

# **ATTACHMENT B**

## **ITEM 3 – PASADENA RENTAL HOUSING BOARD**

**JULY 26, 2023  
REGULAR MEETING**

M David Kroot  
Lynn Hutchins

July 26, 2023

memorandum

Karen M. Tiedemann  
Thomas H. Webber

To  
Pasadena Rental Housing Board

Dianne Jackson McLean  
Robert C. Mills

From

Isabel L. Brown  
James T. Diamond, Jr.

Karen Tiedemann

Margaret F. Jung  
Heather J. Gould

Thomas Levendosky

William F. DiCamillo  
Amy DeVaudreuil

RE

Barbara E. Kautz  
Rafael Yaquián

Employment and Compensation of Members of the Pasadena Rental Housing Board by the City of Pasadena

Celia W. Lee

Dolores Bastian Dalton  
Joshua J. Mason

**RECOMMENDATION:**

It is recommended that the Pasadena Rental Housing Board (the "Board"), approve the following:

Jeffrey A. Streiffer  
Elizabeth R. Klueck

(1) Find that the proposed action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3) (common sense exemption);

Jhaila R. Brown  
Gabrielle B. Janssens

(2) Adopt a resolution of the Pasadena Rental Housing Board requesting that the City of Pasadena (the "City") City Council deem the members of the Board employees of the City and to compensate said Board Members in accordance with City Charter Article XVIII (the "Charter Amendment");

Rye P. Murphy  
Marc A. Bentzen

(3) Require each member of the Board to record the length of time spent preparing for and participating in Board meetings, including ad hoc committee meetings;

Benjamin Funk  
Aileen T. Nguyen

(4) Require the Board Chair to review each Board member's record of time spent preparing for and participating in said meetings prior to authorizing compensation for no more than twenty (20) hours per week; and

Katie Dahlinghaus  
Matthew S. Heaton

(5) Authorize the Pasadena Rental Housing Board to compensate each board member from the Pasadena Rental Housing Board Fund (689) advanced by the City Council until such time the Board adopts a budget and sets a Rental Housing Fee to finance the Board for its reasonable and necessary expenses in implementing the Charter Amendment.

Nazanin Salehi  
Erin C. Lapeyrolerie

Minda Bautista Hickey  
Connor T. Kratz

Colleen A. Wisel  
Thomas J. Levendosky

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(6) Evaluate the above actions to address any issues and determine if an alternative structure for compensation of the Pasadena Rental Housing Board members would better serve the goals of the Charter Amendment no later than ninety (90) days after the implementation of the above actions.

#### BACKGROUND:

On November 8, 2022, the voters of the City voted to adopt Measure H, which amended the City's Charter to impose rent control and just cause eviction protections. The City Council adopted a resolution certifying the results of the November 8, 2022 election on December 12, 2022, and the charter amendment was thereafter filed with the California Secretary of State and took effect on December 22, 2022.

On April 19, 2023, the Pasadena City Council appointed members to serve on the Board to administer the Charter Amendment. On May 8, 2023, the City Council approved an advancement of funds for the initiation of the Board for start-up costs to support the work of the Board in accordance with the Charter Amendment, which requires the City to advance all necessary funds to ensure effective implementation of the Charter Amendment until the Board sets a Rental Housing Fee sufficient to support the Board's work. (City Charter, art. XVIII, § 1811(l).)

The Charter Amendment requires compensation for the Board's current work committed to meetings. (Charter § 1811(j).) Members of the Board are to be compensated on an hourly basis at a rate of two-and-a-half (2.5x) times the City's Minimum Wage Ordinance for no more than twenty (20) hours per week. (*Id.*) Such compensation is intended to support the members of the Board in implementing the Charter Amendment, and the members of the Board have begun the work without the compensation each Board member is entitled to receive.

Section 1811(m) of the Charter Amendment requires the Board to be an integral part of City government and to exercise its powers and duties under the Charter Amendment independent of the City Council, except by request of the Board. Additionally, section 1811(m) obligates the City to support the Board like any other department of the City. Although the Board is empowered to finance all reasonable and necessary expenses to ensure implementation of the Charter Amendment by establishing a Rental Housing Fee, the Board may also request and receive necessary funding from the City. (*See* Charter § 1811(l)).

Due to the requirements of the Charter Amendment and the work of the Board in implementing the Charter Amendment and the need to provide compensation to the Board members in a timely manner, the Board desires for City to recognize and designate the members of the Board as City employees and to be compensated in accordance with the Charter Amendment. The Board should review this decision once it resolves other issues regarding the structure of the Rental Housing Board within the City to determine if the designation of the Board members as City employees continues to be the appropriate

course of action. In addition to the foregoing reasons, the analysis below explains that applicable state law likely categorizes members of the Board as employees of the City.

ANALYSIS:

Under Section 3351 of the California Labor Code an "employee" is defined as "every person in the service of an employer under any appointment or contract of hire [including] elected and appointed paid public officers." Meanwhile an employer is defined to include "[e]ach county, city, district and all . . . public agencies therein." (California Labor Code Section 3300(b).) Indeed, any "person providing labor or services for remuneration shall be considered an employee" unless the employer demonstrates otherwise that such person is an independent contractor. (Labor Code Section 2775).

To demonstrate that a person is an independent contractor, the employer must prove all three of the following conditions of the ABC Test:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B. The worker performs work that is outside the usual course of the hiring entity's business; **and**
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(Labor Code Section 2775(b)(1)(A-C).)

Only one of the foregoing conditions of the ABC test needs to fail for the Board members to be considered employees of the City.

The second and third conditions are the most likely to fail if applied to members of the Board. Regarding condition (B), as previously noted, the Charter Amendment makes the Board an "integral part" of the City government despite its authority to exercise its duties and powers independent of the City Council, City Manager and City Attorney. (Charter § 1811(m).) Furthermore, the extent of the Board's independence from the City is at the Board's discretion, as the Board is empowered to request otherwise. (*Id.*) Nevertheless, the Charter Amendment provides that all members of the Board to be appointed by the City Council. (Charter § 1811(a).) Additionally, the Board is tasked with implementing the Charter Amendment, and any provisions conflicting with the existing City's Municipal Code are superseded by the Charter Amendment (Charter § 1820 (b).) The City Council still retains the authority to enact complimentary or non-conflicting ordinances that align with the Charter Amendment. (*Id.*) The Board is carrying on the

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work of the City Council in the areas of rents, evictions, relocation, etc., and the City Council is still authorized to take action that furthers the aims of the Charter Amendment. Therefore, the work of the Board is likely not outside the usual course of the City Council's business.

Regarding condition (C), it is unlikely that any member of the Board is independently in the same business as the work of the Board. A key factor in determining this criterion is whether the individual "generally takes the usual steps to establish and promote his or her independent business" (*Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 962.) Not only does the Charter Amendment have certain eligibility requirements that prohibit some members from having or gaining material interests while on the Board, all members must reside in the City which did not previously have a Board for any member to engage in work of the Board, and the terms of the members are limited to eight (8) consecutive years. (Charter §§ 1811(a)-(d).) Therefore, it is unlikely that any Board member has engaged or will engage in the sort of the work of the Board outside of their term.

Although less clear, regarding the first condition, the employer "need not control the precise manner or details of the work in order to be found to have maintained the necessary control" to establish an employer-employee relationship. (*Dynamex*, 4 Cal.5th at p. 958.) As previously noted, the Charter Amendment makes the Board an "integral part" of the City government despite its authority to exercise its duties and powers independent of the City Council, City manager and City Attorney. (Charter § 1811(m).) Furthermore, the extent of the Board's independence from the City is at the Board's discretion, as the Board is empowered to request otherwise. (*Id.*) Nevertheless, the Charter Amendment provides that the City Council appoint each member of the Board which supports the notion that the City exercises some control over the Board. (Charter § 1811(a).) Public Employment Relations Board Decision No. 1637, found that the management structure of a nominally independent public corporation was as "integrally intertwined" with the parent public agency to deem the public corporation a subsidiary subject to the same labor relation laws as the parent. Therefore, depending on who the City Council appoints as members of the Board, this condition might also fail.

In the interest of complying with the Charter Amendment and California law, staff recommends that the Board request the City to recognize the members of the Board as employees of the City and for compensation as required by the Charter Amendment. For the foregoing reasons, the members of the Board are likely considered employees of the City under California law, and the Board desires to be recognized as such. The Charter Amendment provides for the Board's general independence from the City in the exercise of the Board's powers and implementation of the Charter Amendment. However, the Charter Amendment also provides that such independence is at the discretion of the Board, and that the Board may request otherwise from City Council. The Charter Amendment mandates that the City is required to treat the Board as any other City Department to provide the Board with its ongoing support. California law presumes that the members of the Board are employees, and in the context of the Board, the conditions

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of ABC test are likely to fail. Finally, by establishing that Board members are employees of the City to be compensated in accordance with the Charter Amendment, members of the Board will finally receive the compensation contemplated by the voters of the City.

**FISCAL IMPACT:**

The City's current minimum wage is Sixteen Dollars and Ninety-Three cents (\$16.93) per hour for employees who perform at least two hours of work per week within the City. At the current rate, the Charter Amendment requires that members of the Board receive Forty-Two Dollars and Thirty-Three Cents (\$42.33) per hour for time committed to meetings for a total of no more than twenty (20) hours per week. At most, the cost for all thirteen (13) members (including alternates who are entitled to attend meetings) of the Board to work the maximum of twenty (20) hours would not exceed Eleven Thousand Five Dollars and Eighty Cents (\$11,005.80) per week. Until such time that the Board adopts a budget and sets a Rental Housing Fee sufficient to pay for the necessary costs of the Board, the funds advanced by the City for the Pasadena Rental Housing Board Fund (689) are available to cover the Board's time committed to meetings. The proposed compensation of the members of Board complies with and is required by the Charter Amendment.

Respectfully submitted,

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Ryan Bell  
Chair, PRHB

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Brandon Lamar  
Vice Chair, PRHB

Attachment A - A RESOLUTION OF THE RENTAL HOUSING BOARD OF PASADENA REQUESTING THE CITY OF PASADENA RECOGNIZE AND COMPENSATE MEMBERS OF THE RENTAL HOUSING BOARD AS EMPLOYEES OF THE CITY OF PASADENA

**PASADENA RENTAL HOUSING BOARD  
RESOLUTION NO. RHB-2023-XX**

**A RESOLUTION OF THE PASADENA RENTAL HOUSING BOARD REQUESTING THE CITY OF PASADENA RECOGNIZE AND COMPENSATE MEMBERS OF THE RENTAL HOUSING BOARD AS EMPLOYEES OF THE CITY OF PASADENA**

WHEREAS, the Pasadena Fair and Equitable Charter Amendment ("Charter Amendment") requires each member of the Pasadena Rental Housing Board ("Board") be compensated on an hourly basis for time committed to meetings of the Board at a rate of two-and-a-half (2.5x) times the amount of the City of Pasadena ("City") Minimum Wage Ordinance; and

WHEREAS, the Charter Amendment empowers the Board to request and receive necessary funding from the City; and

WHEREAS, the Charter Amendment requires that the Board be an integral part of the City' government and for the City to support the Board like any other department of the City; and

WHEREAS, the Charter Amendment limits each Board member's compensation to a maximum of twenty (20) hours per week and requires the chairperson of the Board to track the length of time of each meeting to compensate members of the Board accordingly; and

WHEREAS, each member of the Board commits time to general Board meetings, ad hoc committee meetings, and in preparation of both; and

WHEREAS, in accordance with the Charter Amendment, the members of the Board desire to be considered employees of the City and to be compensated by the City for the amount of time committed to preparing for and participating in Board meetings, including ad hoc committee meetings; and

NOW, THEREFORE IT BE RESOLVED that the Pasadena Rental Housing Board requests that the City Council deem members of the Board employees of the City and compensate the members for time committed to preparing for and participating in Board meetings, including ad hoc committee meetings, in accordance with the Charter Amendment; and

BE IT FURTHER RESOLVED, the source of payment for compensating the members of the Board shall be from the Pasadena Rental Housing Board Fund (689) advanced by the City Council until such time the Board adopts a budget and sets a Rental Housing Fee to finance the Board for its reasonable and necessary expenses in implementing the Charter Amendment; and

BE IT FURTHER RESOLVED, that each member of the Board is responsible for tracking the amount of time spent preparing for and participating in meetings, and for reporting that time to the chairperson of the Board for review prior to receiving any compensation for no more than twenty (20) hours per week; and

BE IT FURTHER RESOLVED, that the Board shall evaluate the designation of the Board members as City employees and the compensation structure required by the Charter Amendment no later than ninety (90) days after the effectiveness of the designation of the Board members as City employees by the City Council.

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The foregoing Resolution was adopted at a regular meeting of the Pasadena Rental Housing Board of the City of Pasadena, duly held on the 26th day of July 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

\_\_\_\_\_  
MARK JOMSKY  
CITY CLERK

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RYAN J. BELL  
CHAIR, RENTAL HOUSING BOARD