



- **Board of Directors**
Organization and Personnel Committee

3/9/2010 Board Meeting

7-6

Subject

Amend employee deferred compensation plan in the Administrative Code to incorporate tax law changes

Description

Metropolitan provides a savings plan for employees under section 401(k) of the Internal Revenue Code and a deferred compensation plan under section 457 of the Internal Revenue Code. Both plans are set forth in the Administrative Code. Amendments to the deferred compensation plan are proposed to formally adopt changes permitted under federal fiscal stimulus legislation. The proposed amendments also conform the definition of compensation that can be deferred under the 457 plan and broaden distribution provisions, as permitted under revisions to the Internal Revenue Code. Similar amendments to the 401(k) plan were approved in December 2007 when the two 401(k) plans were consolidated. These amendments allow 457 plan participants to take advantage of this flexibility.

1997 Deferred Compensation Plan (457 Plan) Amendments

Required Minimum Distributions. Participants over age 70 ½ are required to receive annual minimum distributions from their deferred compensation accounts. The Worker, Retiree, and Employer Recovery Act of 2008 eliminated this requirement for calendar year 2009 and allowed participants to take advantage of this option immediately, with the plan amendment to follow. Great-West Retirement Services, the record-keeper for Metropolitan's deferred compensation and savings plans, notified affected participants of this option. Section 6810(h) is proposed to be added to the Administrative Code to formally add this provision to the plan.

Distributions to Employees in Military Service. Proposed section 6810(g) provides that participants are treated as severed from employment for plan purposes while serving in the military. This gives participants in military service the option to receive distributions from their deferred compensation accounts. Proposed amendments also permit deferral of any differential wage payments paid to Metropolitan employees during military service.

Hardship Withdrawals. The deferred compensation plan permits withdrawal from a participant's account to the extent necessary because of severe financial hardship to the participant resulting from a sudden or unexpected illness or accident affecting the participant or a dependent; casualty loss of the participant's property; or other extraordinary and unforeseeable circumstances arising from events beyond the participant's control. The proposed amendment allows Metropolitan to take the needs of a spouse into account in determining if the participant has such an unforeseeable emergency.

Death Distribution Provisions. Generally a participant's entire interest in his or her deferred compensation account must be distributed by the end of the calendar year that is five years after the participant's death. Proposed amendments broaden the distribution provisions to allow distributions to be based on the life expectancy of the participant, beneficiary or spouse.

Attachment 1 contains the proposed amendments with the changes shown in underline and strikeout format.

Attachment 2 shows the revised Administrative Code sections with these amendments. The complete text of the Plan as it presently exists can be viewed in Division 6, Chapter 7 of the Administrative Code on Metropolitan's Web site.

Policy

Metropolitan Water District Administrative Code Division VI, Article 7: Articles of The Metropolitan Water District of Southern California 1997 Deferred Compensation Plan.

Metropolitan will maintain the deferred compensation plan under section 457 of the Internal Revenue Code.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and approve the proposed changes to the Administrative Code amending Metropolitan's employee deferred compensation plan.

Fiscal Impact: None

Business Analysis: The proposed amendments will allow Metropolitan's employees additional flexibility with respect to certain withdrawals and distributions from their deferred compensation accounts, as permitted under the Internal Revenue Code.

Option #2

Do not approve the proposed amendments.

Fiscal Impact: None

Business Analysis: Metropolitan's employees will not be able to utilize the withdrawal and distribution flexibility provided under the changes to the Code.

Staff Recommendation

Option #1



Fidencio M. Mares
Director of Human Resources

2/19/2010
Date



Jeffrey Kightlinger
General Manager

2/22/2010
Date

Attachment 1 – Revised Administrative Code sections (changes marked)

Attachment 2 – Revised Administrative Code sections (final form)

§ 6802. Article III - Definitions.

For the purposes of the 1997 Plan, certain words or phrases will have the following meanings:

(a) "Compensation" shall mean all cash compensation for services to the District, that is includible in the Participant's gross income for the calendar year, including salary, wages, fees, commissions, bonuses, and overtime pay, plus amounts that would be cash compensation for services to the District includible in the Participant's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b) or 457(b) of the Internal Revenue Code (including an election to defer compensation under Section 6806 of this 1997 Plan). Compensation that would otherwise be paid for a payroll period that begins before separation from service is treated as having been paid or otherwise made available before the Participant's separation from service. To the extent permitted under Section 457(b) of the Internal Revenue Code and the regulations thereunder, Compensation shall also include amounts relating to certain compensation (as described in the federal income tax regulations), if paid within 2 ½ months following separation from service, including (a) pay for accrued sick, vacation or other leave, (b) deferred compensation and (c) regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments provided that the payment would have been paid if the Participant had continued in employment with the District, paid within 2 ½ months following separation from service, and, even if paid more than 2 ½ months after separation from service with the District, amounts relating to certain compensation (as described in the federal income tax regulations) paid to Participants who are permanently and totally disabled, and amounts relating to qualified military service under Section 414(u) of the Internal Revenue Code. For years beginning after December 31, 2008, (i) a Participant receiving a differential wage payment, as defined by Code §3401(h)(2) from Metropolitan while performing service on active duty in the uniformed military services, is treated as an employee of the District, and (ii) the differential wage payment is treated as Compensation.

§ 6810. Article XI - Payments to Participant.

(a) For Participants who separate from service on or after September 1, 2002, unless the Participant affirmatively elects otherwise, upon separation from service on or after normal retirement age, the Participant shall be deemed to have elected to defer distributions of the amounts deferred on behalf of the Participant until the 60th day after the date on which the Participant separates from service, at which time the amount deferred shall be paid to the Participant in a lump sum, or if elected by the Participant at least 30 days prior to the date payment is to be made, distribution may be made in the form of periodic payments on a monthly, quarterly, semiannual, or annual basis for a specific length of time, subject to the provisions of Article XIV.

(b) For Participants who separated from service before September 1, 2002, and who made an irrevocable election regarding payment of deferred amounts, such election may be revoked and a new payment election may be made in accordance with the above requirements at any time after September 1, 2002. If a Participant separated from service prior to September 1, 2002, and the Participant does not affirmatively revoke a prior payment election, all payments shall continue as previously elected.

(c) No payment schedule selected by a Participant shall be effective unless it is consented to by the District in its sole discretion. The District shall, however, only consent to the schedule if it conforms in all respects to the requirements of Section 457 and 401(a)(9) of the Code and the regulations thereunder, including the provisions of subsection (e) below.

(d) All distributions shall be subject to the rollover and plan-to-plan transfer provisions of §6826 of the MWD Administrative Code.

(e) Death Distribution Provisions.

(1) Distribution beginning before death. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest shall continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

(2) Distribution beginning after death. If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:

(a) If any portion of the Participant's interest is payable to a Designated Beneficiary, distributions may be made over the life or over a period certain not greater than the Life Expectancy of the Designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died.

(b) If the Designated Beneficiary is the Participant's surviving Spouse, the date distributions are required to begin in accordance with (1) above shall not be earlier than the later of: (i) December 31 of the calendar year immediately following the calendar year in which the Participant died; or (ii) December 31 of the calendar year in which the Participant would have attained age 70 ½.

(3) If the Participant has not elected a form of distribution by the time of his or her death, the Participant's Designated Beneficiary must elect the method of distribution no later than the earlier of: December 31 of the calendar year in which distributions would be required to begin under this Section; or December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant.

(4) If the Participant has no Designated Beneficiary, or if the Designated Beneficiary does not elect a method of distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(5) If the Surviving Spouse dies after the Participant, but before payments to such Spouse begin, the provisions of this Section shall be applied as if the Surviving Spouse were the Participant.

(f) Death benefits for Military Survivors. In the case of a death or disability occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

(g) Military Service - Severance From Employment. A Participant shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code §3401(h)(2)(A).

(h) Notwithstanding this Section 6810 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding section 6827 of the Plan, and solely for purposes of applying the direct rollover provisions of Section of the Plan, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions as defined in Section 6827(a)(1) of the Plan.

§ 6814. Article XV - Payments for Unforeseeable Emergencies.

The District, in its sole discretion, may direct the Trustee to make payments to a Participant from the Participant's amounts deferred to meet an unforeseeable emergency. An unforeseeable emergency is defined for purposes of this 1997 Plan as a severe financial hardship to the Participant resulting from the occurrence of a sudden and unexpected illness or accident affecting the participant or a ~~dependentspouse~~ or dependent (as defined in Section 152 of the Code (and for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), 152(b)(2) and 152(d)(1)(B)) of the Participant; loss of the participant's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Payments under this article may not be made to the extent the hardship is or may be relieved through compensation by insurance, by liquidation of the Participant's other assets (to the extent the liquidation would not itself cause severe financial hardship) or by cessation of further deferral under the Plan. Payments of amounts based upon an unforeseeable emergency will be made only to the extent reasonably required to satisfy the emergency need. For purposes of this article only, Participant shall also mean a beneficiary if the right to eventual payment has already vested in the beneficiary as a result of the death of the Participant.

Effective as of January 1, 2008, the District may in its sole discretion, take into account the needs of a primary Beneficiary under the Plan in determining if the Participant has incurred an unforeseeable emergency. For this purpose, a "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account under the Plan upon the death of the Participant.

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(b) For Participants who separated from service before September 1, 2002, and who made an irrevocable election regarding payment of deferred amounts, such election may be revoked and a new payment election may be made in accordance with the above requirements at any time after September 1, 2002. If a Participant separated from service prior to September 1, 2002, and the Participant does not affirmatively revoke a prior payment election, all payments shall continue as previously elected.

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