



Board Report 21-25

Date: May 7, 2021

To: Board of Deferred Compensation Administration

From: Staff

Subject: 2021 Board of Deferred Compensation Administration Election for Retiree Representative Board Seat – Extension of Election Date

Board of Deferred Compensation Administration

Thomas Moutes
Chairperson

Raymond Ciranna
Vice-Chairperson

Robert Schoonover
First Provisional Chair

Neil Guglielmo
Second Provisional Chair

Joshua Geller
Third Provisional Chair

Linda P. Le
Wendy G. Macy

Baldemar J. Sandoval
WPERP Representative
Vacant

Recommendation:

That the Board of Deferred Compensation Administration (Board) approve: (a) the proposed changes to the Board Election Policies and Procedures which provide the Board the ability to amend the election schedule due to administrative issues that may impact the conduct of an election (**Attachment A**); and assuming adoption of the proposed changes (b) approve extending the Election Date of the 2021 Board election for the Retiree Representative Board Seat from May 13th to May 27th due to certain administrative issues that impacted the number of ballots mailed.

Discussion:

A. Background

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

Board Position	Incumbent	Term
LACERS Representative	Joshua Geller	July 1, 2020 – June 30, 2023
LAFPP Representative	Baldemar J. Sandoval	July 1, 2020 – June 30, 2023
WPERP Representative	Vacant effective 3/1/2021; Prior incumbent – Hovhannes Gendjian	July 1, 2018 – June 30, 2021
Retiree Representative	Thomas Moutes	July 1, 2018 – June 30, 2021

The Board has adopted Election Policies and Procedures to govern the conduct of elections. Most recently, in December 2020, the Board amended its Election Policies and Procedures to incorporate certain emergency provisions and changes to the signatures-gathering requirement.

In accordance with the amended procedures, staff initiated the election process for the Retiree Representative Board seat with an Election Date of May 13, 2021. The election for the Retiree Representative Board seat is currently underway. All ballots must be received by the Office of the City Clerk – Election Division (City Clerk) by this date.

B. 2021 Election Update for Retiree Representative Board Seat

A notice of election with instructions on how to run for the upcoming Retiree Representative Board seat was mailed to all known eligible participants in early March. Election ballots were subsequently mailed on Thursday, April 22nd. A majority of eligible participants began receiving those ballots beginning the week of Monday, April 26th. On Wednesday, April 28th, an eligible participant contacted staff indicating that he had not yet received his ballot. Upon further research, staff discovered that due to an incorrect data filter that was applied on the ballot mailing list spreadsheet, a total of 73 eligible participants were not mailed ballots. Ballots to this group of participants were subsequently mailed on Thursday, April 29th.

Staff further conducted a comprehensive review of the ballot mailing list to ensure that no other eligible participants other than the 73 participants were omitted from the ballot mailing list. Below is a summary of staff's review and findings:

- An additional 512 eligible participants were not mailed a ballot. After comparing the ballot mailing list against the notice of election mailing list, the 512 eligible participants were incorrectly filtered out of the mailing list and did not receive a ballot.¹
- A total of 94 non-eligible participants received ballots erroneously. Staff identified the cause of this error as an inaccurate payroll system report which had identified these employees as terminated from City service when they are in fact active employees and thus not eligible to vote. Staff mailed a notice to these participants on Thursday, May 6th notifying them that they received a ballot in error and that they should discard the ballot. Should any of these ballots be cast, they will not be counted. Staff provides a final list of eligible participants to the City Clerk by the Election Date to validate the ballots cast in the election.

To ensure that all eligible participants are provided a ballot and have sufficient time to vote in the election, staff recommends that the Election Date be extended two weeks from May 13th to May 27th. Staff consulted with the City Attorney regarding extending the Election Date. The City Attorney advised that because the Board's Election Policies and Procedures prescribe the manner in which a Board election is conducted including setting timelines for the date of the election,

¹ Two participants from this group of 512 have already contacted staff to receive a ballot.

when materials are to be made available to candidates to run, and when ballots are to be mailed, amending the Board’s Election Policies and Procedures is required to make any changes to the current election schedule. The Board’s Election Policies and Procedures do not currently have a provision to address administrative challenges that may impact the conduct of an election such as when ballots are not mailed timely to a group of eligible participants. Accordingly, staff recommends that the Board approve the following change (new text in red-colored font) to the Emergency Board Actions section of the Board Election Policies and Procedures. The proposed changes will provide the Board with added flexibility to amend an existing election schedule to account for unanticipated or inadvertent administrative issues which could lead to the disenfranchisement of its participants.

Section P. Emergency *and Corrective* Board Actions

*“The Board may 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 enact temporary emergency election procedures to provide for the timely conduct of elections in accordance with the Board’s Election Policies and Procedures. **Additionally, the Board may take certain actions to an adopted election schedule in the event of certain administrative errors associated with the conduct of the election provided the Board finds that such modifications are necessary to support the enfranchisement of all participants who are eligible to vote in such election.**”*

Staff consulted with the City Clerk. They confirmed that the additional two-week extension will allow them time to mail the remaining ballots to the eligible participants. The additional two weeks will also allow the General Services Department (GSD) to mail a postcard to all eligible voters (approximately 13,000) to notify them that the Election Date has been extended to May 27th. Both the City Clerk and GSD have confirmed that they can begin mailing ballots and the postcard notice to eligible participants as soon as the Board takes action to approve the extension of the Election Date. Assuming the Board’s approval today, ballots and postcards are expected to be delivered to eligible participants by May 14th. Additionally, staff consulted with Voya regarding sending an email to all eligible participants with an email on file regarding the extension of the Election Date. It is anticipated that Voya is able to send this email by Monday, May 18th.

Based on the new Election Date of May 27th, the City Clerk has confirmed the updated election schedule below:

Task Name	Prior Date	New Date Based on Approval of 2-Week Extension
Election Date	Thursday, May 13, 2021	Thursday, May 27, 2021
Designation of observers to view ballot tally	Monday, May 10, 2021	Monday, May 24, 2021
Ballot tally	Monday, May 17, 2021	Tuesday, June 1, 2021
Deadline to submit written protests	Thursday, May 20, 2021	Friday, June 4, 2021
Certification of election results	Thursday, May 27, 2021	Thursday, June 10, 2021

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;
revised March 31, 2020; December 15, 2020*

Section A. Purpose

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

Section B. Definitions

When the initial letter of a word or phrase is capitalized herein the meaning of such word or phrase shall be as follows:

- 1) "Ballot Statement" shall mean a statement signed by the Office of the City Clerk (City Clerk) stating that all ballots received by the City Clerk have been counted.
- 2) "Ballot Tally" shall mean the counting of the ballots received by the City Clerk following an election in the manner described under Section K.
- 3) "Election Day" shall mean the date an election is to be held and the last day for ballots to be cast.
- 4) "Spoiled Ballot" shall mean a ballot that has been determined to be void by the City Clerk which may include a ballot that has stray marks or is damaged.
- 5) "Challenged Ballot" shall mean a ballot where the intent of the voter or voter information cannot be ascertained.
- 6) "Tally Results" shall mean the official results of the Ballot Tally.

Section C. 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 pursuant to City of Los Angeles Administrative Code Division 4, Chapter 14, Section 4.1407.

Section D. Time of Election

- 1) The election shall be held triennially during the month of May that precedes the month in which the term of office for a member of the Board is set to expire. The date of the election shall be designated by the Deferred Compensation Plan (DCP) staff not sooner than 90 days before the Election Day.
- 2) The election shall be held by secret ballot and shall be administered 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 Board member elections and special elections.

- 3) Eligible voters shall be only those DCP participants with a balance in the DCP and who are members of a constituent group for which an election is being held on that Election Day. To be a member of a constituent group means that one is either: (a) an active employee member of LACERS, LAFPP, or WPERP; or (b) a participant who has retired or otherwise separated from City service.
- 4) DCP staff shall provide to the City Clerk a primary roster, in alphabetical order, of eligible voters as of 30 days prior to Election Day. The roster shall contain the name, address, and last four digits of the social security number (employee ID numbers for WPERP employees) of each eligible voter.

Section E. Nomination of Candidates and Official Ballot

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 official ballot for the election. In order to have their name placed on the official ballot, the member seeking to run as a candidate for a Board seat shall submit a completed nominating petition as provided for in this section. Failure to submit a completed nominating petition as provided for in this section shall result in the candidate's name not being placed on the official ballot.

- 1) Nominating petitions shall be made available at the DCP staff office in City Hall or, if the Board designates, electronically to members of the appropriate constituent group, not more than 60 days prior to Election Day.
- 2) The nominating petition shall have a designated space for each eligible voter to sign. Each person signing the nominating petition shall provide their name, the department in which they are employed, and the date of signing. The Board may designate that electronic signatures be collected in lieu of physical signatures, and both physical and electronic signatures shall be counted to satisfy any candidate requirements.
- 3) In order for LACERS, LAFPP, or WPERP active employee member candidates to qualify to be placed on the official ballot, the nominating petition shall be signed by not fewer than 50 and not more than 100 individuals who are members of the DCP and respective constituent group. Signatures collected on the nominating petition shall be verified and validated by the City Clerk as described further in Section E4. In order for candidates separated from City service to qualify to be placed on the official ballot, the candidate must submit a completed nominating petition with no constituent signatures. Nominating petition signatures are not required for the separated from City service constituent group.
- 4) The nominating petition shall be submitted to the DCP staff by a date and time established by the DCP staff that is not more than 14 days from the date that the nominating petition is first made available to the candidates. The City Clerk shall verify that those persons signing the nominating petition were members as of the date of signing, and shall certify the sufficiency or insufficiency of each nominating petition, and shall so notify the candidate by registered mail.

- 5) Along with the submission of the signed nominating petition, interested candidates have the option to include an occupational ballot designation and a 250-word 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 Section 306 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.
- 6) The statement of qualifications for office may include information such as education, work experience, years of service, and other relevant qualifications and shall not exceed 250 words in length. Any words beyond the 250 word limit shall not be printed by the City Clerk. Qualification statements that are submitted by the due date, as established by the DCP staff under paragraph (4), shall be printed by the City Clerk and mailed with the ballot at no expense to the candidate.
- 7) The statement of qualifications shall include a disclaimer stating that neither the Board nor the City Clerk has verified the accuracy of the information contained in the candidates' qualification statements.
- 8) Should any candidate fail to submit an occupational ballot designation and/or a statement of qualifications by the specified due date, the appropriate sections for the occupational ballot designation and/or qualification statement shall include a statement indicating that the candidate declined to submit an occupational ballot designation and/or a statement of qualifications.
- 9) Prior to the Election Day, the City Clerk shall conduct a public drawing of the letters of the alphabet. Each of the letters of the alphabet shall be drawn by random. The order in which the letters are drawn shall determine the order by which the surnames of the candidates shall be printed on the official ballot. The term "surname" shall mean the name borne in common by members of a family for this purpose.
- 10) Each official 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 DCP and respective constituent group not printed on the official ballot and for whom the voter may wish to vote.

Section F. 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 related interpretations and regulations. Candidates are strongly encouraged to contact the Los Angeles City Ethics Commission for further information.

Section G. Notice of Election

- 1) Not more than 90 but not fewer than 60 calendar days prior to Election Day, the DCP staff shall notify the City Clerk of the fact of the election.
- 2) Not more than 30 but not fewer than 20 calendar days prior to Election Day, the DCP staff shall have prepared a Notice of Election specifying the election date, including a sample ballot containing the name of each candidate who has qualified to be placed on the official ballot, rules concerning eligibility to vote, and any additional information and instructions the City Clerk determines are appropriate. A copy of the Notice of Election shall be posted in the Office of the City Clerk and to its website.

Section H. Observers to the Ballot Tally

Each candidate whose name appears on the official ballot may 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 not less than three calendar days prior to Election Day. Designated observers shall wear identification badges at all times, shall not interfere in the ballot tally process, and shall be subject to regulations prescribed by the City Clerk.

Section I. Voting Procedures

- 1) The City Clerk shall mail a ballot packet for the election to each eligible voter listed on the roster supplied by the DCP staff. The mailing shall be completed not less than ten calendar days prior to Election Day.
- 2) Employees who become members of the DCP within 30 calendar days prior to Election Day and who wish to vote in that election shall obtain a certificate from the DCP staff certifying their eligibility to vote. The employee must present the certificate of eligibility to the City Clerk no earlier than seven calendar days prior to and not later than the close of business on Election Day. The City Clerk shall allow these members to vote.
- 3) 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 WPERP employees), signature, and date of signing;

5. A list of instructions to the voter; and
 6. The candidates' statements of qualifications, if any.
- 4) Upon receiving and casting their vote on 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 number for WPERP employees), signature, and date of signing on the identification envelope containing the ballot and shall enclose it in the return envelope. All ballots must be returned to the City Clerk by United States mail or personal deposit. Ballots shall be accepted not earlier than seven calendar days preceding Election Day, but no later than the close of business (specific time to be designated by the City Clerk) on Election Day. During this period, voters may personally deposit the return envelope containing their ballot in the ballot box in the Office of the City Clerk, Election Division. Ballots received by the City Clerk after the close of business (specific time to be designated by the City Clerk) on Election Day shall be marked as late and shall not be counted.
 - 5) 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 number for WPERP 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.
 - 6) 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.
 - 7) 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 of the ballot. The identification envelope of the replacement ballot shall be prominently marked "**REPLACEMENT BALLOT**" and the original ballot issued to the voter shall be void, if received.

Section J. Verification of Identification Envelopes and Challenges

- 1) 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 number for WPERP employees);
 3. The voter did not 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 Election Day;
 7. The voter has already turned in an identification envelope.
- 2) An authorized observer or the City Clerk, during the Ballot Tally, 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.
- 3) 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 making the challenge.
- 4) The City Clerk shall, with substantiating evidence, sustain or overrule each challenge. Without substantiating evidence being produced within three business days of the Election Day, the challenge shall be overruled and the ballot shall be tallied with the other ballots. Identification envelopes for which 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 K. Ballot Tally

- 1) 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.
- 2) 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.
- 3) If a ballot is a Spoiled Ballot, the ballot shall be declared void by the City Clerk and shall be preserved for a period of 90 calendar days after the election results are certified.

- 4) 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 not less than 90 calendar days after the election results are certified.

Section L. Election Results

- 1) The candidate who receives the most votes of all votes cast shall be elected to the position of Board member for the respective constituent group.
- 2) In the event that two or more candidates receive an equal number of votes cast, 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 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 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 of Board member for the respective constituent group.

Section M. Special Election

- 1) In the event that an elected member of the Board, prior to the expiration of such member's term, 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.
- 2) The Board shall designate the date of the special election. The special 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 under this policy, 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. The nominating petitions shall be available at the office of the DCP or, if the Board designates, electronically to members of the appropriate constituent group seven weeks before the date of the special election. The special election to fill the unexpired term shall be conducted in the same manner as a regular election, except as otherwise provided for in this section.
- 3) If any candidate in a special election receives the most votes of all votes cast, the candidate shall be declared by the Board to be elected to the position of Board member for the respective constituent group for the unexpired term.
- 4) In the event that two or more candidates receive an equal number of votes cast, 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 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 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 of Board member for the respective constituent group for the unexpired term.

Section N. Certification and Report of Results

The City Clerk shall officially certify the results of the election within 14 calendar days from the Election Day.

Section O. Protests of Election

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, together with the official certified results of the election.

Section P. Emergency *and Corrective* Board Actions

The Board may 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 enact temporary emergency election procedures to provide for the timely conduct of elections in accordance with the Board's Election Policies and Procedures. *Additionally, the Board may take certain actions to an adopted election schedule in the event of certain administrative errors associated with the conduct of the election provided the Board finds that such modifications are necessary to support the enfranchisement of all participants who are eligible to vote in such election.*