



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012-51

DE WITT W. CLINTON, COUNTY COUNSEL

163202

TELEPHONE

(213) 974-1879

TELECOPIER

(213) 617-7182

M E M O R A N D U M

February 25, 1991

TO: NEIL W. PETERSON
EXECUTIVE DIRECTOR

ED MCSPEDON
PRESIDENT/CHIEF EXECUTIVE OFFICER

FROM: NINA W. PHILLIPS *NWP*
SENIOR DEPUTY COUNTY COUNSEL

RE: FURTHER REVISIONS TO RCC ENABLING ORDINANCE AND
BY LAWS

Attached you will find further revisions to the RCC Enabling Ordinance and Bylaws to increase RCC board member compensation to a maximum of \$400 per month. Because the Design and Construction Agreement provides for only \$200 per month compensation, we should obtain RTD's concurrence to this increase.

NWP:lrn

cc: RMC

Augustin Zuniga, Richard Chastang
Attachment

RCCENAB.ORD



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MEMORANDUM

March 1, 1991

TO: Neil Peterson
Executive Director
Los Angeles County Transportation Commission

FROM: Nina W. Phillips *NWP*
Senior Deputy County Counsel
Public Works Division

RE: Revised RCC Enabling Ordinance and ByLaws

You have asked me to revise the RCC Enabling Ordinance and ByLaws. While these documents were revised in January 1989 to conform to the Design and Construction Agreement between the RTD and the Commission, additional changes are required to conform to suggestions made by the RCC Board. Many suggestions were made specifically by James Pott and other suggestions were made in connection with the "Principles for LACTC/RCC Organization" prepared by the Board of Directors.

Enabling Ordinance

Attached hereto as Exhibit A is a copy of the Ordinance with the recommended revisions. Deletions are indicated by lining through. Mr. Pott's suggestions are indicated by single underlining. Board "Principles" are indicated by double underlining. In addition, changes suggested by Mr. Pott that I do not recommend are noted in brackets and lined through. Each change is followed by a footnote which explains the reason for the change, or in the case of material in brackets, the reason for not incorporating the change.

ByLaws

Attached hereto as Exhibit B is a copy of the ByLaws with the suggested revisions and suggestions not recommended noted as above in the Ordinance.

Other Suggestions

In addition, you will find changes (with single underlining) to the Ordinance at Article 7 and the ByLaws at Article V which increase the Board member compensation to a maximum of \$400/month. Currently, the Design and Construction Agreement provides that the RCC board members will receive \$200/month and be compensated for expenses under rules comparable to the rules governing either LACTC Commissioners or SCRTD Directors as determined by the RCC Board. Because of the Agreement with RTD, I suggest we inform RTD of the need for the increase in compensation and obtain their concurrence.

Finally, the Board asked for language appropriate for a Finance and Audit Committee. Below is language suggested for the functions of a Finance and Audit Committee which could be adopted by the Board by resolution along with the functions of the other committees at the time the committee structure is established:

"The Committee shall be responsible for reviewing and monitoring individual rail project budgets and recommending approval of the individual rail project budgets and changes thereto to the Board. Further, the Committee shall review the results of the Commission's annual independent audit as it relates to rail design and construction projects. The Committee shall also make periodic reports to the Board on the project cost status and forecasts and recommend steps necessary to correct budget variances."

We will be happy to work with the Board to develop other Committee functions, to revise the above if other duties are desired for the Finance and Audit Committee, and to draft appropriate resolutions to set up the committees.

NWP/dh
c: Ed McSpedon

ORDINANCE NO.

An ordinance to provide for the establishment of a subsidiary organization to support the Los Angeles County Transportation Commission in the exercise of certain of its powers and duties, and to carry out the administrative and operational functions of the Commission, relating to ongoing and future rail construction projects of the Countywide Rail Rapid Transit System.

The Commission has determined that a subsidiary organization is necessary to support the rail transit construction projects being undertaken by the Commission and that a subsidiary would provide the basis for a future joint powers agency to oversee the rail transit projects of the joint powers authority's member agencies.

Therefore, the Los Angeles County Transportation Commission ordains as follows:

Article 1. Establishment of Subsidiary Organization

The Executive Director and his staff are authorized and directed to take the necessary steps to establish a subsidiary organization for rail construction purposes, to be known as the Los Angeles County Rail Construction Corporation, and to be formed as a California non-profit public benefit corporation, "the Corporation."

Article 2. Purpose

It is the purpose of this ordinance that the

Corporation shall act as a supportive body to the Commission in the exercise of the latter's discretionary powers and duties pertaining to the design and construction of all current and future light and heavy ¹ rail construction projects of the Countywide Rapid Transit System, and shall have primary responsibility to conduct the day-to-day administrative and ministerial [administrative and ministerial] ² functions and operations required by the projects. It may also serve in a similar capacity to any joint powers authority formed relating to rail transit projects, including commuter rail and associated rolling stock and control systems.³

Article 3. Membership of Corporation

The membership of the Corporation shall consist of seven directors. Three directors shall be appointed by the Commission. Three directors shall be appointed by the Southern California Rapid Transit District. The seventh director shall be appointed by a majority of the directors of the Corporation.

Article 4. Approval of Corporate Organization

As a condition precedent to the delegation of any of the Commission's powers and duties upon the Corporation, the Commission shall review and approve the Corporation's Articles of Incorporation and By-Laws, and the approval shall

be reflected in the minutes of the Commission. Any changes in the Articles of Incorporation or By-Laws subsequent to the formation of the Corporation shall be subject to the advance approval of the Commission.

The Commission's right of approval under this Article is absolute and comprehensive, and includes, by way of example only and not by way of limitation, the appointment, removal, and terms of office for directors⁴ selection and removal of [employee]⁵ officers [in cooperation with the Board of Directors]⁶ confirmation and approval of the President/Chief Executive Officer^{6.1} and their duties and terms of office, the appointment to, composition and function of committees the hiring and termination of employees, and the compensation for directors, officers, committee members and employees;⁷ provided however, the Board of Directors of the Corporation may appoint such board officers and establish such committees deemed necessary and appropriate to conduct the affairs of the Corporation and the Commission shall have no right of approval over such officers and committees.^{7.1}

Article 5. Delegation of Powers and Duties.

A. The Commission delegates the following powers and duties to the [Board of Directors of the]¹ Corporation:

1. the development establishment of administrative and operating policies needed for effective

implementation of rail transit project design and construction activities in Los Angeles County under the jurisdiction of the Commission for approval by the Commission, and the monitoring of the implementation of these policies thereafter.⁹ These policies shall include policies which establish and ensure operating efficiencies, good community relations, construction and future operational safety, cost effectiveness and cost efficiency, quality of construction matched to needs. ¹⁰ The RCC shall operate consistent with overall Commission policies and applicable federal and state requirements, and suggest changes to those policies as appropriate.¹¹

2. the preparation of a proposed annual design and construction budget to be presented to the Commission for adoption [~~including reviewing contracting plans and budgets for specific programs and making recommendations to the Commission~~]¹²

3. conduct the selection process for independent contractors for consultant services and construction, and recommending their hiring to the Commission;

4. the coordination of multiple project construction, including the establishment of specific schedule milestones and staffing [allocations] levels and the provision of adequate resources to meet priorities and general schedule for each project.¹³

the preparation of the application for federal grant funds.¹⁴

5. the establishment of accounting and auditing procedures; review the results of the Commission's annual independent audit as it relates to rail design and construction projects and recommend to the Commission any additional accounting and auditing procedures deemed necessary.¹⁵

the hiring of personnel as approved by the Commission in its budget;¹⁶

6. the approval and confirmation of the president and chief executive officer of the corporation ¹⁷ who shall be nominated by the Executive Director of Commission. Performance evaluations of the President shall be subject to the continuing oversight and approval of both the Board of Directors and the Executive Director.

The Executive Director and RCC Board of Directors shall jointly develop performance standards and objectives for the position of President, review the President's progress toward achieving those results and, subsequently, plan his or her future work requirements or responsibilities. Such standards and objectives shall also provide a basis for establishing special compensation awards according to the President's work achievements.

Such performance standards and objectives shall also serve as the basis to correct marginal or unsatisfactory performance of the President, as jointly determined by the Executive Director and the Board of Directors.

Insofar as it is determined by the Executive Director and/or the Board of Directors that the President has failed to reasonably accomplish those established standards, objectives, etc., the Executive Director shall take such appropriate disciplinary action up to and including dismissal.¹⁸

7. the negotiation of all contracts, including those for the procurement of all materials and services, and the submission of such contracts to the Commission for approval;

[the recruiting, screening, and selection of the General Manager/CEO jointly with the Executive Director of the Commission as approved by the Commission in its budget];¹⁹

8. the administration of all contracts approved by the Commission for design and construction activities for rail transit.²⁰

9. The review of and recommendation to the Commission for action on the following matters:

a. Awards of Contracts for \$50,000 or

above;

- b. Amendments or Change Orders to existing contracts over \$200,000;
- c. Any Amendment or Change Order which exceeds the contract contingency;
- d. Any Change Order which would delay the revenue operation date;
- e. Settlement of claims over \$200,000 or which exceed the contract contingency;
- f. Authorizing Contract Final Completion and Close Out;
- g. Cost Plus Change Notices. (i.e. changes which staff authorizes within their delegated authority, but which ultimately will exceed that authority and require Commission approval.);
- h. Procurement requiring a deviation from standard procedure;
- i. Approval or rejection of liability claims;
- j. Authorize the initiation of litigation;
- k. Approval of all real estate acquisitions for fair market value or

by administrative settlement or
condemnation.²¹

[review and recommend action to Commission
on all amendments required to cover Work Orders in excess of
previously authorized amounts in Work Plan/Authorization.]²²

10. implementation during design and
construction of joint development policies and plans as
developed and approved by the Commission.²³

11. the establishment and administration of a
community relations program which shall be coordinated with
the Commission's community relations program.²⁴

such other powers and duties as are
delegated to the RCC, the Transit Committee and to staff in
the Commission's Transit Development Policies and Procedures
Manual, Gen 3, Delegation of Authority.²⁵

12. such other powers and duties as are
lawfully delegable and which, from time to time, the
Commission may determine by resolution to vest in the
corporation.

B. the Executive Director of the Los Angeles
County Transportation Commission shall process all rail
transit design and construction issues delegated or assigned
to the RCC through the Board of Directors to the Commission.²⁶

C. The delegation of the Commission's powers and

duties set forth above to the Corporation is limited in scope to the Countywide Rail Rapid Transit System, consisting of:

1. the Long Beach-Los Angeles Rail Transit Project;
2. the Norwalk-El Segundo Rail Transit Project;
3. the Los Angeles Metro Rail Project; and
- [4. the San Fernando Valley Rail Transit Project;]
- [5. the North Coast Extension of the Norwalk El Segundo Rail Transit Project;]
- [6. the Los Angeles-Pasadena Rail Transit Project; and]²⁷
4. any future rail transit projects specifically delegated by the Commission to the RCC.²⁸

D. Ultimate supervision responsibility ²⁹ of all rail projects of the Countywide Rail Rapid Transit System remains with the Commission, and the Commission may annul any action taken by the Corporation within 30 days of its occurrence upon written notice to all interested parties.

All management and contracting activities must comply with Sections 130220 through 130239 of the Public Utilities Code and other applicable laws and authorities delegated by the Commission to the Executive Director [except

as otherwise provided for herein].³⁰

E. In carrying out its powers and duties the RCC shall make efficient use of scarce financial resources and utilize the Financial and Administrative Support Team (FAST) of the Commission to minimize duplication. The RCC will determine the financial and administrative support services it requires to perform its goals, and will contract for those services required of FAST with Commission. FAST services which will be provided through Commission resources shall be performed under the direction of RCC. When the amount of service request in a given area justifies or requires a dedicated staff sufficient for efficient operations in RCC's opinion, FAST staff so assigned shall devote full time to RCC activities, will functionally report to RCC, and, to the maximum extent possible, be co-located with RCC, and operate consistent with the terms of the contract between Commission/FAST and RCC. The RCC shall closely coordinate with and utilize the skills, talents and experience of staff from Commission and District operations and maintenance departments. The RCC shall have independent legal services available to the Board of Directors as the Board may require and as approved by the Commission.³¹

Article 6.

Any members of the Commission's staff who become

directors, officers or employees of the Corporation shall retain their status as employees of the Los Angeles County Transportation Commission.

Article 7. Funding of Corporation.

The Corporation shall be funded annually from the Commission's budget, upon such terms and conditions as are established periodically by the Commission. Board Members shall be compensated at the rate of \$100 per day attending to the business of the RCC up to a maximum of \$400/mos.³²

Article 8. Indemnification.

The Commission shall indemnify and hold harmless the Corporation, its directors, officers, committee members and employees from all liability arising from their actions in the course and scope of their duties pursuant to this ordinance.

Article 9. Effective date.

This ordinance shall be effective () /upon the date of its adoption.

1/En.Ord.

(Revised 3/1/91)

ORDINANCE FOOTNOTES.

1. See Principles For LACTC/RCC Organization ("Principles").
2. Mr. Pott suggested removing the limiting words "administrative and ministerial". In drafting the Ordinance these words were intentionally included because the Commission, as a public entity, cannot delegate its discretionary powers. However, I have added a clause indicating that the RCC's powers and duties include development of rail design and construction policies (see Footnote 7).
3. See Principles.
4. Mr. Pott suggested removing from the Commission's right of approval of the Articles and ByLaws the selection of directors, presumably to conform to the Design and Construction Agreement between the SCRTD and the Commission. However, the Ordinance and ByLaws were amended in January to reflect the Agreement.
5. Mr. Pott suggested qualifying the term officer with "employee" officer. Officers as defined in the ByLaws are essentially employees so this qualification is unnecessary.
6. and
 - 6.1 Here, I believe Mr. Pott is suggesting a requirement adding the concept that the selection and removal of officers of the RCC would be in cooperation with the RCC Board. This is not appropriate because the Commission's

Administrative Code provides that the Executive Director is responsible for the selection and removal of Commission employees and the RCC Ordinance provides that all RCC employees remain Commission employees. Further, the Design and Construction Agreement provides that the Executive Director selects the President/Chief Executive Officer subject to confirmation and approval by the RCC Board.

7. and

7.1 The ByLaws and Articles do not address terms of office, the hiring and firing of employees or compensation. Also, Mr. Pott suggested that the Commission's approval authority over the RCC Board committees be deleted. In addition, I have added a clause authorizing the RCC Board to appoint any Board officers and to establish any committees deemed necessary. Thus, the Board may appoint officers and create its committees by motion or resolution.

8. Mr. Pott suggested limiting the delegation of authority to the Board of Directors rather than to the Corporation. I do not recommend this change for two reasons. Legally, and as provided in the ByLaws, all corporate activities are carried out "by or under the direction of the Board." Thus, it is unnecessary. In addition, it is an unusual provision and creates a cumbersome situation. In practice, no corporate activity could be carried out

- until the Board has delegated that activity to staff so it creates a need for constant delegation of authority.
9. Mr. Pott suggested this provision. However, I modified it somewhat by changing "establishment" to "development" and adding at the end "for approval by the Commission". The reason for this is, again, this involves discretionary activities which should be approved by the Commission.
 10. See Principles.
 11. See Principles.
 12. I suggest not incorporating this specific reference suggested by Mr. Pott because it is inherent in the process of developing the budget and thus unnecessary and creates the implication that other aspects of the budget process are not included.
 13. Mr. Pott suggested this concept and I changed the wording slightly and incorporated it believing it is helpful to clarify these responsibilities.
 14. Deletion suggested by Mr. Pott - this function will not be performed by the RCC.
 15. I have modified this provision to recognize that by law, an annual independent financial audit is done of the LACTC's affairs including all RCC activities. However, I added a provision indicating that the Board is to develop recommendations regarding any additional auditing and accounting procedures deemed necessary.

16. Deletion suggested by Mr. Pott - this function will not be performed by RCC.
17. This is added to conform to the terms of the Design and Construction Agreement.
18. See Principles.
19. I deleted this suggestion of Mr. Pott, but added the appropriate provision (See Footnote 13) because it is inconsistent with the terms of the Design and Construction Agreement.
20. Suggested by Mr. Pott and appropriately clarifies the scope of the delegation.
21. These provisions are added to replace the delegation of powers referred to in the now obsolete Transit Development Policies and Procedures Manual, GEN 3, Delegation of Authority (See Footnote 20).
22. Suggested by Mr. Pott and included in the Ordinance at Article 5, Sections A.2, A.7 and A.8. Because the budget for each project will have line items showing the cost of all aspects of the work, and because the RCC Board will review proposed contract actions and recommend appropriate action on these contract issues to the Commission, this provision is unnecessary.
23. This concept was suggested by staff.
24. This concept was suggested by Mr. Pott and I believe appropriately reflects the need to coordinate the RCC's community relations program with the LACTC's program.

25. This section is deleted because the restructuring of Commission committees and the revisions currently being developed to the Transit Development Policies and Procedures Manual makes this reference obsolete. The delegation of these matters is now incorporated in Article 5, Section A.8, (See Footnote 16).
26. Suggested by Mr. Pott and provides that the RCC Board is responsible for reviewing all matters relating to rail design and construction for the Countywide system. This conforms to changes made to RCC Purpose clause. (See Footnote 1).
27. Suggested by Mr. Pott. However, these projects have not yet been officially authorized by the Commission. So it is premature to delegate management authority over them to the RCC.
28. This change is made to permit the Commission to delegate project to the RCC without amending the Ordinance.
29. Suggested by Mr. Pott and appears appropriate.
30. This addition was suggested by Mr. Pott. However, I made some changes because the code references were incorrect, and also it is not possible to make any exception to the requirement to comply with applicable law.
31. See Principles.
32. Increases board member compensation.