

# Agenda Report

**TO:** THE CITY COUNCIL

**DATE:** NOVEMBER 6, 2000

**FROM:** DEFERRED COMPENSATION TRUST ADMINISTRATOR COMMITTEE

**SUBJECT:** ROLE OF TRUSTEES

## **RECOMMENDATION**

On October 18, 2000, in response to a request by the Finance Committee for the Deferred Compensation Committee to develop recommendations as to the role and responsibilities of the Trustees of the City's 457 Deferred Compensation Trust Fund, the Deferred Compensation Trust Administrator Committee passed a motion recommending that the Trustee take the following action:

- A. Retain Qualified and independent fiduciary counsel to outline the elements of the Trustees' fiduciary responsibility.
- B. Conduct an independent fiduciary audit of administrative practices and plan Performance.

The fiduciary audit recommended by committee action is intended to include a legal component examining the legislative history that precipitated the formation of the Trust, the action by City Council establishing the Trust and the administrative actions taken to implement the will of the Council. The legal component should memorialize the elements of the Trustees' fiduciary responsibility and examine the actions and policies of the administration and the Trustees for conflicts of interest and methods of remediation if conflicts are discovered. All elements of the legal component should be measured against "best practice" with recommendations for improvement where needed.

Example areas of potential conflict include the administrative failure to establish a default designation for Plan Participants and the subsequent questionable conversion of employee earnings back to the City's general fund. Another area to be examined is the City's inducement of cash in lieu of deferred compensation, with 35% of such earnings reverting to the general fund, representing considerable and uninformed opportunity loss for Plan Participants over the life of their career with the City of Pasadena.

The administrative component should include a review of all administrative policies and operational procedures and any training or communications that have been offered to Plan Participants by the Plan Administration or the Trustees. All policies and operational procedures should be measured against "best practice" with recommendations for improvement where needed.

The fiduciary audit recommended to the Trustees includes an accounting component that will examine current policies and procedures, general accounting records, contribution records, disbursement records and records of transfer of funds. This component will also examine internal operating controls and current auditing procedures. As in the legal component the audit will measure against "best practice" and recommend improvements where needed. Records of particular interest would be those reflecting Plan Participant lost funds.

The scope of the recommendation for fiduciary audit also encompasses an investment component that will examine transaction fees or costs, fees for service and performance measures for service providers. Included in this section will be an examination for rebates or other financial consideration back to the City by service providers and the disposition of any such funds.

The fiduciary audit contemplated by the committee has at its base, independence and objectivity for the protection of the Plan Participants and the Trustees. This statement of scope is not intended to limit any relevant area of inquiry and should not be considered all inclusive.

This recommendation may be particularly important as the City Council only recently learned that it has had fiduciary responsibility for this \$90 million fund for nearly two years and have never met as Trustees. Aside from Plan Participant concern, the Attorney General of the state of California has recently expressed interest in breaches of fiduciary responsibility. This recommendation if acted upon can clearly demonstrate the Trustees commitment to their fiduciary responsibility and an understanding of their role.

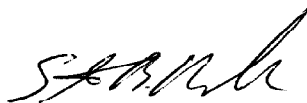
#### **BACKGROUND**

At its regular meeting of October 9, 2000 the Finance Committee requested that the Deferred Compensation Committee develop recommendations as to the role and responsibilities of the Trustees of the City's 457 Deferred Compensation Trust Fund.

#### **FISCAL IMPACT**

Undetermined at this time.

Respectfully Submitted,



Steve Mermell, Vice Chair  
Deferred Compensation Trust Administrators Committee