

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

PROPOSED MINUTES
MEETING OF NOVEMBER 9, 2010 – 2:00 P.M.
200 N. SPRING STREET, ROOM 805

Committee Members:

Present:

Eugene Canzano, Chairperson
Clifford Cannon
John Mumma
Maggie Whelan

Other Board Members Present:

Bob Schoonover

Staff:

Personnel: David Luther
Steven Montagna
Natasha Gameraoz
Ashley Stracke

City Attorney: Curtis Kidder

1. CALL TO ORDER

Eugene Canzano called the meeting to order at 2:09 p.m.

2. PUBLIC COMMENTS

None.

3. MINUTES

Mr. Mumma stated that there was a typographical error on page 5. **A motion was made by John Mumma, seconded by Maggie Whelan, to adopt the minutes as amended; the motion was unanimously adopted.** Mr. Cannon arrived at 2:13 p.m.

4. DEFERRED COMPENSATION PLAN BYLAWS

Mr. Montagna introduced Mr. Kidder as the Plan's newly designated City Attorney. He stated that Mr. Kidder had made several suggestions regarding the

bylaws and that staff had provided a copy of those suggestions for the Committee to review. He recommended that the Committee work off of this version in its discussion.

The Committee began its review of Section 2 of the Bylaws. Mr. Mumma asked about the reference to Charter Section 245 in Section 2.1(A)(2). Mr. Kidder explained that this was the provision that allowed the Los Angeles City Council (City Council) to veto actions of the Board.

Mr. Montagna referred to section 2.1(E)(1) and explained that the word “provider” would be more appropriate than the word “advisors” since the vendors provide investment services to the Plan. Mr. Kidder indicated that he agreed.

Mr. Montagna asked Mr. Kidder to explain his comment regarding 2.1(F)(2). Mr. Kidder stated that the phrase “and their representative constituencies as represented by the governance of the Plan” was not clear. Mr. Mumma suggested that the section state “be responsible and accountable to Plan participants.”

Mr. Montagna suggested adding “and ad hoc” after “standing” in Section 2.1F(5). The Committee agreed. Mr. Mumma asked if the word “consideration” would limit the Committee from taking action on items. Ms. Whelan indicated that she believed this word was appropriate given the fact that the Committees only made recommendations to the Board. *Mr. Schoonover arrived at 2:27 p.m.*

Mr. Mumma asked why Mr. Kidder believed that Section 2.2(A)(7) conflicted with the City of Los Angeles Administrative Code (Administrative Code). Mr. Kidder explained that the Administrative Code states that the City Clerk shall administer the elections of the Plan, not staff. The Committee decided that the language should be amended to state “Coordinate with the City Clerk to facilitate on behalf of the Plan all elections for the Board of Deferred Compensation Administration.”

Mr. Montagna stated that Section 2.3(A)(6) was drafted as a result of the discussions of the previous Committee meeting. Mr. Mumma asked if the Committee had determined that the Board would annually budget for outside counsel. Mr. Montagna asked if Mr. Kidder had experience using outside counsel. Mr. Kidder explained that he had. He indicated that in recent years the City Attorney had dramatically reduced the City’s use of outside counsel, however, he also explained that outside counsel could still be used for complicated legal matters. Mr. Montagna stated that staff could allocate funds in the Plan’s Annual Budget. The Committee agreed to add 2.3(A)(6).

Mr. Kidder stated that he included sections 2.3(A)(8) and 2.3(A)(9) to further clarify the role of Board Counsel. Mr. Canzano indicated that he did not want any language that may preclude the Board from obtaining fiduciary liability insurance. Mr. Mumma indicated that he believed that the language could be left in until the

point in time the Board obtained the insurance, should it do so in the future. Mr. Kidder stated that he would look into that issue. **A motion was made by Bob Schoonover, seconded by John Mumma to adopt Section 2: “Duties and Responsibilities of the Board, Staff, and Counsel” of the Bylaws as amended; the motion was unanimously adopted.**

The Committee began its review of Section 3 of the Bylaws. Mr. Kidder stated that the Ralph M. Brown Act requires boards to designate the meeting location of its regular meetings, otherwise the meeting would be considered “special”. The Committee decided to revise Section 3.4(A) to include “700 East Temple, Room 350, Los Angeles” as the regular meeting location and omit the first sentence of Section 3.4(B).

Mr. Mumma asked if Mr. Kidder’s comment on 3.4(C) was only a note to Committee members and it was not meant to be added to this section of the Bylaws. Mr. Kidder confirmed that this was the case.

Mr. Canzano asked if staff could address the matter of abstention votes that was discussed at the previous Committee meeting. Mr. Kidder indicated that Administrative Code 21.19 required that abstention votes be recorded as a “yes” vote. He explained that this differed from Robert’s Rules of Order.

Referring to Mr. Kidder’s comment on 3.4(D), Mr. Montagna indicated that there was not a provision in the Administrative Code that discussed the removal of Board members. Mr. Cannon asked if 3.4(D) was needed. Mr. Canzano indicated that he believed that this would provide valuable information to participants. The Committee agreed to keep 3.4(D) without adding a provision regarding the removal of Board members.

In regards to 3.5(C), Mr. Mumma asked if the meeting materials were currently made available to the public through the Plan website. Ms. Gameroz stated that the information was provided on the Personnel Department website. Mr. Montagna explained that posting the meeting materials on the Plan website maintained by Great West Retirement Services (Great West) might require that everything go through the firm’s compliance section before being posted. Ms. Gameroz indicated that a link could be placed on the Great West Plan website directing participants and the public to the Personnel Department Plan website.

Referring to 3.5(E), Mr. Kidder stated that the Committee may want to clarify how the agenda is set since it conflicts with Section 2.1(F)(6). Ms. Whelan stated that both the Board and staff set the agenda. Mr. Mumma suggested deleting Section 2.1(F)(6). The Committee agreed. **A motion was made by Ms. Whelan, seconded by John Mumma, to reconsider the previous motion adopting Section 2: “Duties and Responsibilities of the Board, Staff, and Counsel” of the Bylaws as amended; the motion was unanimously adopted. A motion was subsequently made by Ms. Whelan, seconded by**

Cliff Cannon, to adopt Section 2: “Duties and Responsibilities of the Board, Staff, and Counsel” of the Bylaws as amended including the omission of Section 2.1(F)(6); the motion was unanimously adopted.

The Committee next discussed Section 3.6. Mr. Kidder stated that he believed that the wording of section 3.6(A) was unclear and should more closely mirror City Administrative Code 21.16. The Committee came to the conclusion that it should be phrased as “The Board shall exercise its conferred powers by order or resolution adopted by a majority of its members.”

Mr. Kidder stated that upon further review of Section 3.6(C) the wording was in line with the City Administrative Code and that his comment should be disregarded.

Mr. Mumma again asked if the word “consideration” was appropriate in Section 2.1(F)(5) given that Section 3.6(D) indicates that the Board could delegate authority to its Committees. Mr. Kidder explained that the word “consideration” in Section 2.1(F)(5) was used broadly and therefore would also be appropriate in instances where the Board has delegated authority.

Mr. Schoonover asked if five members would be required for an action to be taken should the Board delegate authority to a Committee. Mr. Kidder indicated that typically committees are made up of less than a quorum of the boards they represent. He explained that if a committee was composed of a quorum of the Board and all of the members were present, this would be considered a special meeting of the board and would need to be noticed as such.

Mr. Canzano asked if this was how the Plan had been operating. Mr. Montagna stated that staff had been notifying the public of Committee meetings as it would Board meetings. He explained, however, that the agenda indicates that the meetings are Committee meetings and not Board meetings. Mr. Kidder stated that committees can allow non-committee members to attend meetings which may lead to a quorum of the Board, however, they must be noticed as both a committee meeting and as a special board meeting in order to be in compliance with the Ralph M. Brown Act. Ms. Whelan asked if non-committee members were allowed to vote. Mr. Kidder stated that typically this is not allowed and would need to be stated in the bylaws.

Mr. Montagna asked if Mr. Kidder recommended that the Plan’s committees be composed of less than a quorum of the Board. Mr. Kidder stated that typically committees are made up of less than a quorum of the Board and explained that if a Committee is made up of a quorum of a Board and all of the members vote on a matter then that action could be considered a final action of the Board. Given Mr. Kidder’s comments, Mr. Mumma stated that he believed that each of the Committees should be composed of no more than four members. He also stated that it should be made clear that non-Committee members can attend Committee

meetings, but may not vote. He indicated that this topic should be addressed at the next Board meeting.

Mr. Kidder noted that the current meeting was not noticed as both a Committee meeting and a special meeting of the Board. He recommended that, in order to comply with the requirements of the Ralph M. Brown Act, one member leave the meeting. *Mr. Schoonover left the meeting at 3:25 p.m.*

The Committee continued its review of Section 3. Mr. Kidder suggested moving Section 3.6(D), 3.6(E), and 3.6(F) to Section 4 of the Bylaws regarding Committees. He indicated that the Committee should omit “to establish and” from Section 3.7. The Committee agreed.

Ms. Stracke explained that there was discussion at the last Committee meeting regarding the possibility of requiring a supermajority of the Board to amend the Bylaws and asked Mr. Kidder to speak to this. Mr. Kidder indicated that although Robert’s Rules requires a 2/3 vote to amend bylaws, City Administrative Code 21.16 requires a majority of the members to adopt a resolution, therefore the Board could not require a supermajority to pass amendments to its Bylaws. Mr. Canzano suggested referencing the Administrative Code. Mr. Montagna recommended that the Committee adopt the following language for Section 3.7: “The Board has the authority to amend its bylaws by a majority vote consistent with LAAC 21.16.” **A motion was made by John Mumma, seconded by Maggie Whelan, to adopt Section 3: “Governance and Administration of Meetings” of the Bylaws as amended; the motion was unanimously adopted.**

Mr. Mumma suggested that the Section 4.1(D) refer to the Board Chairperson and to eliminate “and the Board” from Section 4.1(E). The Committee agreed. Mr. Kidder recommended that Sections 4.1(G) and 3.6(E) be consolidated. Mr. Montagna recommended that Section 3.6(E) be deleted and Section 4.1(G) state: “A quorum of the Committee is not required to conduct a meeting; however, the Committee Chairperson must be present in order for an action to be taken.” Ms. Whelan asked if the Bylaws could use the term “Chair” in place of “Chairperson.” The Committee agreed with the change.

Mr. Kidder stated that Section 4.1(I) should reflect that Robert’s Rules of Order are to be used as a guideline to be consistent with Section 3.4(C). He also recommended that 3.6(D) and 4.1(M) be consolidated and included in Section 4. The Committee agreed to both of these changes. Since Section 4 would require significant changes to the language and organization of the information, Mr. Montagna recommended that the Committee not adopt the section until staff could bring back the amended version. The Committee agreed.

The Committee next reviewed Section 5 of the Bylaws. Mr. Canzano asked that the Bylaws not state a specific amount for the reserve fund. Mr. Montagna

recommended that the language instead state: “To protect Plan participants from fluctuations in assets which may require frequent changes to participant fees, the Board has established a target reserve surplus as designated by the Board.” Ms. Stracke recommended also omitting “Department of Water and Power” from Section 5.1 since the Plan no longer reimburses the department for staffing.

Mr. Montagna also recommended that a section stating “At the beginning of each Plan year, staff will present, for adoption of the Board, a Plan budget.” Ms. Whelan asked if the term “Plan Year” could be cited in Section 1: “Defined Terms”. Mr. Canzano suggested using the term “calendar year” instead of “Plan Year” in the new section. The Committee agreed, but also requested that the term “Plan Year” be cited in Section 1 as well.

5. REQUESTS FOR FUTURE AGENDA ITEMS

None.

6. ADJOURNMENT

A motion was made by Maggie Whelan, seconded by Cliff Cannon, to adjourn the meeting; the motion was unanimously adopted. The meeting adjourned at 4:05 p.m.

Minutes prepared by staff member Ashley Stracke.