

CITY OF LOS ANGELES
BOARD OF DEFERRED COMPENSATION ADMINISTRATION
PLAN GOVERNANCE AND ADMINISTRATIVE ISSUES COMMITTEE

ADOPTED MINUTES
MEETING OF SEPTEMBER 30, 2010 – 9:00 A.M.
200 N. SPRING STREET, ROOM 805

Committee Members:

Present:

Eugene Canzano, Chairperson
Clifford Cannon
John Mumma
Maggie Whelan

Other Board Members Present:

None

Staff:

Personnel: Alex Basquez
Steven Montagna
Natasha Gameraoz
Ashley Stracke

City Attorney: Chris Lee

1. CALL TO ORDER

Eugene Canzano called the meeting to order at 9:22 a.m.

2. PUBLIC COMMENTS

None.

3. MINUTES

Mr. Cannon requested that the minutes reflect the discussion regarding Board member elections with no candidates. **A motion was made by Cliff Cannon, seconded by John Mumma, to adopt the minutes as amended; the motion was unanimously adopted.**

4. DEFERRED COMPENSATION PLAN BYLAWS

Mr. Montagna introduced Deputy City Attorney, Chris Lee to the Committee and explained that he was attending the meeting in place of Deputy City Attorney

Anita Parys who was out of the office. Mr. Mumma asked if Mr. Lee had an opportunity to review the amended draft Bylaws. Mr. Lee indicated that he had.

Mr. Montagna stated that staff recommended that the Committee review the sections of the Bylaws in sequential order. He indicated that the Committee might want to address the 'Defined Terms' section after completing its review of the other sections in order to capture all of the necessary terms. Mr. Montagna stated that definitions were included for both the Personnel Department staff and City Attorney staff as a result of the discussion of the last Committee meeting. Mr. Canzano asked if staff used governance documents of other plans to help draft the language. Mr. Montagna indicated that staff had contacted other California plans and found that no other plans had similar documents.

Referencing the duties and responsibilities of Counsel staff, Mr. Canzano asked if section 2.3.6 was the appropriate section that would grant the Board the authority to seek outside counsel if needed. Mr. Montagna stated that the City Charter was the authoritative document that would allow for this and that such an action would first need to be approved by the City Attorney. Mr. Lee explained that such an action would also require the approval of the City Council. Mr. Canzano indicated that he was addressing this topic because the Pension systems have contracts with outside counsel. Mr. Lee indicated that section 2.3.6 of the Bylaws would allow the Board to request outside counsel.

Ms. Whelan asked if the Bylaws could make a specific statement that the Board should obtain the most qualified experts. Mr. Montagna stated that staff was aware of other plans that use outside counsel for advice on federal tax regulations and asked if the Board could do the same. Mr. Lee stated that the City Attorney would have to sign a contract with the firm, but that afterward the Plan could work directly with the outside counsel.

Ms. Whelan asked if the Bylaws could have language stating that the Plan budget accounts for the use of outside counsel. She indicated that she believed there were topics that would be better addressed by outside counsel. Mr. Canzano stated that he liked the idea of including language that would explicitly state that the Plan would bare all costs associated with obtaining outside counsel.

Ms. Basquez referred the Committee to page three. She stated that staff could include a section that would clearly define the responsibility the Board has to obtain third party expertise specifically in regards to obtaining outside counsel. Mr. Mumma stated that the Committee would also like language that addressed that it would be paid in full by the Plan. Mr. Canzano agreed and stated that while the authority for the Board may already be in place in other governing documents of the City, he believed that it would be helpful to clearly define that in the Bylaws. Mr. Montagna stated that he believed that it would be helpful if the

Bylaws explicitly stated that the Board would approve a budget for outside counsel.

Mr. Cannon stated that he believed that all of this information was already addressed in the Bylaws as written. Ms. Whelan stated that she believed that it would more clearly define the obligation the Board has to obtain such expertise.

Mr. Mumma indicated that the topic of using outside counsel should be addressed in sections 2.1 as well as 2.2. Mr. Montagna stated that the Board may want to submit a request to the City Attorney's office asking to develop a mechanism for how to address questions on regulatory issues that the City Attorney may not be well-versed in.

Mr. Montagna stated that staff would draft that language and bring it back to the Committee. Ms. Stracke asked if the Committee would like to make a motion to adopt the section 2 language as amended. Mr. Montagna stated that adoption of the motion would allow staff to remove the tracked changes formatting for any parts approved by the Board. **A motion was made by John Mumma, seconded by Cliff Cannon, to adopt Section 2: "Duties and Responsibilities of the Board, Staff, and Counsel of the Bylaws" as amended; the motion was unanimously adopted.**

Mr. Mumma asked that all references to the "Brown Act" be referred to as the Ralph M. Brown Act. Ms. Stracke referred to page 9, section B, and stated that "expiration of term" would be added as requested at the last Committee meeting. Mr. Canzano suggested that the Bylaws include additional language to account for other reasons the Vice-Chairperson may assume the duties of the Chairperson. Ms. Stracke stated that the succession language in the Bylaws closely reflects the succession language for the City's elected officials and explained that there was no such clause in that language. Ms. Basquez recommended that the Bylaws use the word "incapacitated" in place of "disability." The Committee agreed.

Mr. Montagna stated that there was also a change to page 9 establishing an expectation regarding the length of the meetings. Mr. Mumma then brought up the topic of Board member attendance. He explained that the Police Protective League Board Bylaws has a section that indicates that Board meetings are a primary duty of Board members. He indicated that it might be useful to include a similar section in the Bylaws.

Mr. Montagna stated that one possible way to address Board member attendance would be to include a section in the Bylaws that stated there would be an annual review of Board member attendance. Mr. Lee stated that there was a similar policy implemented by the Workforce Investment Board. Mr. Mumma asked how this might be implemented. Mr. Canzano suggested making it part of

the Plan Annual Report. Mr. Montagna agreed and also suggested making it a separate report to the Board once a year.

Mr. Canzano stated that he wanted there to be a mechanism that would indicate properly excused absences. Mr. Mumma indicated that the Chairperson would be required to determine whether an absence was excused or unexcused. Mr. Canzano stated that the issue of excused absences could be reevaluated in the future. Mr. Mumma suggested that language be drafted to the effect of “staff will present a report to the Board in sufficient time for the Annual Report.”

Mr. Montagna indicated that language could be drafted to the effect of “It is expected that Board members will attend meetings on a regular basis and absences will be rare. Staff will provide the Board with an annual report indicating the attendance of the Board members during the prior year.” It was agreed that this language could be inserted under section 3.4 “Meetings.”

Mr. Mumma stated that the current draft of the Bylaws appear to use two different numbering systems and requested that it be uniformly organized. Staff indicated that they would make the changes.

Mr. Cannon referred to section 3.7 on page 10, and suggested that the Bylaws specify a specific number of Board Members required for amending the document. There was discussion regarding the number of Board members it would take for a motion to pass. Mr. Canzano explained that for a motion to be approved, there must be at least five aye votes. Mr. Lee explained that generally boards could pass votes with the majority of members present at the meeting. He gave the example of a nine-person board in which five people make quorum. He explained that boards generally pass a vote with the majority of members present, which in such a case would be three members. Mr. Lee stated that he would review Robert’s Rules of Order to confirm.

Ms. Whelan stated that the Civil Service Commission, a five-person board, required three affirmative votes to pass a motion. She explained that if the Board only had three members present, a motion could only be passed if unanimously adopted.

Mr. Montagna stated that the Board had a precedent requiring a majority of the Board to pass a resolution. He asked if the City Administrative Code addressed the issue. Mr. Lee indicated that the City Administrative Code generally allowed boards to select their own voting and governance policies. Mr. Lee cited section 3.6(a) and stated that the Board’s Bylaws currently require an “order or resolution [to be] adopted by a majority of its members.”

Mr. Cannon asked if Robert’s Rules superseded the Bylaws. Mr. Lee explained that Robert’s Rules would only come into effect if the Bylaws did not address a particular topic. He indicated that since the Bylaws currently require a majority of

members to pass a resolution, this would take effect over what might be addressed by Robert's Rules.

Ms. Whelan left the meeting at 10:30 a.m.

The Committee next discussed abstention votes. Mr. Canzano stated that from his experience on other boards he understood an abstention vote to be considered as an affirmative vote. Mr. Lee stated that according to Robert's Rules of Order, abstention votes are considered negative votes. Mr. Montagna asked if it were possible for the Board to determine how abstentions would be counted. Mr. Lee stated that this could be addressed in the Bylaws.

Mr. Mumma stated that on the other boards that he was a member of, members were not allowed to abstain, but rather must excuse themselves from the room. He explained that this was done to encourage members to always take a position as well as to ensure that members leave the room if they have a conflict of interest regarding a specific topic.

Mr. Canzano asked the Committee if they would like to include language regarding abstentions in the Bylaws. Mr. Montagna stated that the City Attorney had ruled that an abstention vote was considered an affirmative vote during the controversial 2004 Board resolution regarding the selection of the Plan's third party administrator. Mr. Lee stated that staff in his office had been discussing abstention votes and their affect on board decisions.

Mr. Montagna asked how the Committee would like to proceed with this topic. Mr. Mumma stated that he believed that the Board should take a policy of not accepting abstentions and rather require Board members to leave the room when a conflict of interest exists. Mr. Canzano stated that he did not believe he had enough information to make a decision on the matter. Mr. Cannon agreed.

Ms. Basquez asked if the Committee would like for staff to review the Bylaws of comparable agencies for direction in regards to abstention votes. Mr. Canzano stated that he would like for staff to review the policies of the City's retirement systems. Mr. Lee stated that he would draft a memo discussing how Robert's Rules of Order viewed abstentions.

Mr. Mumma returned to the topic of amendments to the Bylaws and stated that he believed that the Bylaws should be approved by supermajority. Mr. Canzano questioned the need for resolutions regarding the Bylaws to be different than other decisions of the Board. Mr. Mumma stated that he believed that the Bylaws should be a protected document. Mr. Canzano stated that he would like additional information before taking a position.

Mr. Mumma stated that the Police Protective League required a supermajority for resolutions regarding the Bylaws and political contributions. Mr. Canzano asked

if counsel had anything to add. Mr. Lee stated that the topic was a policy decision of the Board. He also indicated that most governing documents do require a supermajority for amendment.

Mr. Canzano stated that he would like to agendaize this for the Board. Mr. Montagna stated that staff would review what the City's retirement systems policies were in regards to this topic.

Ms. Stracke asked the Committee for a motion. **A motion was then made by John Mumma, seconded by Cliff Cannon, to adopt section 3 "Governance and Administration of Meetings" as amended with staff reporting back on the governance policies regarding abstention and Bylaw amendments of the City's other retirement systems; the motion was unanimously adopted.**

5. REQUESTS FOR FUTURE AGENDA ITEMS

None.

6. ADJOURNMENT

A motion was made by Cliff Cannon, seconded by John Mumma, to adjourn the meeting; the motion was unanimously adopted. The meeting adjourned at 11:05 a.m.

Minutes prepared by staff member Ashley Stracke.