

Deferred Compensation Plan BOARD REPORT 11-21

Date: April 4, 2011
To: Board of Deferred Compensation Administration
From: Plan Governance & Administrative Issues Committee
& Staff
Subject: Board Governance Policies/Bylaws

*Board of Deferred Compensation
Administration
Eugene, Canzano, Chairperson
Richard Kraus, Vice-Chairperson
Sangeeta Bhatia
Cliff Cannon
Tom Moutes
John R. Mumma
Michael Perez
Robert Schoonover
Maggie Whelan*

Recommendation:

That the Board of Deferred Compensation Administration approve the Plan Governance and Administrative Issues Committee recommendation to adopt the Board of Deferred Compensation Administration Governance Policies/Bylaws as amended.

Discussion:

At the February 15, 2011 meeting, the Board reviewed the draft Board of Deferred Compensation Administration Governance Policies/Bylaws (Bylaws) submitted by the Plan Governance and Administrative Issues Committee. The Board requested the following amendments:

- Elaboration of the Board's fiduciary duties;
- A provision regarding a scheduled review date for the Bylaws;
- Clarification of staff's role as a liaison between the Board and contracted agents;
- Clarification regarding Board member attendance of Committee meetings;
- Procedures for disclosing vendor contact twelve months prior to the initiation of a procurement process; and
- Reference to the Brown Act as an attachment to the Bylaws.

Revisions to the language have been incorporated using Track Changes formatting. Staff recommends that the Board approve the draft Bylaws as amended. The following is a description of the main revisions made to the Bylaws:

Fiduciary Duties – Board Counsel has informed staff that the source of the Board's fiduciary obligation is not contained in the State Constitution or any specific State law or regulation in regards to deferred compensation plans. Such obligation, rather, likely emanates from trust law or the common law related to municipal boards of commissioners. As such, Board Counsel recommends that Section 2.1(c) of the Bylaws be revised to read: "Consistent with their fiduciary duties, Board members will strive to meet the highest standards of ethical conduct consistent with the City's Code of Ethics, the Governmental Ethics Ordinance

(Municipal Code Chapter IV, Article 9.5) and the Commissioner Ethics Pledge." Staff recommends adopting the Bylaws with this revised provision.

Scheduled Review Date – To ensure that the Bylaws continue to be relevant to the Board and the Plan into the future, a provision has been included as a new Section 2.1(D)(1) requiring a review of the document no less than every three years. In addition, a space has been added to the title page to indicate the “next review” date.

Staff as Liaison - Section 2.2(A)(13) of the Bylaws has been amended to further define staff’s role as a liaison between the Board and Plan vendors.

Board member attendance – Section 3.4(D) was amended to clarify that Board members are required to attend all meetings of the Board and those of their assigned Committees.

Disclosure of Vendor Contact – During the process of editing Section 7: “Procurement Process and Contracting, staff found that the language as originally drafted appeared to contain a flaw that had been previously overlooked. The language was originally intended to prohibit inappropriate contacts between vendors and Board/members and staff. The prior bylaw language, however, appeared to infer that such contacts would be acceptable as long as they were disclosed. To revise, staff drafted revisions to Sections 6 and 7 which prohibit contacts, create consequences for such contacts (disqualification from participating in the decision-making process), and provide detail as to what kinds of contacts are permitted or not permitted. A new provision 6.7 was added to specify that Board and staff members shall not request, receive, or agree to receive something of value or other advantages in exchange for a decision. In addition, a new provision 6.8 has been added to specify that Board and staff members shall not communicate with current or prospective vendors or their representatives for the intent of securing a contract or realize financial gain from the City’s Plan.

Section 7.1(A) was re-written to emphasize that Board and staff members agree not to meet privately with representatives and lobbyists of actual and potential respondents twelve months prior to a scheduled initiation of an RFP process nor any time before the final contract award. Any such action shall be disclosed in writing to staff and shall result in a Board or staff member’s disqualification in the evaluation and awarding of the contract. Staff will make such disclosures available to the public and full Board simultaneously in accordance with the Ralph M. Brown Act.

Attachment of Ralph M. Brown Act – Per the Board’s request, the Ralph M. Brown Act has been included as an Attachment A.

In addition, at the March 15, 2011 Board meeting Board member Richard Kraus asked if the Bylaws had a provision indicating that Board members should act first and foremost in their capacity as a fiduciary of the Plan. He explained that he believed this was relevant for those Board members that have positions with other Boards or organizations that may have competing objectives. Board Counsel would like more time to review this, however, believes that it would be prudent to proceed with the adoption of the Bylaws as drafted and amend the document at a later date if so warranted.

Submitted by: _____
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Reviewed by: _____
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Approved by: _____
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Approved by: _____
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