



# CITY OF *Los Angeles*

## DEFERRED COMPENSATION PLAN (DCP)

### Board Report 19-27

Date: July 16, 2019

To: Board of Deferred Compensation Administration (Board)

From: Staff

Subject: Board Governance and Decision-Making Authority

#### Board Members

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#### **Recommendation:**

That the Board receive and file report regarding Board governance and decision-making authority.

#### **Discussion:**

##### **A. Background**

At the Board's May 21, 2019 meeting, staff was requested to provide a report regarding options for increasing the independence of the Board and the DCP. Staff subsequently reviewed this request with the Board Chairperson who indicated that the report should address considerations relative to establishing greater latitude for the Board in decision-making authority closer in design and execution to the models used for the City's three defined benefit retirement pension plans ("City's DB plans").

Staff has compiled the following governance history of the DCP:

- 1983 – The City Council established the DCP by ordinance through Los Angeles Administrative Code (LAAC) Division 4, Chapter 14. The DCP was originally created to be administered by the City Treasurer's Office with a governance structure providing for a seven-member Advisory Committee. The Advisory Committee's authority was limited; all contracting decisions were made by the City Council. In 1983 the City Council selected the DCP's original bundled Third-Party Administrators and investment managers (Hartford Life Insurance Company and Great Western Bank). The first participant contributions to the DCP were taken in 1984.
- 1995 – Effective July 1, 1995, the City Council moved administration of the DCP from the City Treasurer to the Personnel Department.
- 1998 – The City Council established the DCP as a trust pursuant to a new Federal requirement that all Internal Revenue Code Section 457 plans be placed into trust for the exclusive

benefit of participants and their beneficiaries. The City Council further amended Chapter 14 to establish the Advisory Committee as a Board with the ability to contract for DCP service providers.

- 2002 – The City Council provided the Board with the authority to establish and administer a DCP Plan Document concurrent with removing certain administrative provisions of LAAC Division 4, Chapter 14 relating to DCP services and participant rules that were more appropriately located within Plan Document.
- 2006 – The City Council approved changes to the composition of the Board, expanding the number of representatives from seven to nine, adding the heads of the City’s DB plans, removing the City Treasurer, and providing for direct elections of participants representing retired DCP participants as well as each of the City’s DB plans.
- 2007 – The City Council provided the Board with the authority to enter into contracts for investment management services for terms of up to five years in length.
- 2015 – The City Council provided the Board with the authority to enter into contracts for all DCP services for terms of up to five years in length.

## **B. Governance and Decision-Making Authority – DCP vs. the City’s DB Plans**

The City’s DB plans are established under the City Charter and are also governed by the State of California Constitution Article XVI, Section 17 (**Attachment A**). Under the State Constitution, boards of public pension or retirement systems are provided with plenary authority with respect to certain decision making.

Plenary authority refers to power granted to a body or person in absolute terms, with no review of or limitations upon the exercise of that power. The assignment of plenary power to one body means that other bodies do not have the right to exercise that power unless otherwise specified.

State Constitution Article XVI/Section 17 provisions provide, in part, that:

*“Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system...*

*“A retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty.*

*“The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement stems are trust funds and shall be held for the exclusive purposes*

*of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.”*

As indicated in the Background section of this report, both the DCP and the Board were established by City Council action. The City Council provided the Board with significant latitude to administer the DCP. The Board’s authority includes the following:

- (i) Administering the [DCP] (Section 4.1401(j))
- (ii) Preparing and adopting a Plan Document which together with the Administrative Code are the governing documents for the DCP (Section 4.1400)
- (iii) Having sole authority for the operation of the DCP in accordance with its terms and ruling on all questions arising out of the administration, interpretation, and application of the DCP (Section 4.1407(a))
- (iv) Selecting and contracting with organizations to assist with the administration of the DCP and providing DCP investment options and governing the contractors selected (Section 4.1407(b))
- (v) Paying administrative and operating costs from funds deposited in the DCP Trust Fund (Section 5.492)

However, the Board does not have plenary authority. As a City-sponsored program, the DCP and the Board are subject to Mayoral directives, City ordinances, and City processes and rules which apply broadly to all City departments and functions. The Board’s contracting authority is subject to the procurement requirements of, among other statutes and regulations, the City Charter and Administrative Code. Other administrative functions (for example, travel, training, purchasing, and accounting) must be in accordance with the City’s rules and requirements.

In addition, the Board does not exclusively control the administration of the DCP, as virtually all of the DCP’s administrative processes are performed by the Personnel Department. LAAC Division 4, Chapter 14, Section 4.1407(e)(1), in identifying the General Manager Personnel Department as a member of the Board, provides: “The General Manager of the Personnel Department who shall coordinate and/or disseminate rulings and responses necessitated by Board actions; and shall, through his/her Office, provide staff assistance and support to the Board.” This model differs slightly from those for the Los Angeles City Employees’ System (LACERS) and Los Angeles Fire and Police Pensions (LAFPP), by virtue of the fact that they are separate City departments; and the Water and Power Employees Retirement Plan (WPERP), which is not a separate department but is administered by the same department for which its DB plan exists.

### **C. Modifying Board Decision-Making Authority**

Expanding the Board’s authority would require City Council action. The City Council created the Board and therefore can modify the boundaries of its autonomy. Presumably, if the Board wished to pursue greater autonomy, it would need to present its case to the City Council for

doing so with justifications that would ultimately relate to better meeting the City's obligation as a plan sponsor to act in the best interests of DCP participants and their beneficiaries.

It is further noted that, notwithstanding the fact that the DCP has been placed into trust as required under federal law, current LAAC provisions do not explicitly identify Board members as trustees of the DCP. LAAC provisions also do not define trustee roles and responsibilities nor require that they be so defined.

If the Board is interested in further exploring modifications to LAAC provisions regarding the Board's autonomy and decision-making, it may wish to refer the matter for greater study to either its Plan Governance and Administrative Issues Committee or to an ad hoc committee created specifically for this purpose. That committee could then report back to the full Board with recommendations for action by the Board.

Submitted by: \_\_\_\_\_  
Steven Montagna



**CONSTITUTION OF THE STATE OF CALIFORNIA**

**ARTICLE XVI PUBLIC FINANCE**

**Section 17**

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SEC. 17. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to all of the following:

(a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

(b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

(c) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The members of the retirement board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to

maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(e) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section.

(h) As used in this section, the term "retirement board" shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term "retirement board" shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system.

(Sec. 17 amended Nov. 3, 1992, by Prop. 162. Initiative measure.)