



Board Report 20-12

Date: March 31, 2020

To: Board of Deferred Compensation Administration

From: Staff

Subject: - Proposed Changes to Board Election Policies and Procedures
- Proposed Emergency Action Related to the 2020 Active LACERS Representative/Active LAFPP Representative Board Elections

Board of Deferred Compensation Administration
Thomas Moutes <i>Chairperson</i>
Raymond Ciranna <i>Vice-Chairperson</i>
Robert Schoonover <i>First Provisional Chair</i>
Wendy G. Macy <i>Second Provisional Chair</i>
Hovhannes Gendjian <i>Third Provisional Chair</i>
Joshua Geller
Neil Guglielmo
Linda P. Le
John R. Mumma

Recommendation:

That the Board of Deferred Compensation Administration (Board) (a) approve proposed changes to the Board Election Policies and Procedures providing the Board with emergency powers relative to the conduct of Board elections (**Attachment A**); and assuming adoption of the proposed changes (b) suspend the signature-gathering requirement for the 2020 elections.

Discussion:

A. Background

Per City of Los Angeles Administrative Code Section 4.1407, Board members include directly elected participant representatives from the Los Angeles City Employees' Retirement System (LACERS), Los Angeles Fire and Police Pensions (LAFPP), Department of Water and Power (DWP), and retired employee participants. The table below details the incumbent representatives and their Board terms:

Board Position	Incumbent	Term
LACERS Representative	Joshua Geller	June 29, 2018 – June 30, 2020*
LAFPP Representative	John Mumma	July 1, 2017 – June 30, 2020
DWP Representative	Hovhannes Gendjian	July 1, 2018 – June 30, 2021
Retiree Representative	Thomas Moutes	July 1, 2018 – June 30, 2021

*Mr. Geller assumed this position through a special election that occurred after the LACERS Representative position was vacated by the prior representative midway through his term.

The terms for both the active LACERS Representative and the active LAFPP Representative expire on June 30, 2020. The election to fill these positions is scheduled to be held on May 15, 2020, with new terms beginning July 1, 2020, and ending on June 30, 2023. Key dates for the election are as follows:

Early March 2020	Active LACERS participants and LAFPP participants advised via general mailing of the election and their eligibility to run for the seats
March 20, 2020	Nominating petitions made available from the Personnel Department’s Employee Benefits Division to eligible participants who choose to run
April 3, 2020	Deadline for submission of signed petitions from participants interested in running for the position; participants must gather at least 100 signatures to qualify to be placed on the ballot
April 27, 2020	Ballots will be mailed
May 15, 2020	Election Day; all ballots must be received by this date

The Office of the City Clerk – Election Division (City Clerk) administers this election on behalf of the Board, and staff is closely working with the City Clerk on coordinating the election process, including establishing timelines and drafting and disseminating communications.

B. Global Coronavirus Pandemic and Impact on 2020 Active LACERS/LAFPP Representative Election

On March 11, 2020, the World Health Organization declared the 2019 novel coronavirus (COVID-19) outbreak a pandemic acknowledging the rapid spread of the disease globally and its impact on public health. On March 12, 2020, in response to the outbreak, Los Angeles Mayor Garcetti issued Citywide COVID-19 guidelines to protect the City workforce while ensuring continuity of operations. These guidelines included directing General Managers of City departments to develop emergency COVID-19 telecommuting plans for their workforce and for employees to implement social distancing of six feet per person. Subsequently, on March 19, 2020, Mayor Eric Garcetti issued a “Safer at Home” public order, and Governor Gavin Newsom issued Public Order N-33-20, directing Los Angeles and State of California residents (respectively) to stay home and limit all non-essential activities. Additionally, on March 21, 2020, the County of Los Angeles Department of Public Health issued the “Safer at Home Order for Control of COVID-19” further restricting and limiting the gathering of persons and requiring the closure of non-essential activities and businesses in an effort to slow the spread of COVID-19 in LA County.

The requirement for three-year terms is set forth in Los Angeles Administrative Code (LAAC) Division 4, Chapter 14. LAAC provisions do not provide a mechanism to postpone an election. However, at this time, the City Clerk has informed staff that it can move forward with administering the election as originally scheduled, but noted the COVID-19 situation is fluid. At present one candidate has expressed interest in running for the LACERS representative seat and one candidate has expressed interest in running for the LAFPP representative seat.

The COVID-19 outbreak poses certain challenges for executing the 2020 election process under current rules given that a large number of City staff are telecommuting to work. Coupled with

social distancing practices, it would be difficult for candidates to collect 100 signatures in the two week period from March 20, 2020 to April 3, 2020 to qualify to be placed on the ballot.

C. Proposed Changes to the Board Election Policies and Procedures

To provide the Board with the flexibility to respond to the current state of emergency, staff has drafted a proposed change to the Board Election Policies and Procedures providing tools for the Board to respond to emergency situations such as the current COVID-19 outbreak. Upon the Board's approval, a change in policy and procedures adopted by the Board would be effective immediately and could be applied to this current election cycle. Staff recommends that the Board adopt the proposed changes in the Board Election Policies and Procedures in **Attachment A** by adding a new section as follows:

Section O. Emergency Board Actions

The Board shall be able to take certain actions relative to the election process in the event of a local emergency declared by the City of Los Angeles, the County of Los Angeles, the State of California, or the Federal government that significantly impacts the conduct of an election. In such an event, the Board shall be able to amend provisions in the Board Election Policies and Procedures. In the event that the Board Chairperson determines that the Board is not able to convene in a timely manner in order to approve emergency changes as indicated in the preceding sentence, the Board Chairperson may, with the concurrence of one other Board officer, be empowered to amend provisions in the Board Election Policies and Procedures regarding the number of nominating petition signatures required and extend the time period to collect signatures to qualify to be placed on an election ballot.

D. Proposal to Postpone Current Election

Assuming adoption of the recommended modifications to the Board Election Policies and Procedures, the Board can take certain action with respect to the 2020 elections. As indicated previously, large numbers of City employees are telecommuting making it difficult to obtain nominating petition signatures. As a result, staff recommends that the Board suspend the signature-gathering requirement for the 2020 elections. Suspending the signature-gathering requirement would allow the Board to continue the 2020 election process under the previously adopted schedule. Alternatively, if the Board were to establish a smaller signature-gathering requirement (e.g. five or ten signatures), an additional period of time, such as one week, for gathering signatures should be considered.

Submitted by:

Jenny M. Yau, Senior Management Analyst II

Approved by:

Steven Montagna, Chief Personnel Analyst

BOARD OF DEFERRED COMPENSATION ADMINISTRATION ELECTION POLICIES & PROCEDURES

Adopted by the Board of Deferred Compensation Administration on March 20, 2007
Revised January 20, 2009; revised February 17, 2009; revised February 21, 2012

Section A. Purpose

To establish election procedures for the Board of Deferred Compensation members representing the active participant membership of the (a) Los Angeles City Employees Retirement System (hereafter "LACERS") (b) Fire and Police Pensions (hereafter "Pensions" and (c) Water and Power Employees Retirement Plan (hereafter "DWP Retirement Plan"); as well as the member representing participants who have retired or otherwise separated from City service.

Section B. Term of Office

The terms of all elected positions shall be for three years beginning on the first day in July of the year of their respective elections as determined under City of Los Angeles Administrative Code Division 4, Chapter 14.

Section C. Elections: General

All elections shall be by secret ballot and shall be conducted by the City Clerk. The City of Los Angeles Deferred Compensation Plan shall reimburse the City Clerk for all necessary expenses incurred in the administration of employee member elections.

The regular election shall be held in May of any year in which the term of office for an employee member of the Board expires. Eligible voters shall be only those Plan participants who are members of the Plan as well as members of a constituent group for which an election is being held on that election day. To be a member of the Plan means that an employee maintains a balance in the Plan. To be a member of a constituent group means that one is either (a) an active employee member of LACERS, Pensions or the DWP Retirement Plan; or (b) a participant who has retired or otherwise separated from City service. The Personnel Department, in its administrative support capacity, shall provide to the City Clerk a primary roster, in alphabetical order, of eligible voters as of 30 days prior to an election. The roster shall contain the name, address, and last four digits of the social security number (Employee ID Numbers for DWP Employees) of each eligible voter.

Section D. Nomination of Candidates

Only members of the appropriate constituent group who have been nominated as provided in this article shall be eligible to have their names placed on the ballot. Nominating petitions shall be furnished by the Board. These petitions shall be in substantially the following form:

*NOMINATING PETITION FOR CANDIDATE FOR
THE BOARD OF DEFERRED COMPENSATION ADMINISTRATION*

We, the undersigned, hereby certify, each for himself/herself and not one for the other, that we are members of the City of Los Angeles Deferred Compensation Plan and (insert: “active employee members of the City Employees Retirement System” or “active employee members of the Fire/Police Pensions” or “active employee members of the DWP Retirement Plan” or “have retired or otherwise separated from service with the City of Los Angeles”), and collectively we hereby nominate _____ (insert name as it will appear on the ballot), a member of the Plan, for the office of _____ for the term beginning _____, and ending _____.

If this is a special election to fill an unexpired term, the petition shall be modified at the end to read instead: “...for the remainder of the unexpired term ending _____.”

Beneath the foregoing, and in columnar form, space shall be provided for the signature of each nominator, the department in which each nominator is employed or the designation “Separated from City Service,” as applicable, and the date on which the petition is signed by the nominator. Each person signing a petition shall write his/her name, department (if applicable) and the date of signing. Space shall be provided on each petition for one hundred signatures and two, and only two, petitions shall be available for each candidate at the office of the Plan each year in which the term of office of an employee member of the Board expires.

In order for Active Employee Member Candidates to qualify for a place on the election ballot, the petitions shall be signed by no fewer than 100 nor more than 200 individuals who are members of the Plan and respective constituent group. In order for Candidates Separated from City service to qualify for a place on the election ballot, the petitions shall be signed by no fewer than 10 nor more than 20 individuals who are members of the Plan and respective constituent group.

The petitions shall be filed in the office of the Plan no later than the date and time to be established by the Plan that is within two weeks of the date that petitions are first made available to candidates. The City Clerk shall verify that those persons signing the petitions were members as of the date of signing, and shall certify the sufficiency or insufficiency of each petition, and shall so notify the nominated members by registered mail.

Along with the submission of the signed petitions, interested candidates have the option to include an occupational ballot designation and a 250-word typewritten statement of qualifications for office for the provision of information to the electorate. The occupational ballot designation shall be printed on the ballot immediately under that candidate’s name and shall consist of a three-word designation of either (a) the current principal profession, vocation or occupation of the candidate, or (b) the principal

profession, vocation or occupation of the candidate during the calendar year immediately preceding the filing of the candidate's nominating petition. The standards for occupational ballot designations contained in the City's Election Code are to be applied by the City Clerk as applicable, except that a candidate who is running for an elective office, which that person currently holds, shall have "(Incumbent)" printed on the ballot, immediately after that person's name, in addition to the candidate's occupational ballot designation. The statement of qualifications for office may include information on education, work experience, years of service, and other relevant qualifications and shall not exceed 250 words in length. Qualification statements that are submitted by the due date will be printed by the City Clerk and mailed with the ballot at no expense to the candidate. The Board shall provide a disclaimer stating that neither the Board nor the City Clerk has verified the accuracy of the information contained in the candidates' qualification statements. Should any candidate fail to submit an occupational ballot designation or a statement of qualifications by the specified due date, the appropriate sections for the occupational ballot designation and qualification statement will be blank.

Prior to the election, the City Clerk shall conduct a public drawing of the letters of the alphabet. The order in which the letters are drawn shall constitute the random alphabetical order by which the surnames of the candidates shall be arranged on the ballot. The term "surname" shall mean the name borne in common by members of a family for this purpose. Each ballot shall contain the names of all candidates who have qualified in accordance with this section. There shall be a blank space beneath these names in which the voter may write the name of any employee member of the Plan not printed on the ballot and for whom the voter may wish to vote.

Section E. Third Party Candidate Support

In certain situations, funds used by third parties in order to support candidates for positions on the Board may be considered reportable gifts under State and City ethics rules and laws. These rules and laws include, but are not limited to, California's Political Reform Act of 1974, the City of Los Angeles Governmental Ethics Ordinance, and their related interpretations and regulations. Candidates are strongly encouraged to contact the Los Angeles City Ethics Commission for further information.

Section F. Notice of Election

Not more than 90 nor fewer than 60 calendar days prior to the regular election, the Plan shall notify the City Clerk and the General Manager of the Personnel Department of the fact of the election. Not more than 30 nor fewer than 20 calendar days prior to the regular election, the Plan shall have prepared a Notice of Election specifying the election date, a sample ballot containing the name of each candidate who has qualified for a place on the election ballot, rules concerning eligibility to vote, and any additional information and instructions the City Clerk determines are appropriate. A copy of the notice and sample ballot shall be posted in the Office of the City Clerk.

Section G. Observers

Candidates whose names appear on the election ballot may each designate no more than two observers at the tally center to observe that ballots are properly cast and votes

are properly counted. In addition to these designated observers, candidates may also observe. Names of all observers, including any candidates who desire to attend, shall be presented to the City Clerk no less than three calendar days prior to the election. Designated observers shall wear identification badges at all times and shall be subject to regulations the City Clerk shall prescribe.

Section H. Voting Procedures

The City Clerk shall mail a ballot packet for the election to each eligible voter listed on the roster supplied by the Plan. The mailing shall be completed no less than ten calendar days prior to the date of election.

Employees who become members of the Plan within 30 calendar days prior to an election and who wish to vote in that election shall present themselves in the office of the City Clerk no earlier than seven calendar days prior to and no later than the close of business (specific time to be designated by the City Clerk) of the day of the election with a certificate from the Personnel Department on a form approved by the City Clerk verifying the fact of their eligibility to vote. The City Clerk shall allow these members to vote.

Each ballot packet mailed or provided to voters shall consist of the following items:

1. A mailing envelope;
2. A return envelope;
3. The official ballot;
4. An identification envelope for the official ballot with space for the voter to affix the voter's name, mailing address, last four digits of the social security number (Employee ID Numbers for DWP Employees), signature, and date of signing;
5. A list of instructions to the voter; and
6. The candidates' statements of qualifications, if any.

Upon voting the ballot, the voter shall enclose the ballot in the identification envelope. The voter shall then affix the voter's name, mailing address, last four digits of the voter's social security number (Employee ID Numbers for DWP Employees), signature and date of signing on the identification envelope containing the ballot and shall enclose it in the return envelope. The voter shall return the voted ballot to the City Clerk by United States mail or personal deposit. During regular business hours in the seven calendar days preceding the election, but no later than the close of business (specific time to be designated by the City Clerk) on election day, voters may personally deposit the return envelope containing their ballot in the ballot box in the Office of the City Clerk, Election Division. All ballots shall, in order to be counted, be received by the City Clerk no later than the close of business (specific time to be designated by the City Clerk) on the date of the election.

Upon receipt of the identification envelope and its contents, the City Clerk shall date stamp the envelope, verify the name and last four digits of the social security number

(Employee ID Numbers for DWP Employees) appearing on the envelope with the roster of eligible voters and shall cause the roster to be marked showing that the member has voted. No identification envelope shall be opened prior to the commencement of the tally.

If a voter inadvertently spoils a ballot, the voter may return the spoiled ballot to the City Clerk, who shall furnish the voter with a replacement ballot. No more than two replacement ballots may be issued to the same voter. Spoiled ballots will be clearly marked "**SPOILED**" by the City Clerk.

If a voter on the roster claims not to have received a ballot, the voter may receive a replacement ballot from the City Clerk upon filing a signed affidavit claiming non-receipt. The identification envelope of the replacement ballot shall be prominently marked "**REPLACEMENT BALLOT**" and the original ballot issued to the voter shall be challenged, if received.

Section I. Challenges

The City Clerk may challenge a returned identification envelope on the following grounds:

1. The identification envelope is not properly completed according to the instructions and does not accurately identify the voter;
2. The voter did not include the correct last four digits of the social security number (Employee ID Numbers for DWP Employees);
3. The voter did not properly sign the identification envelope;
4. The voter's name does not appear on the roster;
5. The identification envelope was received after the last date and time provided pursuant with these policies;
6. The voter has lost status as a member of the appropriate constituent group within 30 days prior to the election based;
7. The voter has already turned in an identification envelope.

An authorized observer or the City Clerk, prior to the time that the identification envelope is opened, may challenge the eligibility of any person to vote in the election. Challenges by observers may be made only on the following grounds:

1. The identification envelope was not signed by the person whose name appears on the roster; or
2. The person's status as an eligible voter has changed since the person was certified.

Each identification envelope that is challenged shall have written on the envelope the word "**Challenge**," the reason for the challenge, and the signature of the person imposing the challenge.

The City Clerk shall, with substantiating evidence, sustain or overrule each challenge. Without substantiating evidence being produced within three business days of the election, the challenge shall be overruled and the ballot shall be tallied with the other ballots. Identification envelopes whose challenges have been sustained shall be retained unopened by the City Clerk for a minimum of 90 calendar days after the election results are certified.

Section J. Ballot Tally

The City Clerk shall count ballots in accordance with procedures used by the City Clerk to count ballots for other similar elections. Only the City Clerk may handle ballots. All ballots counted and uncounted shall be kept in view of the observers at all times during the tally and until the Ballot Statement is finally signed.

The identification envelope containing the sealed ballot envelope shall not be opened until the tally is commenced in order to preserve the secrecy of the ballot. At the commencement of the tally, the City Clerk shall audibly announce the name of each voter and shall then open the identification envelope, removing the official ballot. After all identification envelopes have been opened and set aside from the tally area, the City Clerk shall then proceed to count and tally the ballots cast for each choice, laying the ballots face up so that observers may inspect the marks. The count shall continue in this manner until all the ballots are opened and counted. When all ballots have been counted, the total number of votes cast for each candidate shall be entered on the unofficial Tally Results.

If a ballot is torn, defaced, marked in an ambiguous fashion, or is otherwise defective, the City Clerk shall determine whether the intent of the voter can be reasonably determined and, if so, determine it. If intent cannot be reasonably determined or if the ballot directly or indirectly identifies the voter, the ballot shall be declared void by the City Clerk and shall be preserved for a period of 90 calendar days.

After preparing the official Tally Results, the City Clerk shall place under seal all ballots, identification envelopes, and tally sheets, and shall retain them in a sealed condition for no less than 90 calendar days.

Section K. Regular Election Results

The candidate who receives a plurality of all votes cast shall be elected to the position. In the event that two or more candidates receive an equal number of votes cast, then the candidates receiving an equal number of votes shall appear before the City Clerk at the time and place designated by the Clerk and draw lots to determine which person shall be declared elected. The City Clerk shall determine the manner in which the lots shall be drawn and, in the event that any candidates involved do not appear, the City Clerk shall act for the absent person or persons in the drawing of the lot.

Section L. Special Election

In the event that an elected member of the Board has submitted a letter of resignation or the member's office becomes vacant by virtue of death, retirement, termination of

employment, or for any other reason, the City Clerk shall conduct a special election to fill the unexpired term. However, no special election shall be held where there is less than twelve months remaining before expiration of the term.

The Board shall designate the date of the election. The election shall be held not more than 90 calendar days after the submission of the letter of resignation or the receipt of notification of the vacancy. Candidates to be voted on at any special election shall be nominated in the same manner provided above, but the nominating petition shall provide that the nomination is made for the balance of the unexpired term and specify the ending date of that term. Nominating petitions shall be available at the office of the Plan seven weeks before the date fixed for the election. The special election to fill the unexpired term shall be conducted in the same manner as a regular election, except as otherwise provided in this section.

If any candidate in a special election receives a plurality of all votes cast, the candidate shall be declared by the Board to be elected to the position of employee member for the unexpired term. In the event that two or more candidates receive an equal number of votes, and no candidate receives more votes, then the candidates receiving an equal number of votes shall appear before the City Clerk at the time and place designated by the City Clerk in order to draw lots to determine which person shall be declared elected. The lots shall be drawn in the manner that the City Clerk shall determine. In the event that any candidate involved does not appear, the City Clerk shall act for the absent person in the drawing of the lot. The candidate who is selected by lot shall be declared by the Board to be elected to the position for the unexpired term.

Section M. Certification and Report of Results

The City Clerk shall within 14 calendar days after the date of election furnish to the Board the official certified results of the election.

Section N. Protests

Any interested person may challenge any proceeding, act or omission that may be material to the election, by written notice to the City Clerk not later than three business days after the count of the ballots. The City Clerk shall review the protests and submit a report of findings and recommendations to the Board with the official certified results within 14 calendar days after the election.

Section O. Emergency Board Actions

The Board shall be able to take certain actions relative to the election process in the event of a local emergency declared by the City of Los Angeles, the County of Los Angeles, the State of California, or the Federal government that significantly impacts the conduct of an election. In such an event, the Board shall be able to amend provisions in the Board Election Policies and Procedures. In the event that the Board Chairperson determines that the Board is not able to convene in a timely manner in order to approve emergency changes as indicated in the preceding sentence, the Board Chairperson may, with the concurrence of one other Board officer, be empowered to amend provisions in the Board Election Policies and Procedures regarding the number of

nominating petition signatures required and extend the time period to collect signatures to qualify to be placed on an election ballot.