



Staff Report

TO: Board of Harbor Commissioners

FROM: Julie van Hoff, Director of Administrative Services

DATE: November 20, 2019

SUBJECT: Review District's Current 'Expense Accounting and Expenditure Reimbursement for Commissioners' Policy and Newly Drafted 'Commissioner Reimbursement' Policy

Recommendation/Motion:

Recommendation: Review and comment on the District's current 'Expense Accounting and Expenditure Reimbursement for Commissioners' Policy and newly drafted 'Commissioner Reimbursement' Policy.

Motion: Approve replacement of current policy with newly drafted policy 4.2.4 'Commissioner Reimbursement' (including any proposed revisions, if applicable); or take no action and keep the current Policy.

Policy Implications:

If approved by the Harbor Commission, newly drafted Policy 4.2.4 'Commissioner Reimbursement' would replace the District's current 'Expense Accounting and Expenditure Reimbursement for Commissioners' Policy which was approved on September 7, 2016.

California Government Code (CGC) §53232 et. seq. provides reimbursement requirements of members of a legislative body.

Internal Revenue Service (IRS) Publication 463 is referenced in CGC §53232 and provides further reimbursement requirements.

Fiscal Implications/Budget Status:

None

Background:

The Harbor Commission approved the District's current Policy 4.2.4 'Expense Accounting and Expenditure Reimbursement for Commissioners' ("Current District Policy") (Attachment 1) on September 7, 2016. Staff is requesting that the Current District Policy be evaluated and potentially replaced in whole or in part with the attached draft policy (Attachment 2). The primary goals of the draft policy are to clarify requirements of District-related expenses, the approval process for those expenses, ensure compliance with current laws, and identify reasonable rates for reimbursement. Following is a summary of key components of the current and draft policies:

Allowable Expenses:

CGC §53232 and IRS regulations allow for the following District-related expenses to be paid on behalf of a Commissioner.

- Actual (including standard meal allowance as included in draft policy), ordinary and necessary expenses incurred in the performance of official duties.
 - Actual expenses are documented by original receipts or IRS published standard meal allowance.
 - Ordinary expenses are defined as common and accepted by other Local Government Agencies.
 - Necessary expenses are helpful and appropriate for a Local Government Agency.

When Board Pre-Approval Is Not Required:

The Current District Policy states that the following types of activities do **not** need pre-expense approval by the Board, provided that the activity occurs within the State of California.

- Communicating with representatives of regional, state and national governments on Board-adopted policy positions;
- Attending conferences or educational seminars designed to improve the skills and knowledge of Commissioners, so long as the skills and knowledge relate to their position with the District; and
- Participating in regional, state and national organizations whose activities or agenda directly affect the District needs.

Staff requests Board direction as to whether or not the current policy should be revised such that all or some of the above-mentioned activities would require Board approval prior to the Commissioners incurring an expense.

When Board Pre-Approval Is Required:

Current District Policy and CGC §53232 require pre-approval by the Board for any expense that is not explicitly addressed by the adopted policy of the District or IRS Publication 463.

Current District Policy requires pre-approval for out-of-state travel. If the Board does not approve an expense the Commissioner may travel at his or her own expense per CGC §53232.

Staff does not recommend any changes to the current policy. Should the Board follow this staff recommendation, the above-mentioned items will continue to require pre-approval by the Board.

Approval of Expense Reports:

The Current District Policy states that expense report forms will be reviewed by the Treasurer and will be approved by the Harbor Commission pursuant to the normal process of approving bills and claims. The current normal process is for the Harbor Commission to review expense report forms after the payment to the Commissioner has been made.

Staff requests Board direction as to whether or not the current process for approving expense reports should remain the same or be changed to require a pre-approval process of estimated costs and an update to the section ‘When Board Pre-Approval is Not Required’ of the current or newly drafted policy.

Reimbursement Rates:

CGC §53232 requires the adoption of a policy in order for the District to reimburse members of the Board. The policy may specify reasonable rates for reimbursement and if rates aren’t stated the District must use the IRS rates as established in Publication 463.

A. Recommended Reasonable Rates:

Staff recommends that the following reasonable reimbursement rates be established for Travel. For the purposes of this Policy, Travel is defined as being away from the Commissioner’s home, on District Business, for a substantial amount of time; **and** the Commissioner needs to sleep or rest away from his or her home (from IRS publication 463).

1) **Transportation-**

- Airplane, Train, Bus -Coach fares will be reimbursed along with baggage charges. *Original receipts required.*
- Commissioner’s Car- IRS reimbursable mileage rate- adjusted annually on October 1. *Starting location & ending location required.*
- Rental Car-economy size. *Original receipts for rental and gas required.*
- Taxi, Commuter Bus, Ferries, Airport Shuttles, Tolls and Parking- *Original receipts required.*

As per CGC §53232- Commissioners shall use government and group rates offered by a provider of transportation travel when available.

2) **Lodging -**

- a. As per CGC §53232- If lodging is in connection with a conference or organized educational activity, lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Commissioner at

the time of booking. If the group rate is not available, the Commissioner shall use comparable lodging.

- b. As per CGC §53232- Commissioners shall use government and group rates offered by a provider of lodging services for lodging when available.
- c. *Original receipts are required.*

3) **Meals & Incidental Expenses-**

The Current District Policy requires a comparison of actual receipts submitted by staff and the IRS published Standard Meal Allowance. Meals are reimbursed up to a maximum of the IRS rate. To reduce record keeping and as allowed by the IRS, staff recommends that the District use the Standard Meal Allowance. With approval of this change, the District would reimburse the Commissioner a standard amount as published by the IRS. If a meal is included in education, training, conference or seminar registrations fees, the meal would not be eligible for reimbursement. For travel days, the Standard Meal Allowance would be 75% of the total daily Standard Meal Allowance. Standard Meal Allowances are adjusted annually on October 1st. Incidental expenses include fees and tips to porters, baggage carriers, and hotel staff.

It is anticipated that this change would result in a minimal increase in District costs and would require less time for Commissioner record keeping and staff review.

Commissioners are encouraged to make travel arrangements sufficiently in advance to obtain discounted transportation and lodging rates.

Reporting Requirements:

CGC §53232 requires Commissioners to provide brief reports on meetings attended at the expense of the District at the next regular meeting of the Board, or if the Commissioner is not in attendance at the next regular meeting.

CGC §53232 includes a requirement that Commissioners must provide an expense report form for actual and necessary expenses incurred in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. The expense reports shall: 1) document that expenses meet the existing policy for expenditure of public resources; 2) shall be submitted within a reasonable time after incurring the expense; and 3) the reports shall be accompanied by the receipts documenting each expense.

In consultation with District Counsel, staff recommends that the expense report would be required regardless of whether public funds are expended as a payment towards a credit card or as a check reimbursement. In addition, if the expense exceeds \$100 it must be reported annually as required by CGC §53065.5

Required Ethics Training Per CGC §53232:

For a Commissioner to be eligible to receive reimbursement from the District for permitted expenses, the Commissioner must attend at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years. "Ethics laws" include, but are not limited to, the following:

- (1) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
- (2) Laws relating to claiming perquisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
- (3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

Note: All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1. In addition, an annual report will be posted on the District's website identifying all reimbursements made for over \$100 as required by CGC §53065.5.

- (4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

Expenses Not Eligible for Reimbursement

The items listed in the Current Policy are the same as those listed in the Newly Drafted Policy.

Penalties Per CGC §53232:

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies may include, but are not limited to, the following:

- (a) The loss of reimbursement privileges.
- (b) Restitution to the local agency.
- (c) Civil penalties for misuse of public resources pursuant to CGC §8314.
- (d) Prosecution for misuse of public resources, pursuant to §424 of the Penal Code.

Attachments:

1. Current Policy 4.2.4 'Expense Accounting and Expenditure Reimbursement for Commissioners'
2. Proposed Policy 4.2.4 'Commissioner Reimbursement'
3. California Government Code 53232 et. seq.
4. CSDA Sample Policy

Reference:

Internal Revenue Service Publication 463

<https://www.irs.gov/forms-pubs/about-publication-463>