



Midpeninsula Regional  
Open Space District

R-19-08  
Meeting No. 19-02  
January 23, 2019

## AGENDA ITEM 4

### AGENDA ITEM

Board Compensation Policy Amendment

### GENERAL MANAGER'S RECOMMENDATIONS

1. Adopt a Resolution approving amendments to Board Policy 6.06 – *Meeting Compensation, Reimbursement of Authorized Necessary Expenses for Performance of Official Duties, and Adoption of Ethics Training Requirements Pursuant to Government Code Section 53232 et seq. (AB1234)* – to increase the number of compensable meetings from five to six per month.
2. Direct the General Manager to either introduce an ordinance increasing Board compensation to \$105.00 per meeting pursuant to new law, or to do further research and bring additional pertinent information back to the Board to inform its direction.

### SUMMARY

In January 2017, the Board of Directors expressed concern that legislative changes affecting the tax deductions of elected officials. On November 8, 2017, the Board directed staff to explore options to remedy these concerns and supported legislative changes to support this direction. Governor Brown signed Assembly Bill 2329 (Obernolte) on August 20, 2018. Effective January 1, 2019, it allows the Board to increase the total number of compensable meetings in a month from five to six upon annually adopting written findings that more than five meetings per month are necessary for the effective operation of the District. Additionally, it allows the District to increase the per meeting compensation, not to exceed 5% annually, by ordinance. Based on these recent legislative changes, the General Manager recommends increasing the number of Board compensable meetings to six per month and direction on introducing a new ordinance to increase the per meeting compensation by 5% to \$105.00. Based on available funds, the proposed increases are expected to fall within the Board-approved Fiscal Year 2018-19 budget. Future budgets would reflect Board-approved changes to compensation.

### DISCUSSION

Prior to January 1, 2019, California Public Resources Code section 5536 set compensation for Board members at \$100 per meeting with a maximum of \$500 or five meetings per month. This level of Board compensation had not changed since 1984. Based on US inflation calculators, the cumulative rate of inflation during this timeframe has been approximately 141.5%.

Although compensation has not changed in 34 years, the scope of Board member responsibilities and the complexity of policy oversight has substantially grown:

- Since 1984, the District's budget has grown from \$13.9 million to \$103 million, which includes the purchase of the new administrative office
- The District secured a substantial second funding source for capital projects in the form of a \$300 million general obligation bond passed by voters in 2014
- District land holdings have grown from 18,300 acres to 63,500 acres
- The District now operates in three counties, including the San Mateo County coast, while it previously had operated in only two counties and was limited in San Mateo County to the southern bayside area.
- The District's constituent population grew from 570,000 to 760,000

Based on Board direction in 2017, staff collected monthly compensable meeting data throughout 2017 and 2018 to assess the appropriateness of requesting new legislation for 2019. However, in mid-June of 2018, the District's legislative consultant, Public Policy Advocates, alerted staff of a related bill, AB 2329 (Obernolte), which provided Board members with enhanced latitude in increasing the number of compensable meetings and per meeting compensation amount. The intent of the bill, as expressed in the author's bill analysis, is as follows:

*"This bill puts special districts on the same playing field. Many special districts are operated with small boards of directors that work diligently to make their special district as useful to the community as possible. This important work takes board members' time. Allowing special districts to be allowed the same amount of meetings a month will help level the playing field for those districts that currently have lower limits. Additionally, allowing districts the authority to slightly adjust their compensation annually will help districts assess for themselves what is fair and what their district can handle, rather than raising the compensation statewide."*

After reviewing the bill and conferring with the General Manager, the District actively supported the bill per *Board Policy 1.11 – Positions on Ballot Measures and Legislative Advocacy*. The Chief Financial Officer traveled to Sacramento and testified before the Senate Governance and Finance Committee on June 20, 2018. He described the increased responsibilities that the District's Board has taken over the last 34 years since their compensation was defined. Additional support letters were also sent. Ultimately, the legislature passed the bill, which the Governor signed in 2018.

#### **Increase in number of compensable meetings per month**

In November 2017, the Board amended *Board Policy 6.06* to expand the definition of compensable meetings to include Board field trips to District project locations, trainings required by State law, and celebratory ribbon cuttings for projects on District lands. The Board also determined that briefings with staff on District projects, and Board member attendance at meetings of outside agencies where the Board member is an appointed representative, would be considered compensable. Due to the increase in projects requiring Board committee consideration, including the new administrative office and policy updates, the number of meetings requiring Board member attendance increased approximately 40% from 2017 to 2018.

Due to the change in the law effective January 1, 2019, the attached amendments to *Board Policy 6.06 Meeting Compensation, Reimbursement of Authorized Necessary Expenses for Performance of Official Duties, and Adoption of Ethics Training Requirements Pursuant to Government Code Section 53232 et seq. (AB1234)* would allow Board members to be compensated for up to six meetings per month. The attached Resolution adopting the revised policy includes written

findings supporting the conclusion that more than five meetings per month are necessary for the effective operation of the District. The newly amended Public Resources Code section 5536 requires the Board to annually adopt written findings in order to support a policy that more than five meetings per month are necessary for the effective operation of the District.

**Increase in \$100 per meeting compensation**

In addition to increasing the number of compensable meetings to six, the amendments to Public Resources Code section 5536 allow the District to adopt an ordinance increasing the per meeting compensation by up to 5% annually. The ordinance must be adopted pursuant to the procedure used by water districts (Water Code section 20200 *et seq*) that includes multiple opportunities for the public to provide input through a public hearing and a petition process. The procedure for adopting a compensation increase is:

- Publish a notice of the public hearing in the local newspaper once per week for two consecutive weeks.
- Hold a public hearing (first reading), and adopt the ordinance at a subsequent meeting (second reading)
- Within 60 days after adoption, the public may petition for reconsideration of the ordinance. In this case, the Board must reconsider the ordinance before enacting it.

To date, it is unclear whether other Public Resources Code section 5500 agencies will increase the \$100 per meeting compensation amount. For the sake of comparison, East Bay Regional Park District Board members are compensated \$100 per meeting, 10 meetings per month. Examples of compensation for non-section 5500 entities include:

- Santa Clara Valley Open Space Authority: \$75 per meeting (2 meetings per month)
- Santa Clara Valley Water District Board: \$273 per meeting (10 meetings per month)
- Palo Alto City Council: \$1000 per month

If the Board does not wish to consider a draft ordinance in the immediate future to increase compensation to \$105 per meeting, one alternative is to direct the General Manager to do further research and bring this issue back at the beginning of Fiscal Year 2019-2020, or at some other time such as the beginning of the District's fiscal year.

**FISCAL IMPACT**

In FY2018-19, the budget provides up to \$35,000 for Board meeting compensation, which has \$20,500 remaining for the current fiscal year. This amount may not be sufficient to compensate Board members for the remainder of the fiscal year and is contingent upon the number of compensable meetings held per month. If it is later determined that additional funds are required, a budget adjustment may be requested.

**BOARD COMMITTEE REVIEW**

The Legislative, Funding, and Public Affairs Committee (LFPAC) discussed the topic of Board compensation in March and August 2017. In March 2017, LFPAC requested to narrow the compensation options to four areas:

- Estimate an adjustment based on the Consumer Price Index (CPI);
- Consider increasing the days of service compensated per month;

- Explore what meetings should be compensable; and
- Provide mileage reimbursement options.

With the passage of AB2329 and additional District changes, the District addressed each of these four areas.

- AB2329 allows for an up to 5% annual increase to the per meeting compensation.
- AB2329 allows an increase in the number of compensable meetings to six per month, provided that the Board makes certain findings annually with regard to the need for six meetings.
- In November 2017, the Board interpreted a broader reading of Board policy 6.06 to expand the definition of “meetings of the Board of Directors” as outlined above.
- Board members began receiving mileage reimbursements for District meetings not held at the administrative office starting in August 2017.

**PUBLIC NOTICE**

Public notice was provided as required by the Brown Act.

**CEQA COMPLIANCE**

This item is not a project subject to the California Environmental Quality Act.

**NEXT STEPS**

The Board compensation policy would be considered by the Board annually to allow the Board to make the written findings to allow six compensable meetings per month as required by Public Resources Code section 5536.

If directed to do so by the Board, the General Manager will prepare to introduce an ordinance to increase compensation to \$105 per meeting, publish a notice, and agendize a public hearing for that purpose.

**ATTACHMENTS:**

1. California Public Resources Code 5536 as amended, effective January 1, 2019
2. Resolution making findings that more than five meetings are necessary for the effective operation of the District, and adopting a Revised “Board Policy 6.06 – Meeting Compensation, Reimbursement of Authorized Necessary Expenses for Performance of Official Duties, and Adoption of Ethics Training Requirements Pursuant to Government Code Section 53232 et seq. (AB1234)”

Responsible Department Head:  
Ana Ruiz, General Manager

Prepared by:  
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Joshua Hugg, Governmental Affairs Specialist

Board Policy Manual

<p><b>Meeting Compensation, Reimbursement of Authorized Necessary Expenses for Performance of Official Duties, and Adoption of Ethics Training Requirements Pursuant to Government Code Section 53232 et seq. (AB 1234)</b></p>	<p><b>Policy 6.06 Chapter 6 – General</b></p>
<p>Effective Date: 1/30/08</p>	<p>Revised Date: <del>8/9/17</del> <a href="#">1/9/19</a></p>
<p>Prior Versions: 11/13/13, <a href="#">8/9/17</a></p>	

**A. COMPENSATION OF BOARD MEMBERS**

1. Pursuant to Public Resources Code section 5536, members of the Board shall receive one hundred dollars (\$100.00) for each attendance at a Board meeting. [This amount shall be the maximum compensation allowable to a board member on any given day.](#) A Board meeting includes a special meeting, a continued meeting, a closed session, a public hearing, or a meeting of a standing committee of the Board. Attendance at an ad hoc or other committee meeting shall be compensable only when determined to be so by the Board. Only Board members, who are members of the committee, or authorized substitutes appointed by the presiding officer, may be compensated for attendance at the meeting. A committee of the Board includes a committee of one and Board-appointed representatives on a committee established by other organizations.
2. [Board members may be compensated for up to six meetings in a calendar month.](#)
3. [Pursuant to Public Resources Code section 5536, the Board may adopt an ordinance to increase the amount of compensation received for attendance at a Board meeting. The increase may not exceed an amount equal to five percent for each calendar year following the operative date of the last adjustment of the compensation which is received when the ordinance is adopted. Adoption of such an ordinance must comply with the procedure set forth in California Water Code section 20200 et seq.](#)

**B. TRAVEL AND INCIDENTAL EXPENSES INCURRED WHILE PERFORMING AUTHORIZED DISTRICT BUSINESS**

1. Types of Occurrences and Meetings that Qualify for Expense Reimbursement. Board Members are eligible for reimbursement for actual and necessary expenses incurred in the performance of their authorized official duties as provided in Public Resources Code Sections 5536 and 5536.5 and AB 1234 as follows:

- a. Attendance at conferences in accordance with the Board’s “Budget Guidelines for Conference Attendance”, or if the Board, on a case-by-case basis, approves other conference attendance in advance, due to specific business needs of the District.
  - b. Board authorized or General Manager requested, attendance at meetings with nonprofit organizations, joint powers agencies, other government agencies such as grant-funding agencies, District legislators or their staff, local, state or federal representatives, and similar meetings, when such attendance is necessary in order to effectively represent the District’s position on a matter of District concern.
2. Government and Group Rates. Airlines, hotels, rental car companies, and other businesses often make special rates available to government agencies or groups. These rates are presumed to be the most economical and reasonable rates for the purposes of this Policy and shall be obtained whenever available.
  3. Transportation. Generally, travel to Board-authorized conferences or other authorized travel between points within 150 miles of the District’s Administrative Office by the Board Member’s private vehicle shall be at the current rate established by the Internal Revenue Service. Travel exceeding 150 miles shall be at rates not exceeding the most economical rates of a public carrier. Specific types of transportation expenses shall be reimbursed as follows:
    - a. Air Travel. Board Members may be reimbursed for the cost of a roundtrip economy-class ticket, provided the amount of reimbursement does not exceed the least expensive airfare that is consistent with the Board Member’s reasonable scheduling constraints.
    - b. Personal Vehicle Travel. Board Members may be reimbursed for expenses incurred in traveling by personal vehicle at the current Internal Revenue Service mileage rate.
    - c. Car Rental Reimbursement. Where necessary when attending a conference or other authorized travel, Board Members may be reimbursed for the expense of a rental car, provided the amount of reimbursement does not exceed the most economical and reasonable rates available. When more than one Board Member attends the event, Board Members shall share the rental car where feasible.

Conference and Travel Meals. Board Members may be reimbursed for meal expenses on a per diem basis for meals consumed in conjunction with conference attendance or authorized travel. The per diem rate for breakfast, lunch, and dinner shall be the daily per diem rate established by the Federal Government General Services Administration (GSA) ([www.gsa.gov/perdiem](http://www.gsa.gov/perdiem)) for the region where the conference/training is located. Where the conference/training site or hotel includes meals in the cost of the registration, such meals shall not be included in the per diem allowance unless dietary restrictions require obtaining meals from other sources. A breakdown of allowable rates for breakfast, lunch, and dinner may be found on the GSA web page ([www.gsa.gov/mie](http://www.gsa.gov/mie)).

The above limitations do not apply to meals at conferences or authorized travel at which a fixed price meal is served as part of or during the event. In such a case, the actual cost of the meal will be reimbursed.

If a meal is provided by a conference or included in the payment of the registration fee, Board Members may not be reimbursed for meals purchased in lieu of or in addition to the provided meal, unless it is infeasible for the Board Member to attend the meal due to the need to conduct other District business.

1. Conference and Travel Lodging. The District will reimburse lodging expenses when conference or other authorized travel reasonably requires an overnight stay, provided the amount of the reimbursement does not exceed economical and reasonable rates for lodging that meets the Board Member's reasonable scheduling and official business needs. For lodging in connection with a conference, such lodging costs shall not exceed the maximum group rate available through the conference or event sponsor, provided that the lodging at the group rate is available to the Board Member at the time of booking. If the conference rate is not available, the Board Member shall use comparable lodging and may be reimbursed at a nightly rate not to exceed the maximum group rate available through the conference.
2. Incidental Expense Reimbursement. Board Members may be reimbursed for actual and necessary incidental expenses incurred in connection with authorized conferences or travel. Such expenses may include reasonable and customary gratuities, parking fees, taxi fares, public transportation costs, tolls, telephone calls, internet, postage, facsimile charges, and similar incidental expense.
3. Conference Registration Fee Reimbursement. Board Members may be reimbursed for the expense of an authorized conference registration fee as set out in the Board's "Budget Guidelines for Board Conference Attendance" or as authorized by the Board on a case by case basis.
4. Other Expenses. All other actual and necessary expenses incurred in the performance of official duties that are not listed in this Policy shall not be reimbursed unless reimbursement is approved by the Board in advance of incurring the expense.
5. Prohibited Expense Reimbursements. Board Members shall not be reimbursed for expenses such as alcoholic beverages; spouse, domestic partner, or family member expenses; entertainment expenses such as movie, theatre, or sporting event fees; nor for fines for vehicle citations or damage to personal vehicles used in the course of District business. Exceptions can be approved by the Board when necessary to comply with the Americans with Disabilities Act or other applicable law, such as the payment for a necessary caregiver or companion to accompany a Board Member due to a qualifying disability.

### **C. CELL PHONE REIMBURSEMENT**

The District shall reimburse Board Members for the use of their personal cellular phone to conduct Board business, receive or make calls with constituents and communicate with District management. The reimbursement shall be \$32.50 per month. To be eligible for this reimbursement, the Board Member shall need to submit a completed Cell Phone Reimbursement Form to the District Clerk for processing.

Whether or not an employee's cell phone charges are reimbursed by the District, any records of District business conducted on a personal cell phone or other device (including photos, voicemail, text, and electronic mail) must be made available to the District upon request, including but not limited to when needed to comply with a Public Records Act request.

### **D. DOCUMENTATION FOR COMPENSATION AND REIMBURSEMENT**

1. Documentation Requirements. The District shall provide Board Members with expense report forms to be filed by the Member for reimbursement of actual and necessary expenses which are authorized to be reimbursed under this Policy. The form shall be used to document the expenses for which reimbursement is sought is proper under this Policy. The District shall also provide a separate form to document compensable meetings.

a. Time for Filing Forms. Board Members must file expense report forms within by the end of the calendar month following the calendar month when the expense was incurred in order to receive reimbursement. The expense report forms shall be accompanied by itemized receipts for items documenting each expense. Compensation forms shall also be filed by the end of the month following calendar month of the meeting for which compensation is sought. In the event a Board Member is unable to file such forms by the end of the following calendar month due to extenuating circumstances, such as his or her absence from home or illness, the Board Member shall file such forms as soon as feasible. In no event shall such forms be filed later than ninety (90) days from the compensable meeting or incurring of the expense. If a Board Members fails to file a timely reimbursement or compensation form, the Board Members shall be ineligible to receive the requested payment.

b. Offset of Amounts Due the District. If a Board Member has reimbursable expenses or compensation due from the District, and that Member owes any amounts to the District, such amounts due shall be deducted from the reimbursement or compensation otherwise due to the Board Member.

c. Public Records. All documents related to reimbursable expenses are considered public records subject to disclosure under the California Public Records Act.

2. Report to Board Regarding Compensable Activities. Board Members shall provide brief reports on meetings attended for which compensation is provided by this Policy at the next regular Board meeting attended by the Board Member. The report may be made orally during Board Informational Reports, or in writing. If provided in writing, the Board Member shall state at the meeting that he or she is submitting to the District Clerk a written report of compensable meetings attended.

### **E. ETHICS TRAINING PURSUANT TO AB 1234**



Each Board Member shall receive at least two hours of training in general ethics principles and laws relevant to his or her public service every two years. The District shall annually provide information on training alternatives available to Board Members to meet the requirements of AB 1234. The District shall maintain documentation of the dates that Board Members received this training and the entity that provided the training.

**RESOLUTION NO. 19-XX**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT  
APPROVING CHANGES TO BOARD COMPENSATION POLICY**

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**WHEREAS**, Effective January 1, 2019, California Public Resources Code section 5536 provides that Board members may be compensated for up to six meetings in a calendar month, provided that the Board makes the written findings that more than five meetings per month are necessary for the effective operation of the District; and

**WHEREAS**, the Board of Directors wishes to increase the number of compensable meetings from five to six meetings per calendar month.

**NOW THEREFORE**, the Board of Directors of the Midpeninsula Regional Open Space District does resolve as follows:

**SECTION ONE.** FINDINGS:

1. Board compensation established pursuant to Public Resources Code section 5536 has not changed since 1984. Although the \$500 cap on monthly compensation has not changed since 1984, the scope of Board member responsibilities and the complexity of policy oversight has substantially increased.
2. Since 1984, the District's budget has grown from \$13.9 million to \$73 million.
3. Since 1984, District land holdings have grown from 18,300 acres to 63,500 acres.
4. In 1984 the District operated in two counties and the District boundary was limited to the southern bayside area of San Mateo County. Now, the District operates in three counties, including an additional 144,000 acres of San Mateo County coastal area annexed into District boundaries in 2004.
5. Since 1984, the District's constituent population has grown from 570,000 to 760,000.
6. The District secured a substantial funding source for capital projects with the passage of a \$300 million general obligation bond approved by voters in 2014.
7. There are currently at least two Regular Meetings of the Board every calendar month.
8. Currently, there is an average of at least one standing committee meeting held every calendar month in order to effectively advise the Board in the following areas: Real Property acquisitions, Planning and Natural Resources issues, the Legislative and Public Affairs program, the annual Action Plan and Budget, and performance evaluations of Board appointees.
9. Currently, the Board typically holds numerous other special meetings during the course of the year, which may include but are not limited to: community workshops, study sessions, site visits, committees established by other organizations, and other similar meetings.
10. In every year since 2015, Board members have attended an average of 3.5 compensable meetings per month.
11. In 2017, Board members attended an average of 3.4 compensable meetings per month, and as many as 6 per month.
12. In 2018, Board members attended an average of 4.4 compensable meetings per month—, and as many as 9 per month.

13. Therefore, more than five compensable Board meetings per month are necessary for the effective operation of the District.

**SECTION TWO.** Board Policy 6.06 (*Meeting Compensation, Reimbursement of Authorized Necessary Expenses for Performance of Official Duties, and Adoption of Ethics Training Requirements Pursuant to Government Code Section 53232 et seq. (AB 1234)*), attached hereto, is hereby adopted to reflect that Board members may be compensated for up to six (6) meetings per month.

\* \* \* \* \*

**PASSED AND ADOPTED** by the Board of Directors of the Midpeninsula Regional Open Space District on \_\_\_\_\_, 2019, at a Regular Meeting thereof, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Secretary  
Board of Directors

\_\_\_\_\_  
President  
Board of Directors

**APPROVED AS TO FORM:**

\_\_\_\_\_  
General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

\_\_\_\_\_  
District Clerk