



Midpeninsula Regional
Open Space District

R-20-139
Meeting No. 20-27
November 18, 2020

AGENDA ITEM 12

AGENDA ITEM

First Reading of the Board Compensation Ordinance *dem*

GENERAL MANAGER'S RECOMMENDATION

1. Waive reading and introduce an ordinance increasing Board compensation from \$100.00 to \$105.00 per meeting pursuant to Public Resources Code section 5536.
2. Hold a public hearing on the proposed ordinance.
3. Direct the General Manager and General Counsel to prepare the ordinance for second reading at the December 9, 2020 Board meeting.

SUMMARY

A recent change to the Midpeninsula Regional Open Space District's (District) enabling legislation allows the Board of Directors (Board) to increase the per meeting compensation for Board members by an amount not to exceed 5% annually, by ordinance. This item consists of the first reading of an ordinance, which would increase the per meeting compensation from \$100.00 to \$105.00. The proposed increases are expected to fall within the Board-approved Fiscal Year 2021 (FY21) budget.

DISCUSSION

Prior to January 1, 2019, California Public Resources Code section 5536 set the 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 150%.

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 \$81 million.
- 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.
- Acres of land preserved by the District have grown from 18,300 acres to over 64,500 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 770,000.

In June 2018, the District supported AB 2329 (Obernolte), the purpose of which was to provide Board members with enhanced latitude in increasing the number of compensable meetings and per meeting compensation amount. Assemblymember Obernolte expressed the intent of the legislation 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."

The new law, which took effect January 1, 2019, enables Board members to increase the number of compensable meetings from five to six per month, and to increase the per meeting compensation amount not to exceed 5% annually.

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, the number of meetings requiring Board member attendance increased approximately 40% from 2017 to 2018. During 2019, Board members typically attended between five and nine compensable meetings per month with numerous months at six or more meetings for individual Board members.

Due to the change in the law effective January 1, 2019, the Board adopted 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 allow Board members to be compensated for up to six meetings per month, supported by written findings that more than five meetings per month are necessary for the effective operation of the District. These findings are required to be made annually. The findings were made again in January 2020 to allow Board members to be compensated for up to six meetings per month.

Ordinance increasing the per meeting compensation from \$100 to \$105

In addition to increasing the number of compensable meetings, 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.

In January 2019, the Board deferred its decision on the issue of the 5% increase to determine whether other special districts were updating compensation in response to the recent legislation. In July 2019, East Bay Regional Park District (another agency organized under PRC section 5500) adopted an ordinance increasing its per meeting Board compensation amount by 5%.

In January 2020, the Board directed the General Manager and General Counsel to prepare this ordinance to increase the per meeting compensation from \$100.00 to \$105.00 in accordance with state law. The new law specifies that the Board may increase its compensation not more than 5% for each calendar year following the operative date of the last adjustment. General Counsel recommends that the Board enact an increase as a “baseline” in response to the 2019 changes to the law. The Board may consider enacting subsequent compensation increases provided that the increase does not exceed 5% per calendar year.

On April 19, 2020, the Legislative, Funding and Public Affairs Committee considered other changes to the Board policy to further define compensable meetings. These proposed amendments to Board Policy 6.06 will be brought to the full Board for consideration in January 2021.

FISCAL IMPACT

The FY21 budget provides up to \$42,000 for Board meeting compensation, and as of September 30, 2020 has \$33,000 remaining for the current fiscal year. This amount should 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 Board of Directors directed the General Manager and General Counsel to prepare this compensation ordinance in January 2020. Additionally, at its April 19, 2020 meeting, the Legislative, Funding, and Public Affairs Committee (LFPAC) discussed the topic of Board compensation, including refining the definition of compensable meetings in Board Policy 6.06. LFPAC approved forwarding a recommendation to the Board of Directors to refine language in the Policy, which the Board will consider in January 2021.

PUBLIC NOTICE

Public notice of the Ordinance was published in the newspaper once a week for two weeks leading up to this first reading in accordance with Public Resources Code section 5536 and Water Code section 20203.

Public notice was also provided pursuant to the Brown Act.

CEQA COMPLIANCE

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

NEXT STEPS

If approved by the Board, the Ordinance will undergo a second reading at the December 9, 2020 meeting. If enacted upon second reading, the Ordinance will be published thereafter in the newspaper and will go into effect 60 days after adoption.

ATTACHMENTS:

1. Ordinance
2. Board Policy 6.06

Responsible Department Head:
Ana Ruiz, General Manager

Prepared by:
Hilary Stevenson, General Counsel

ORDINANCE NO. 20-__

**ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT INCREASING
THE COMPENSATION AMOUNT FOR BOARD MEMBER MEETING
ATTENDANCE TO \$105 PER MEETING**

WHEREAS, the Midpeninsula Regional Open Space District (“District”) is a special district duly organized and existing under and pursuant to California Public Resources Code section 5500 et seq.; and

WHEREAS, California Public Resources Code section 5536 sets forth the authority for establishing compensation for members of the District’s Board of Directors (Board); and

WHEREAS, the current Board member compensation is one hundred dollars (\$100) per day for attendance at a meeting of the Board, up to a maximum of six (6) days per calendar month; and

WHEREAS, the one hundred dollars (\$100) per day amount has not been increased since 1984; and

WHEREAS, the size and complexity of the District has increased significantly since 1984, which in turn means that the responsibilities and time commitment for Board service is greater than ever; and

WHEREAS, section 5536 was amended in 2018 to allow the Board of Directors, by ordinance pursuant to the procedures set forth in California Water Code section 20200 et seq., to increase the amount of compensation received for attending meetings of the Board; and

WHEREAS, California Water Code section 20202 provides that an increase in compensation may not exceed an amount equal to five percent (5%) for each calendar year; and

WHEREAS, the Board desires to establish the amount of compensation by way of this Ordinance in accordance with the provisions of state law; and

WHEREAS, in accordance with California Water Code section 20203 and California Government Code section 6066, a public hearing was held on November 18, 2020, at 7:00 pm, and a notice of said hearing was duly published in the newspaper once a week for two weeks prior to the public hearing.

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

SECTION 1.

- A. The Midpeninsula Regional Open Space District desires to compensate members of the Board of Directors for attendance at its meetings, in accordance with California law and Board policy.

B. The amount of compensation to be received by the Board of Directors for each day’s attendance at a meeting of the Board shall be increased five percent (5%) from one hundred dollars (\$100) to one hundred and five dollars (\$105) per day.

SECTION 2. Upon adoption of this Ordinance, 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)*) shall be amended to reflect this increase.

SECTION 3. This Ordinance shall be published once within thirty (30) days after adoption in a newspaper of general circulation printed, published, and circulated in the Midpeninsula Regional Open Space District.

SECTION 4. Pursuant to Water Code section 20204, this Ordinance shall become effective 60 days from the date of its adoption.

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Adopted by the Midpeninsula Regional Open Space District Board of Directors on _____, 2020, 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 an ordinance 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

Board Policy Manual

<p>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)</p>	<p>Policy 6.06 Chapter 6 – General</p>
<p>Effective Date: 1/30/08</p>	<p>Revised Date: 1/9/19</p>
<p>Prior Versions: 11/13/13, 8/9/17</p>	

A. COMPENSATION OF BOARD MEMBERS

1. Pursuant to Public Resources Code Sections 5536 and 5536.5, 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 closed session of the board, regular and special meetings of the board, field trips to district project locations, district public hearings, meetings of standing and ad hoc committees, trainings required by State law, and ribbon cuttings for projects on district lands. Regarding compensation for committee meetings, only Board members who are members of the committee, or other authorized substitutes appointed by the presiding officer, may be compensated for attendance at the meeting.
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) 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).

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 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 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.