Valley (MBASIA) Appeal of Denial of Coverage

Ms. Sullivan presented the City of Scott's Valley's appeal of denial of coverage based upon untimely reporting, citing no financial or other prejudice to ERMA.

Discussion ensued regarding the details of the appeal and occurrence, as well as the potential consequences of the recommended 25% late-reporting penalty to the City's \$500,000 SIR.

Kevin Bryant moved, seconded by Roger Carroll, to grant the City of Scott's Valley appeal of denial of coverage with no penalty applied to the SIR. A roll call was conducted. The motion passed with affirmative votes by Brian Whitemyer, Yumi Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Drew Felder, Jeremy Wittie, and Brett Miller, nay votes by Robert Thompson and Stuart Schillinger, and no abstentions.

D. City of Taft (CSJVRMA) Appeal of Denial of Coverage

Ms. Sullivan reported on the City of Taft's appeal of denial of coverage due to untimely reporting, citing no financial or other prejudice to ERMA.

Kevin Bryant moved, seconded by Brett Miller, to grant the City of Taft's appeal of denial of coverage with a 25% increase to the SIR from \$25,000 to \$31,250. A roll call was conducted. The motion passed unanimously with affirmative votes by Robert Thompson, Brian Whitemyer, Melissa Guerrero, Yumi Augustus, Kevin Bryant, Roger Carroll, Charlene Calica, Drew Felder, Jeremy Wittie, Brett Miller, Stuart Schillinger, and John Gillison, with no nays or abstentions.

12. CLOSING COMMENTS

A. Board of Directors

None.

B. Staff

None.

13. ADJOURNMENT

The February 10, 2022, ERMA Board of Directors Meeting adjourned at 1:18 p.m. by general consent.



Danielle Davis, Board Secretary