

RESOLUTION No. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

RESOLUTION APPROVING BOARD OF RETIREMENT REGULATIONS SECTIONS 4.12, 4.13 AND
4.14 REGARDING POST-RETIREMENT EMPLOYMENT
AND ESTABLISHMENT NORMAL RETIREMENT AGES

WHEREAS, *SamCERA* is an Internal Revenue Code § 401(a) tax-qualified retirement system; and

WHEREAS, the Internal Revenue Service (IRS) has stated that a pension plan may not permit the distribution of employer-provided benefits to a retired participant who has not attained normal retirement age as defined in the plan unless the participant has a "bona fide separation" from employment; and

WHEREAS, generally, a bona fide separation from employment requires that no predetermined arrangement, either oral or written, for the reemployment of a member who retires at an age younger than normal retirement age, as defined, may exist between the member and the County or other *SamCERA* employer prior to the member's retirement; and

WHEREAS, the County Employees Retirement Law of 1937 is silent with respect to the definition of "bona fide separation"; and

WHEREAS, a break in service of a stated number of months is evidence (but not conclusive evidence) that there is no predetermined arrangement for reemployment; and

WHEREAS, the Board of Retirement has determined that there shall be at least a continuous 90-day break in service from the date of the member's retirement prior to being reemployed; and

WHEREAS, Government Code §31525 provides that the Board of Retirement, with the approval of the Board of Supervisors, may establish regulations that govern the operation of *SamCERA* that are not inconsistent with the California Employees' Retirement Law of 1937; and

WHEREAS, the Internal Revenue Service has said that "normal retirement age" cannot be earlier than the age that is "reasonably representative of a typical retirement age for the covered workforce"; and

WHEREAS, *SamCERA* members who retire as safety members do so at an average age of 53; and

WHEREAS, *SamCERA* members who retire as general members retire at an average age of 60; and

WHEREAS, other government entities such as (but not limited to) the Legislature, Congress, and Internal Revenue Service may establish rules regarding normal retirement ages which take precedence over actions by the Retirement Board and the Board of Supervisors of San Mateo County; now therefore be it

RESOLVED that section 4.12 of Article IV, Membership Duties and Rights, is hereby amended and shall read as follows:

4.12 Normal Retirement Ages: The normal retirement age for general members shall be the later of age 60 or the age at which the member is entitled to receive benefits under the County Employees Retirement Law of 1937 contained in Government Code sections 31450 et seq. The normal retirement age for safety members shall be the later of age 53 or the age at which the member is entitled to receive benefits under the County Employees Retirement Law of 1937 contained in Government Code sections 31450 et seq. These normal retirement ages shall be in effect until such time as action taken by the Legislature, Congress, Internal Revenue Service or other government agencies whose actions take precedence as a matter of law over the actions of *SamCERA* establish or require establishment of normal retirement ages that differ from those established in this regulation. It is further

RESOLVED that sections 4.13 and 4.14 be added to the Regulations of the Board of Retirement, Article IV, Membership Duties and Rights, and shall read as follows:

4.13 No Pre Arrangement of Post-Retirement Employment: A member who retires at an age younger than normal retirement age, as defined in section 4.12, may not, prior to the date the member's retirement commences, enter into an agreement, either oral or written, to be reemployed while retired by the County or any other employer whose employees are members of *SamCERA*, regardless of the length of the member's break in service after retirement.

4.14 Required Break In Service Prior to Post Retirement Employment: A member who retires at an age younger than normal retirement age, as defined in section 4.12,, must have at least a continuous 90-day break in service from the date of the member's retirement prior to being reemployed while retired by the County or from any other employer whose employees are members of *SamCERA*.