



Board Report 20-43

Date: December 15, 2020
To: Board of Deferred Compensation Administration
From: Staff
Subject: DCP Autonomy

Board of Deferred Compensation Administration

Thomas Moutes
Chairperson

Raymond Ciranna
Vice-Chairperson

Robert Schoonover
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Second Provisional Chair

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Recommendation:

That the Board of Deferred Compensation Administration (Board): (a) approve a proposed Memorandum of Understanding (MOU) between the Board and the Personnel Department regarding the reporting relationship and duties for staff assigned to work with the City of Los Angeles Deferred Compensation Plan (DCP); and (b) assuming adoption of the MOU, recommend to the General Manager Personnel Department that, pending filling of the DC Plan Manager position, DC Plan Manager duties continue to be assigned on an interim basis to the current Employee Benefits Division Chief and Assistant Division Chief staff supporting the DCP.

Discussion:

A. Background

At the Board of Deferred Compensation Administration (Board) regular meeting on **July 16, 2019**, former Board Chairperson John Mumma established an Ad Hoc Committee on Deferred Compensation Plan Autonomy (“Committee”) to explore options for establishing greater authority and autonomy for the DCP. At its special meeting on **February 18, 2020**, Board Chairperson Tom Moutes requested that the Committee be convened as soon as practical to address the autonomy of the DCP and to review DCP staffing. At its special meeting on **May 19, 2020**, the Board amended the charge of the Committee to include reviewing and advising on matters regarding the creation of a new Defined Contribution Plan Manager (“DC Plan Manager”) classification, and directed the Committee to review proposed salary ranges and recruitment considerations for the DC Plan Manager classification and report back with recommendations to the Board.

The Committee met on **April 23, 2020**, **May 14, 2020**, and **September 8, 2020**, to conduct its analysis and develop its findings. At its meeting on **October 20, 2020**, the Board reviewed the

Committee's findings and recommendations and adopted a motion authorizing the Board Chairperson to work directly with staff to draft a Memorandum of Understanding (MOU) between the Board and the Personnel Department incorporating elements of autonomy desired by the Board, including with respect to selection and retention of the Defined Contribution (DC) Plan Manager, reporting of the DC Plan Manager to the Board, budget requests to the Office of the Mayor, and administrative tasks, and return to the Board with the proposed MOU for adoption.

B. Proposed MOU

Staff worked with the Board Chairperson, Personnel Department management, and the City Attorney in drafting a proposed MOU (**Attachment A**). The MOU incorporates the following:

Acknowledgments

- Legal authority for the DCP and the Board.
- Fiduciary and statutory responsibilities of the Board.
- City Charter and Los Angeles Administrative Code (LAAC) provisions regarding the duties of the Personnel Department General Manager with respect to appointments, assignment of work, and budget submission.
- The Personnel Department General Manager's concurrence with the Board's objectives with respect to various elements of autonomy for the Board.

Terms

- The Board will make recommendations to the Personnel Department General Manager regarding the appointment of the DC Plan Manager.
- Staff assigned to the DCP will remain assigned to the DCP and any contemplated reassignment will not take place unless the Personnel Department General Manager first provides an opportunity for the Board to provide its findings and recommendations.
- The DC Plan Manager will design and execute selection processes for other DCP staff and the Board will recommend selection of those staff to the Personnel Department General Manager.
- DCP staff will report directly to the Board with respect to reports and recommendations, strategic planning, policy development and execution, and all other administrative and oversight functions.
- The Board will work with staff to develop recommendations to the Mayor and City Administrative Officer (CAO) with respect to position authorities, authorization to fill positions, and other budgetary matters.
- The Board, through DCP staff, will conduct DCP procurement processes.
- The Board, through DCP staff, will develop and execute DCP contracts.
- The Board, through DCP staff, will administer DCP training-related travel.
- The Board, through DCP staff, will where practical and feasible administer DCP accounting, payroll, purchasing, and timekeeping functions.

The MOU, upon its execution, will assist the Board and the Personnel Department to implement a forward-thinking model for a refined governance structure that best serves the DCP and its participants. Staff recommends that the Board approve the proposed MOU between the Board and the Personnel Department regarding the reporting relationship and duties for staff assigned to work with the City of Los Angeles DCP.

C. Interim Assignment of DC Plan Manager Duties

Until such time as the new DC Plan Manager is filled the Personnel Department expects that the Employee Benefits Division staff members presently devoting partial time to management of the program will continue to do so. Assuming adoption of the MOU, the Board could take formal action to recommend to the General Manager Personnel Department that, pending filling of the DC Plan Manager position, DC Plan Manager duties continue to be assigned on an interim basis to the current Employee Benefits Division Chief and Assistant Division Chief staff supporting the DCP.

Submitted by:



Steven Montagna, Chief Personnel Analyst

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF LOS ANGELES BOARD OF DEFERRED COMPENSATION
ADMINISTRATION
AND CITY OF LOS ANGELES PERSONNEL DEPARTMENT**

This Memorandum of Understanding (“MOU”) is made and entered this ___ day of _____, 2020, by and between the City of Los Angeles Board of Deferred Compensation Administration (“Board”) and the City of Los Angeles Personnel Department (“Department”) regarding the reporting relationship and duties for staff assigned to work with the City of Los Angeles Deferred Compensation Plan (DCP). The Board and the Department are referred to herein individually as a “Party” and collectively “Parties.”

RECITALS

WHEREAS, in 1983 the City of Los Angeles established the DCP under Internal Revenue Code Section 457 and Los Angeles Administrative Code (LAAC) Division 4, Chapter 14, as a voluntary supplemental retirement savings program for all employees who are members of one of the City’s three primary defined benefit retirement programs; and

WHEREAS, LAAC Section 4.1407 provides the Board sole authority to oversee the operation of the DCP and further provides the Department as the entity responsible for providing staff support for the DCP; and

WHEREAS, the Board and the Department have a statutory and fiduciary obligation to act solely in the best interest of DCP participants, with all DCP assets held in trust for the exclusive benefit of DCP participants and their beneficiaries; and

WHEREAS, pursuant to LAAC Section 4.1407, the DCP operates at no cost to the City, with all administrative and operating costs defrayed by DCP participants through direct assessments or fees; and

WHEREAS, certain other governmental agency defined contribution plans provide for a governance model whereby program staff report directly to the program governing body rather than an agency or department head, and that the DCP and its participants would be best served by a model whereby DCP staff report directly to the Board; and

WHEREAS, Los Angeles City Charter Sections (Charter Sections) 542 and LAAC Section 21.1 provide that the chief administrator officer of the Personnel Department is the head of the department and has the powers and duties of general managers as set forth in Charter Sections 506 and 510; and

WHEREAS, Charter Sections 506 and 510 provide, in relevant part, that the general manager has full charge and control of all work of the department, is responsible

for the administration of the department's affairs, including the supervision, control, regulation and management of the department, has the authority to appoint, suspend and transfer all employees of the department, submits the department budget, and exercises any further powers as may be conferred upon him/her; and

WHEREAS, the Personnel Department General Manager and the Board supports an oversight structure whereby the Board would make a recommendation to the Personnel Department General Manager for the appointment of an individual for the DCP's recently established DC Plan Manager position; and

WHEREAS, the Personnel Department General Manager, at the request of the Board, has agreed to delegate to the DC Plan Manager, or equivalent DCP manager, (and by extension, those staff positions reporting to same), subject to the General Manager's Charter and LAAC authority, duties and obligations, the responsibility of reporting directly to the Board for the purposes of DCP administration, including for the purpose of generating reports and recommendations, strategic planning, policy development and execution, and other administrative and oversight functions; and

WHEREAS, the Personnel Department General Manager and the Board support, subject to the requirements of the Charter and LAAC, an operational structure whereby the Board may separately and independently develop and submit to the City of Los Angeles Mayor and City Council requests for position authorities within the Personnel Department to be funded by DCP participant assessments or fees or other budgetary matters related to the DCP and to advocate therefore; and

WHEREAS, the Board and Department, after conferring with Board Counsel, find that the Board's objectives can be implemented by entering into an MOU between the Board and the Department with respect to selection of the DC Plan Manager, staff reporting to the Board, budgetary communications to elected officials, and other related administrative considerations, but subject to conformance with the requirements of the provisions of the Charter and LAAC.

NOW, THEREFORE, the Board and Department, in consideration of the covenants and agreements set forth herein, hereby agree as follows:

AGREEMENT

(1) Purpose of Agreement.

To establish an operating agreement between the Parties providing that the Board will make a recommendation to the Personnel Department General Manager for the appointment of DCP's recently established DC Plan Manager position; that the Personnel Department General Manager will delegate to the DC Plan Manager, or equivalent DCP manager, (and by extension, those staff positions reporting to same) the responsibility of reporting directly to the Board for the purposes of DCP administration, including for the

purpose of generating reports and recommendations, strategic planning, policy development and execution, and all other administrative and oversight functions; and that the Board may develop and submit to the City Council requests for position authorities to be funded by DCP participant assessment and fees or other budgetary matters related to the DCP and to advocate therefore; and to further address other related administrative considerations. All actions set forth herein shall be performed in conformance with the requirements of the Charter, LAAC and other City rules and procedures.

(2) Term of Agreement.

This Agreement will commence upon full execution hereof and will expire upon written agreement by the Parties.

(3) DC Plan Manager Selection and Retention.

The Board may make recommendations to the Personnel Department regarding the design and content of the selection process(es), participate in the selection process and make recommendation(s) to the Personnel Department General Manager with respect to appointment of the DC Plan Manager. When the DC Plan Manager position is vacant, the Board shall recommend the appointment, on an interim basis, of an interim DC Plan Manager, who shall be responsible for the most essential functions, as established by the Board, of the DC Plan Manager. All selection processes will be consistent with the Charter and the LAAC and the Civil Service rules applying to all City employees.

(4) DCP Staff Assignments.

The DC Plan Manager and other Personnel staff supporting the DCP will remain assigned to the DCP and the Personnel Department General Manager agrees that such staff will not be reassigned by the Personnel Department General Manager, unless the Personnel Department General Manager shall first provide an opportunity for the Board to provide its findings and recommendations with respect to any such proposed reassignment prior to the reassignment taking place. Nothing in the foregoing is intended to preclude, delay, or interfere with any DCP staff member voluntarily and independently pursuing a transfer or promotional opportunity to any position elsewhere within the City.

(5) Other DCP Staff Appointments.

The DC Plan Manager or equivalent DCP manager, working with the Board, shall have the sole responsibility for designing and conducting selection process(es) and making recommendation(s) to the Board, which shall subsequently provide recommendations to the Personnel Department General Manager with respect to appointment of all DCP staff. All selection processes will be consistent with the Charter and LAAC and with selection and Civil Service rules applying to all City employees.

(6) Staff Reporting.

The Personnel Department General Manager delegates to the DC Plan Manager, or equivalent DCP manager, (and by extension, those staff positions reporting to same), subject to the requirements of the Charter, LAAC and internal Personnel Department policies and rules, the responsibility of reporting directly to the Board for the purposes of DCP administration, including for the purpose of generating reports and recommendations, strategic planning, policy development and execution, and all other administrative and oversight functions.

(7) Budget Request for Position Authorities and Authorization to Fill Positions.

The Board, acting in concert with DCP staff, may separately and independently develop recommendations to the Office of the Mayor and City Administrative Officer (CAO) with respect to budget requests for position authorities within the Personnel Department to be funded by DCP participant assessments and fees, and authorization to fill positions, including requests for exemptions from hiring freezes, requests for approval of positions that may be subject to managed hiring processes in effect for the City, and other budgetary matters. The Board may independently transmit such budget-related communications to the extent permitted under the Charter and LAAC and the Mayor's procedural rules, but may from time to time act in concert with the Personnel Department General Manager as may be required.

(8) Procurements.

DCP staff, under the direction of the Board pursuant to the authority under LAAC Section 4.1407, and in accordance with such policies or practices established by the Board, shall be responsible for the development, review, and issuance of procurements for DCP contracted services, including working with Board counsel in developing the procurement method and vehicle, posting of procurements on the City's contractor website, reviewing and making determinations as to whether proposing firms are deemed compliant with the City's general contracting requirements, and responding to questions from prospective bidders regarding the City's general contracting requirements as they apply to the DCP and the specific services which are the subject of the procurements.

(9) Contracts.

DCP staff, under the direction of the Board, and in accordance with such policies or practices established by the Board, shall be responsible for the development, review, and issuance of all contracts for DCP services, including working with Board counsel in developing service agreements, requesting authority from the Office of the Mayor for executing contracts, and completing all other required administrative tasks related to contract execution.

(10) Travel.

DCP staff, under the direction of the Board, and in accordance with such policies or practices established by the Board, shall be responsible for the administration of training-related travel for DCP Board members and staff, in accordance with the City's policies, City Controller policies, and Board policies.

(11) Accounting, Payroll, Purchasing, and Timekeeping Functions.

DCP staff, under the direction of the Board, and in accordance with such policies or practices established by the Board, shall be responsible, to the extent practical and feasible, for its own accounting, payroll, purchasing, and timekeeping functions related to the administration of the DCP and its budget accounts. To the extent Department accounting and operational support may be required, the Board shall provide salary reimbursement for all Department time spent in support of accounting and payroll functions.

(12) Citywide Mandates.

DCP staff shall continue to be subject to all applicable Citywide mandates which the Department may apply, on behalf of the City, to Department employees, including Citywide trainings, disaster and emergency relief preparation and response, building and occupancy requirements, and other mandates.

(13) Enforcement/Dispute Resolution.

Either Party's failure to perform any of its duties or obligations under this MOU may be deemed a breach hereof by the non-breaching Party by written notice thereof. The non-breaching Party may, upon the failure of the breaching Party to cure the breach to reasonable satisfaction of the non-breaching Party, terminate this MOU. Prior to any such termination, the Board Chairperson and the General Manager of the Department shall meet and confer in regards to the breach. Any resolution of the breach shall be documented by the Parties; if such resolution changes or modifies any provision of this MOU, then this MOU shall be so amended in writing.

(14) Notices.

The representatives of the respective Parties are authorized to administer this MOU and to whom formal, demands and requests and communications shall be given are as follows:

Board of Deferred Compensation Administration
200 N. Spring Street, Room 867
Los Angeles, California 90012
Attn: Chairperson

Personnel Department
700 E. Temple Street, Room 305
Los Angeles, California 90012
Attn: General Manager

IN WITNESS THEREOF, the Parties hereto have caused this MOU to be executed by their duly authorized representatives as of the date first written above.

Board of Deferred Compensation Administration

THOMAS MOUTES
Chairperson

Date: _____

Personnel Department

WENDY G. MACY
General Manager

Date: _____

Approved as to Form:

MICHAEL N. FEUER, City Attorney

By: _____
Curtis S. Kidder
Assistant City Attorney

Date: _____