AGENDA ITEM 5

Midpeninsula Regional Open Space District Board Compensation

GENERAL MANAGER’S RECOMMENDATIONS

1. Adopt a Resolution making annual findings required by law that up to six compensable Board meetings per month are necessary for the effective operation of the agency.

2. Direct the General Manager and General Counsel to prepare and introduce an ordinance increasing Board compensation by five percent from $100.00 to $105.00 per meeting, consistent with current law.

3. Discuss other possible changes 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), and either:
   a. Direct the General Manager to return at a future Board meeting with a revised policy reflecting Board feedback for consideration of adoption, OR
   b. Refer the topic of policy changes to the Legislative, Funding, and Public Affairs Committee for further deliberation.

SUMMARY

In January 2019, the Board of Directors (Board) increased the total number of compensable meetings in a month from five to six pursuant to new legislation (AB 2329). This new legislation enables the board of directors of various special districts, including regional park and open-space districts, to increase the number of compensable meetings from five to six subject to certain requirements, including a provision that the board of directors annually adopt written findings that more than five meetings per month are necessary for the effective operation of the agency. Additionally, the Board may increase the per meeting compensation, not to exceed 5% annually, by ordinance. In 2019, the Board requested information to understand whether other special districts are adopting the 5% increase to the per meeting compensation. During 2019, some special districts, including East Bay Regional Park District, enacted the 5% increase.

The attached Resolution makes the annual findings that up to six meetings per month are necessary for the effective operation of the District. This would not result in changes to the existing Board policy that was updated in 2019. Additionally, based on recent actions by other special districts, the General Manager requests direction to introduce an ordinance to increase the per meeting compensation by 5% to $105.00. The General Manager also requests direction on other potential changes to the Board compensation policy, including defining the types of
meetings that are compensable, and any other changes to compensation desired by the Board such as medical, dental, or vision benefits, within the constraints of current law. Based on available funds, the proposed increases are expected to fall within the Board-approved Fiscal Year 2019-20 budget.

DISCUSSION

Prior to January 1, 2019, California Public Resources Code (PRC) 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 the per meeting 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 standard budget has grown from $13.9 million to $75 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.
- District land holdings have grown from 18,300 acres to over 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.

In 2018, AB 2329 (Obernolte) was enacted, enabling Board members to increase the number of compensable meetings 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 (See Attachment 2). Due to the increase in projects requiring Board committee consideration, including review of Vision Plan/Measure AA projects and policy updates, 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 with six or more meetings for individual Board members.

Due to a change in the law effective January 1, 2019, 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) was revised to provide that Board members may be compensated for up to six meetings per month. The newly amended PRC 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. The attached Resolution includes written
findings supporting the policy of compensating Board members for up to six meetings per month.

**Increase in $100 per meeting compensation**

In addition to increasing the number of compensable meetings to six, the amendments to PRC 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 (Cal. Water Code § 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 2019, East Bay Regional Park District (another agency which is organized under PRC section 5500) and the Grossmont Healthcare District are two special districts that invoked the new state law and adopted ordinances increasing the per meeting compensation amount by 5%.

Examples of compensation for nearby entities not organized under PRC section 5500 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

**Definition of compensable meetings**

As mentioned above, in 2017, the Board amended 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.

Pursuant to California Government Code section 53232, a local agency such as the District may pay compensation to members of its legislative body for attendance at the following: a meeting of the legislative body, a meeting of an advisory body, and a conference or organized educational activity conducted pursuant to state law, such as ethics training. An agency may also compensate Board members for attendance at occurrences other than those listed above if the governing body has adopted, in a public meeting, a written policy specifying the types of occurrences that constitute the performance of official duties for which payment may be received.

East Bay Regional Park District is considering including the following activities to their list of compensable meetings to clarify which meetings are compensable and better reflect the types of activities undertaken by Directors in service to its District:
• One-on-one meetings with the General Manager involving operations of the District.
• New Board member orientation meetings with the General Manager and his/her designees.
• Meetings of other governmental entities, associations, or duly recognized committees on which the District is officially represented, including Regional Parks Foundation, Park Advisory Committee, joint agency, and liaison committee meetings.
• Attendance at community or public outreach events held by, supported by, or sponsored by the District.
• Attendance at meetings located in the State of California of the following agencies and organizations and their committees on topics related to parks, open-space, recreation, natural and cultural resources, or other issues that could impact the District: [Alameda County Mayors’ Conference, Alameda County Special Districts Association, California Park and Recreation Society, California Special Districts Association, Contra Costa County Mayors’ Conference, Contra Costa Special Districts Association]
• Attendance at meetings, events, or functions including meetings of civic, business, and non-profit organizations as well as meetings of local, regional, statewide, or federal public officials, public agencies, or regulatory bodies by the Board President as may be required by his or her role as a Board officer, or by a Board member who may be designated in writing by the Board President to attend such a meeting on his or her behalf, on topics related to parks, open-space, recreation, natural and cultural resources, or other issues that could impact the District.

Based on the information provided in this report and Board discussion, the Board may choose to (a) direct the General Manager to return at a future meeting with a revised policy reflecting Board feedback on changes to the list of compensable meetings for consideration of adoption, or (b) refer the topic of policy changes to the Legislative, Funding, and Public Affairs Committee for further deliberation.

Other compensation: medical, dental, and vision coverage

PRC section 5536 allows Board participation in a group medical plan on the same terms as District employees, or some other amount designated by the Board. Since 1999, it has been Board policy that if a Board member is not eligible for employer-paid group medical or dental plan, they may obtain District group medical or dental coverage through the District’s program at their own expense, at no cost to the District (i.e., the Board member pays the entire premium). In 2002, Board policy was broadened to offer vision coverage, similar to medical and dental coverage.

Although current Board policy requires Board members to pay the entire cost of the health premium, the District’s enabling legislation allows group coverage to be subsidized by the District as part of Board member compensation “on terms designated by the Board”. For example, East Bay Regional Park District subsidizes Board members’ coverage in the same manner that coverage is provided to management-level employees.

The District currently subsidizes coverage for employees at a cost to the District ranging from $650 to $2,200 per month, depending on the plan selected by the employee and the number of dependents. A table of current 2020 premiums (showing respective costs borne by the District,
and costs passed on to employees) for medical, dental, and vision benefits is attached to this report as Attachment 3.

**FISCAL IMPACT**

The adopted FY2019-20 Budget provides up to $42,000 for Board meeting compensation, which has $24,800 remaining for the current fiscal year (as of November 30, 2019). This amount 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 as follows:

- 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 described 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**

Board compensation is addressed by the Board annually to allow the Board to make the written findings to allow for six compensable meetings per month as required by law.

If directed to do so by the Board, the General Manager and General Counsel will prepare to introduce an ordinance to increase compensation to $105 per meeting, including publishing a public notice and adding the item to the Agenda of future public hearing for that purpose.
The General Manager will proceed with any other changes to the Board compensation policy as directed by the Board.

Attachments:

1. Resolution making findings that more than five meetings are necessary for the effective operation of the District
2. Board Policy 6.06
3. 2020 Health Insurance Premiums

Responsible Department Head:
Ana Ruiz, General Manager

Prepared by:
Hilary Stevenson, General Counsel

Staff contact:
Hilary Stevenson, General Counsel
RESOLUTION NO. 20-XX

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
MAKING FINDINGS REGARDING THE NEED FOR UP TO SIX COMPENSABLE MEETINGS PER MONTH FOR THE EFFECTIVE OPERATION OF THE DISTRICT

WHEREAS, 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 annual 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 $75 million.
3. Since 1984, District land holdings have grown from 18,300 acres to over 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 the San Mateo County Coast that was 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. The number of annual compensable meetings per month has increased consistently since 2015, to as many as 9 in one month:
    a. In every year since 2015, Board members have attended an average of 3.5 compensable meetings per month.
b. In 2017, Board members attended an average of 3.4 compensable meetings per month, and as many as 6 per month.
c. In 2018, Board members attended an average of 4.4 compensable meetings per month, and as many as 9 per month.
d. In 2019, Board members attended between 5 and 9 compensable meetings per month, and in numerous months, individual Board members attended 6 or more meetings.

SECTION TWO. More than five compensable meetings per month are necessary for the effective operation of the District. Therefore, Board members may be compensated for up to six (6) meetings per month as reflected in Board Policy 6.06.

* * * * * * * * * * * * * * * * * * * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on ______, 2020, 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
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 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. ProhibitedExpense 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.
# January 1, 2020 Health Insurance Premiums

## EMPLOYEE PREMIUM COSTS

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</tr>
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<td>PERS Choice</td>
<td>$861.18</td>
<td>$860.27</td>
<td>$1,722.36</td>
<td>$1,560.49</td>
<td>$2,239.07</td>
<td>$2,020.63</td>
</tr>
<tr>
<td>PERS Care</td>
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<td>PORAC</td>
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<tr>
<td>Delta Dental</td>
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<tr>
<td>VSP</td>
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<td>$9.94</td>
</tr>
</tbody>
</table>

Cash Back to Employee per Paycheck Indicated as Negative Amount

Per MOU, Article 7.2 Benefits, B. Cafeteria Plan, item 4) Cash Back: In the event CalPERS offers a medical insurance plan with lower premiums than the District contribution, an employee selecting such a plan will have contributions remaining in the Cafeteria Plan and may apply the remaining contribution to other qualified benefit costs, or receive the difference in cash.