



Board Agenda Item 31

DATE: November 8, 2022

TO: Board of Supervisors

SUBMITTED BY: Hollis Magill, Director of Human Resources

SUBJECT: Amend the Deferred Compensation Management Council Bylaws

RECOMMENDED ACTION(S):

Approve the Amended Deferred Compensation Management Council Bylaws.

The recommended action has no fiscal impact on the County. At its September 27, 2022 meeting, the Deferred Compensation Management Council (the "Council") amended its bylaws by a unanimous vote of its members and is now seeking your Board's approval. The terms of the bylaws require that your Board approve amendments to the bylaws. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board may choose not to approve the amended bylaws and recommend that the Council revise and resubmit the bylaws for Board approval.

FISCAL IMPACT:

The recommended action has no fiscal impact on the County.

DISCUSSION:

On January 20, 1976, the Board of Supervisors adopted Resolution No. 76-102, which created the County of Fresno 457(b) Deferred Compensation Plan (the "457(b) Plan") and the Council. On April 17, 2012, the Board of Supervisors adopted Resolution No. 12-154, which modified the membership of the Council to its current composition: the County Administrative Officer (CAO), Auditor-Controller/Treasurer-Tax Collector, Director of Human Resources, Retirement Administrator, one (1) department head appointed by the CAO, and two (2) members at-large appointed by the Board of Supervisors. In addition, on April 5, 2022 your Board adopted Resolution No. 22-114 which also delegated the authority to oversee the County of Fresno 401(a) Defined Contribution Plan (the "401(a) Plan") to the Council. The duties and responsibilities granted to the Council include:

- Enforcement of the provisions of the 457 (b) and 401(a) Plan Documents;
- Direction of the third-party administrator on behalf of the County to make disbursement of 457 (b) and 401(a) Plan benefits;
- Selection and review of any investment currently offered or under consideration to be offered as an investment option under the 457 (b) and 401(a) Plans;
- Make recommendations to the Board of Supervisors, as appropriate, regarding the appointment of such agents, advisors, and counsel, including a third-party administrator as necessary for the administration and operation of the 457 (b) and 401(a) Plans.

The bylaws were originally approved by the Board of Supervisors on December 11, 2012. The bylaws were most recently amended by your Board on May 26, 2020. The bylaws are being recommended for amendment to reflect the new responsibilities related to implementation of the 401(a) Plan by your Board on April 5, 2022.

Staff has attached a redlined version (Attachment B) and a final version (Attachment A) of the proposed amended bylaws. The proposed amended bylaws (Attachment A) were unanimously approved by a five-vote majority of the Deferred Compensation Management Council at its September 27, 2022 meeting. Staff would like to summarize the proposed amendments to the bylaws as follows:

1. Section 1 - FORMATION
 - a. This section was updated to state that the Council was initially created by the Board of Supervisors in 1976 per Resolution 76-102.
 - b. Language was added to state that the Council is granted the authority to oversee the 401(a) Plan by Resolution 22-114.
2. Section 2 - PURPOSE
 - a. Staff added more context to the term "Trust" by stating that the term has the same definition as Article 2.29 of the County of Fresno 457(b) Deferred Compensation Plan.
 - b. Staff added Paragraph 2.3, which states "The Council is a non-partisan, non-sectarian, non-profit making organization. It does not take part officially in, nor does it lend its influence to any political issues." This paragraph incorporates language found in the County Boards, Commissions, and Committees Bylaws Template provided in Exhibit A to Management Directive, Chapter No. 2700 (Boards, Commissions, and Committees).
3. Section 3 - DEFINITIONS
 - a. The definition of "Participant" is as defined by the 457(b) Plan and the 401(a) Plan.
 - b. The definition of "Plan" was changed to "Plans" and refers to both the 457(b) Plan and the 401(a) Plan.
4. Section 4 - MEMBERS
 - a. Subsection 4.3.1.1 relating to Board appointed members was deleted because the language was redundant with language in Paragraph 4.4.
 - b. Subsection 4.3.3 relating to meeting attendance was deleted in favor of new language in Paragraph 4.5, as staff determined that Ordinance Code Chapter 2.68 covers automatic resignation due to an appointed Council member's absences.
 - c. Language was added to the Subsections in Paragraph 4.4 providing that any newly appointed member will serve out the remainder of the previous member's term. This is consistent with current practice.
5. Section 5 - OFFICERS
 - a. Language was added to Subsections 5.7.3 and 5.7.4 to further clarify the duties of the Council Secretary or their designee. The Secretary of the Council shall now also "keep the roll and certify the presence of a quorum at all meetings and hearings of the Council or of standing subcommittees" and maintain "a list of all active Council members, and handle Council correspondence."
6. General Language Changes
 - a. Throughout the bylaws, references to the "Plan" were changed to the "Plans" to reflect the Council's new responsibilities related to the 401(a) Plan.

REFERENCE MATERIAL:

BAI #39, April 5, 2022
BAI #42, May 26, 2020
BAI #50, June 4, 2019
BAI #21, December 11, 2012
BAI #24, April 17, 2012
BAI #19b, January 20, 1976

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Attachment A, Amended Bylaws

On file with Clerk - Attachment B, Amended Bylaws - Redlined

CAO ANALYST:

Samantha Buck

Attachment A

Amended Bylaws

County of Fresno

Deferred Compensation Management Council

Bylaws

Adopted by the Board of Supervisors December 11, 2012

As Amended May 26, 2020

As Amended November 8, 2022

1. FORMATION

- 1.1. The Deferred Compensation Management Council was created by Resolution 76-102 by the Board of Supervisors of the County of Fresno on January 20, 1976.
- 1.2. The Council was delegated the authority to oversee the County of Fresno 401(a) Defined Contribution Plan by Resolution 22-114 by the Board of Supervisors of the County of Fresno on April 5, 2022.

2. PURPOSE

- 2.1. The purpose of the Council is to exercise administrative oversight of the County of Fresno 457(b) Deferred Compensation Plan and the County of Fresno 401(a) Defined Contribution Plan.
- 2.2. The Council has the following duties and responsibilities:
 - 2.2.1. Interpretation and construction of the policies and procedures of the Plans and the Trust, as defined in Article 2.29 of the County of Fresno 457(b) Deferred Compensation Plan;
 - 2.2.2. Establish all policies, procedures, and guidelines necessary or advisable to carry out the purpose of the Plans;
 - 2.2.3. Establish an investment policy or guidelines to ensure the prudent selection and monitoring of the Plans' investments;
 - 2.2.4. Selection and review of any investment currently offered or under consideration to be offered as an investment option under the Plans;
 - 2.2.5. Make recommendations to the Board of Supervisors, as appropriate, regarding the appointment of such agents, advisors, and counsel, including a third-party administrator as necessary for the administration and operation of the Plans; and
 - 2.2.6. Determine the reasonable expenses of the Plans and the administrative fee charged to Participants to pay for the Plans' reasonable expenses on an annual basis.
- 2.3. The Council is a non-partisan, non-sectarian, non-profit making organization. It does not take part officially in, nor does it lend its influence to any political issues.

3. DEFINITIONS

- 3.1 "Appointed Council Member(s)" refers to members appointed by the CAO or the Board, as described in paragraphs 4.1.5 and 4.1.6, below, respectively.

- 3.2 "Board" means the Board of Supervisors of the County of Fresno.
- 3.3 "Brown Act" refers to the Ralph M. Brown Act (Sections 54950 – 54963 of the California Government Code) which governs public meetings.
- 3.4 "CAO" means the County Administrative Officer.
- 3.5 "Council" means the Deferred Compensation Management Council.
- 3.6 "County" means the County of Fresno. "Non-appointed Council Member(s)" refers to members who serve on the Council while they hold one of the positions listed in paragraphs 4.1.1 through 4.1.4, below.
- 3.7 "Participant" means a Participant, as defined in Article 2.22 of the County of Fresno 457(b) Deferred Compensation Plan, or Article 1.36 of the County of Fresno 401(a) Defined Contribution Plan, as applicable.
- 3.8 "Plans" refers to the County of Fresno 457(b) Deferred Compensation Plan and the County of Fresno 401(a) Defined Contribution Plan.
- 3.9 "Staff" refers to employees within the County providing support to the Council in its administration of the Plans.

4. MEMBERS

- 4.1. The Council shall consist of seven (7) voting members as follows:
 - 4.1.1. Auditor-Controller/Treasurer-Tax Collector
 - 4.1.2. CAO
 - 4.1.3. Director of Human Resources or Deputy Director of Human Resources
 - 4.1.4. Retirement Administrator or Assistant Retirement Administrator
 - 4.1.5. One (1) department head appointed by the CAO
 - 4.1.6. Two (2) members at-large appointed by the Board of Supervisors; the two members at-large appointed by the Board of Supervisors must be Participants in one or both of the Plans.
- 4.2. Appointed Council Members (paragraphs 4.1.5 and 4.1.6, above) shall serve one (1) 3-year term. Appointed Council Members may be reappointed at the end of the designated term. Appointed Council Members shall continue to hold office until reappointed or replaced by their successor.
- 4.3. Vacancies in the office of a member of the Council.

- 4.3.1. Vacancies in the office of a Non-appointed Council Member shall occur due to any of the following events:
 - 4.3.1.1 The member is removed by the Board, pursuant to Article 8.01, Paragraph C of the County of Fresno 457(b) Deferred Compensation Plan.
 - 4.3.1.2 Separation from County employment/service, or, vacating the County office listed in paragraphs 4.1.1 through 4.1.4 above.
- 4.3.2. Vacancies in the office of any Appointed Council Member shall occur due to any of the following events:
 - 4.3.2.1 As provided in Fresno County Ordinance Chapter 2.68, as currently in effect and as or may be amended from time to time. For purposes of this subsection 4.3.2.1 only, the Council Member appointed under paragraph 4.1.5, above, shall be deemed appointed by the Board under the aforementioned Chapter 2.68.
 - 4.3.2.2 The member is removed by the Board, pursuant to Article 8.01, Paragraph C of the County of Fresno 457(b) Deferred Compensation Plan.
 - 4.3.2.3 Resignation from the office of Council member by the member, or, in the case of a department head (as described in paragraph 4.1.5, above), vacating that department head position.
- 4.3.3. The Council member being convicted of a felony or of any offense involving a violation of his or her official duties shall be, by affirmative vote of the Council and which vote shall not include the subject Council member, referred to the Board.
- 4.3.4. The death of the Council member.
- 4.4. If any of the events described in Section 4.3, above, apply, the following will happen:
 - 4.4.1 For Non-appointed Council members, the interim department head or interim Retirement Administrator shall temporarily assume duties until a new department head or Retirement Administrator is elected or appointed.
 - 4.4.2 For CAO-appointed members (as described in paragraph 4.1.5, above), the CAO shall appoint a new member as soon as administratively feasible. The newly-appointed member will complete the remainder of the term of the vacated office.
 - 4.4.3 For Board-appointed members (as described in paragraph 4.1.6, above), the Secretary or their designee will immediately notify the Clerk of the Board so that the Board may appoint a new member. The newly-appointed member will serve the remainder of the term of the vacated office.

- 4.5. Subject to the provisions of Section 4.3, above, Council members are required to attend all meetings of the Council, unless a Council member has good cause to miss a meeting.
- 4.6. No Council member shall receive compensation for their attendance at Council meetings or for any other purpose or purposes.

5. OFFICERS

- 5.1. The officers of the Council shall be a Chair, Vice-Chair and Secretary.
- 5.2. The Chair and the Vice-Chair shall be elected by the members of the Council at the first meeting of each calendar year and shall hold office until a successor is duly elected at such election.
- 5.3. The Chair shall preside at all Council meetings and shall have other powers and duties as may be prescribed from time to time by a vote of the Council.
- 5.4. The Vice-Chair shall have all powers and duties of the Chair in the event of the absence or disability of the Chair.
- 5.5. In the event of the absence or disability of the Chair and Vice-Chair, at any meeting or hearing of the Council, the Council shall elect one of its members as Chair Pro Tempore to preside over such meeting or hearing.
- 5.6. The Secretary of the Council shall be the Director of Human Resources or their designee.
- 5.7. The Secretary or their designee shall have the following powers and duties:
 - 5.7.1. Schedule all meetings of the Council.
 - 5.7.2. Post meeting agendas as required pursuant to the Brown Act.
 - 5.7.3. Attend all meetings and hearings of the Council or of standing subcommittees, keep the roll and certify the presence of a quorum at all meetings and hearings of the Council or of standing subcommittees, and keep a record or minutes of all that transpires at such meetings or hearings.
 - 5.7.4. Keep and have custody of all records of the Council, including maintaining a list of all active Council members, and handle Council correspondence.
- 5.8. If an officer fails for any reason to complete their term, the Council shall elect a successor for the balance of the unexpired term at its next regular meeting.

6. MEETINGS

- 6.1. The Council shall meet at least two (2) times per year, and shall set its meeting schedule as far in advance as possible.

- 6.2. Special meetings of the Council may be called at any time by the Chair, or by a majority of Council members, whenever in their opinion the business of the Council requires it.
- 6.3. Four (4) Council members shall constitute a quorum, provided that no action shall be taken without the affirmative vote of at least three (3) Council members.
- 6.4. Agenda items to be presented to the Council at regular meetings shall be given or delivered to the Secretary of their designee at least ten (10) business days in advance of the Council meeting, and agenda items to be presented to the Council at special meetings shall be given or delivered to the Secretary or their designee at least seven (7) business days in advance of the special Council meeting.
- 6.5. All meetings of the Council shall be called, held and conducted in accordance with the provisions of the Brown Act.
 - 6.5.1. Public Comment – Matters not on Agenda. Members of the public may comment on any item not appearing on the agenda. No person shall be permitted to speak unless he or she is recognized by the Chair and given permission by the Chair to speak. Matters presented under public comment cannot be discussed or acted upon by the Council at that time, with the following exceptions:
 - 6.5.1.1. A Council member may briefly respond to statements made or questions posed by persons exercising their public testimony rights.
 - 6.5.1.2. A Council member may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.
 - 6.5.1.3. A Council member or the Council itself may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.
 - 6.5.2. Public Comment – Agenda Items. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Council consideration. Upon being recognized by the Chair, such person may speak or present evidence relevant to the matter being heard.
 - 6.5.3. Right to Speak. No person shall be denied the right to speak because he or she declines to disclose their name, address or telephone number.
 - 6.5.4. Time Limit. Any person addressing the Council will be limited to a maximum of three (3) minutes per agenda item. However, the Chair, in their discretion, may extend such time as they may find reasonable under the circumstances or may further limit the time if the time anticipated to complete the agenda is unusually long.
- 6.6. Minutes shall include the time and place of each Council or standing subcommittee meeting, the names of the members present, all official acts of the Council, votes given by Council members

except where the action is unanimous, and when requested, a member's dissent or approval with their reasons. The minutes shall be presented for approval at the next regular Council meeting. The minutes, or a true copy thereof, approved by the Council and signed by the Chair, shall form part of the permanent records of the Council.

- 6.7. No proxy or substitute may vote in place of a Council member.

7. SUBCOMMITTEES

- 7.1. The Council shall have the power to create one or more subcommittees from time to time which shall serve at the pleasure of the Council. The members of the subcommittees shall be appointed by the Chair with the approval of the Council.
- 7.2. Standing Subcommittees. The Council shall have the power to create one or more standing subcommittees in order to assist the Council in its decision-making related to the administration, interpretation and application of the Plans by performing such functions as conducting research, developing reports, making recommendations or providing other assistance as determined by the Council. The Secretary or their designee shall post the agenda for any standing subcommittee meeting in accordance with Section 5.7 above.
- 7.3. Quorum for Standing Subcommittees. A quorum to conduct subcommittee business shall consist of two (2) members, but a lesser number may constitute a quorum for the purpose of adjourning a meeting or adjourning a meeting to a stated time. In any case in which a subcommittee takes action on any matter with only two members present, the subcommittee's report to the Council shall reflect the number of members actually voting.
- 7.4. Officers of Standing Subcommittees. Each subcommittee shall have a Chair and Vice-Chair, and such other officers as may be required who shall be selected by, and serve at the pleasure of, the subcommittee. Such officers shall have such powers and duties as the subcommittee may from time to time determine.
- 7.5. Ad Hoc Subcommittees. The Chair of the Council shall have the power, with the approval of the Council, to appoint such ad hoc subcommittees as are necessary for the purpose of furthering the objectives of the Council. If the Ad Hoc Subcommittee has four (4) or more members, then the provisions in Section 7.2, above, shall apply.
- 7.6. Attendance. Each member of a subcommittee shall attend meetings of the subcommittee as scheduled. If a member of a standing subcommittee fails to attend two (2) consecutive meetings, the member may be replaced by appointment of a replacement member by the Chair of the Council with the approval of the Council, or, in the case of absence from two (2) consecutive meetings of an ad hoc subcommittee, the replacement member may be appointed by the Chair of the Council.

8. AMENDMENT OF BYLAWS

- 8.1. Approval by the Council. An amendment to these Bylaws may be proposed at any time. At least five (5) members of the Council must vote in favor of the amendment in order for it to be approved.
- 8.2. Adoption by the Board. If the Council approves an amendment to the bylaws, the amendment shall be submitted to the Board. The amendment shall become effective immediately upon adoption by the Board.