

Deferred Compensation Plan BOARD REPORT 11-11

Date: January 26, 2011
To: Board of Deferred Compensation Administration
From: Plan Governance & Administrative Issues Committee
& Staff
Subject: Board Governance Policies/Bylaws

*Board of Deferred Compensation
Administration
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Recommendation:

That the Board of Deferred Compensation Administration a) approve the Plan Governance and Administrative Issues Committee recommendation to adopt the Board of Deferred Compensation Administration Governance Policies/Bylaws; and b) refer to the Plan Governance and Administrative Issues Committee development of an Administrative Policies Manual.

Discussion:

At its June 29, 2009 meeting, the Board of Deferred Compensation Administration directed the Plan Governance and Administrative Issues Committee to develop proposed Board Bylaws. Bylaws are intended to address the general objectives and operational rules of boards. Staff modeled the original draft of the Board's Bylaws after the Governance Policies developed by the City's pensions systems.

Over the course of five meetings, the Committee reviewed the Bylaws with the assistance of the Board's City Attorney to ensure each provision was accurate, clearly worded, and resembled the current policies and operating procedures of the Board. In addition, provisions were revised or added in cases where the Committee felt the current procedures of the Board could be improved. The following is a brief review of the primary discussions/decisions of the Committee:

Responsibilities of Staff and Board Counsel – The initial draft of the Bylaws only included language regarding the duties and responsibilities of the Board. At the direction of the Committee, language was added to also address the responsibilities of staff and Board Counsel (the City Attorney). In addition, provisions were added that would acknowledge the potential for the Board to use outside counsel in the future.

Board Voting - As part of the discussions regarding Board voting, the Committee clarified the following:

- **Abstentions** – At the direction of the Committee, staff consulted Assistant City Attorney, Curtis Kidder, who explained that the Los Angeles Administrative Code

governs the use and application of Board abstentions and cited Section 21.19, which states:

“Where such will not be inconsistent with Charter-prescribed duties, or prohibited by law, a member of a City board or commission or of a committee thereof, who is present when a question is put to that board, commission or committee shall vote on that question at the call of the roll thereon. In the event such member fails to affirmatively vote either “yes” or “no,” that member will be deemed to have voted “yes,” and the member’s vote will be spread as such upon the record.”

Therefore, Board members are expected to vote on all matters that do not result in a conflict of interest. Should a Board member choose to abstain from voting on a particular topic, that decision will be considered an affirmative vote per the City Administrative Code.

- **Supermajority Voting** – The Committee considered requiring a supermajority vote for amendments to the Bylaws, however, as explained by Mr. Kidder, Administrative Code 21.16 precludes the Board from using a supermajority vote since it indicates that orders or resolutions shall be adopted by a “majority” of members.

As is customary with current Board protocol, when the Plan’s authoritative documents such as the Administrative Code, Charter, or Bylaws are silent on parliamentary procedure, Robert’s Rules of Order will be used for guidance. With the adoption of these Bylaws, however, the need to look to Robert’s Rules of Order should be rare.

Board Member Attendance – The Committee added a provision to the “Governance and Administration of Meetings” section that stresses the importance of Board member attendance and added a separate provision to direct staff to provide the Board with an annual report regarding Board member attendance in the prior year.

Committee Composition & Voting – In reviewing Section 4 of the Bylaws, the City Attorney explained that when committees are comprised of a quorum of a board and the entire committee votes on a matter then that action could be considered a final action of the Board. Since the intent of the Board is for the Committees to provide recommendations rather than to take final action, a provision was added limiting Committee membership to less than a quorum of the Board. In addition, a provision was added stating that “all motions approved by a committee are subject to Board approval, unless the Board has delegated to the Committee specific authority to act on its own...”

Fiscal Administration Policy – A provision was added to allow for the adoption of an Annual Plan Budget. This provision also outlines the Board’s objective of maintaining long term stability of the Plan’s Trust Fund.

Code of Ethics - This section was revised by the City Attorney to allow for greater clarity as it relates to conflicts of interest. Language was also added that requires Board and staff members to immediately consult with Board Counsel for guidance as soon as they become aware of a potential conflict of interest.

Administrative Policies – Originally, the Bylaws included the Elections Policy as well as a Travel & Education Policy, however, the Committee determined that these provisions should be removed from the document since they are related to administrative rather than governance issues. The Committee therefore recommends that a separate administrative policies manual be created. This manual would also include other administrative determinations such as communication limitations of firms during a Request for Proposal and the procedure for processing hardship appeals. Given the amount of detail the document will likely provide and the Committee’s familiarity with the topic as a result of the development of the Bylaws, staff recommends that the Board refer the development of an administrative policies manual directly to the Plan Governance and Administrative Issues Committee. Staff would begin the process by presenting an initial list of topics/issues the Committee may want to consider addressing in the manual at the next Committee meeting.

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