

**BYLAWS
OF THE
MUNICIPAL POOLING AUTHORITY**

These Bylaws are for the regulation of the MUNICIPAL POOLING AUTHORITY, except as otherwise provided by law or by the Joint Powers Agreement establishing said Authority. The Authority is comprised of the Cities of ANTIOCH, BRENTWOOD, CLAYTON, DANVILLE, EL CERRITO, GILROY, HERCULES, LAFAYETIE, MANTECA, MARTINEZ, MORAGA, OAKLEY, ORINDA, PACIFICA, PINOLE, PITTSBURG, PLEASANT HILL, SAN PABLO, SAN RAMON and WALNUT CREEK.

**ARTICLE I
DEFINITIONS**

The terms in these Bylaws shall be as defined in the Joint Powers Agreement creating the Authority, unless otherwise specified herein.

**ARTICLE II
OFFICES**

The principal executive office for the transaction of business of the Authority is hereby fixed and located at Walnut Creek, California. The Board shall have the authority to change the location of the principal executive office from time to time. Any such change shall be noted in the Bylaws by the Secretary, opposite this section, or this section may be amended to state the new location.

Other business offices may, at any time, be established by the Board at any place or places where the Authority is qualified to do business.

**ARTICLE III
FUNCTIONS OF THE AUTHORITY**

The Authority shall perform the following functions in discharging its responsibilities under the Joint Powers Agreement and these Bylaws:

- (1) Provide coverage for risks selected by the Members, by pooling or purchasing coverage for losses;
- (2) Assist Members in developing their risk management statements;
- (3) Participate in Members' risk management advisory committees;
- (4) Provide loss prevention, safety and security advice;
- (5) Provide claims management services for non-covered risks and for high deductibles;

- (6) Provide claims recovery and subrogation services to investigate, pursue and collect for damages caused by the acts of others;
- (7) Negotiate and purchase excess coverage and/or insurance policies;
- (8) Assist in providing rehabilitation services under workers' compensation to reduce industrial disability and retirement liabilities;
- (9) Establish actuarial methods and procedures to distribute costs and generate revenues equitably, and perform or contract for claims audits and actuarial studies to determine cost allocations;
- (10) Provide loss analysis control by use of statistical analysis, data processing, record and file keeping services. The purpose of this information is to identify high exposure operations and to evaluate proper levels of self-retention and deductibles;
- (11) Assist in maintaining proper building and contents values by location;
- (12) Conduct risk management evaluations to review the participation of each Member in the program;
- (13) Select legal counsel after recommendation by a committee composed of city attorneys of the Members;
- (14) Advise Members on selection of defense counsel;
- (15) Prepare an annual budget;
- (16) Provide litigation management oversight; and
- (17) Perform other functions as required by the Board for the purpose of accomplishing the goals of the Joint Powers Agreement.

ARTICLE IV
BOARD OFFICERS

The governing body of the Authority shall be the Board of Directors, which shall provide policy direction for the Officers, the Chief Administrative Officer (CAO), and any standing committee including the Executive Committee. The Board may delegate any or all of its responsibilities, except that the Board reserves to itself the authority to do the following, by majority vote unless otherwise stated:

1. Accept a new Member to the Authority (two-thirds vote of the Board);
2. Accept indebtedness (two-thirds vote of the Board);
3. Adopt a budget;
4. Amend these Bylaws;
5. Alter a Member's retained limit (two-thirds vote of the Board);
6. Approve contracts for Authority administrative services including legal counsel;

7. Approve equity distributions;
8. Approve Memoranda of Coverage;
9. Assess Members for an actuarially unsound coverage year (two-thirds vote of the Board);
10. Establish or terminate a coverage program (two-thirds vote of the Board);
11. Elect the officers of the Authority;
12. Remove an officer (two-thirds vote of the Board);
13. Expel a Member from the Authority (three-fourths vote of the Board);
14. Cancel or refuse to provide coverage to a member (two-thirds vote of the Board);
15. Approve the rescission of a Member's withdrawal notice;
16. Acquire and/or dispose of real property; and
17. Settle claims in excess of the authority of the Executive Committee and CAO.

The officers of the Board shall be the President, Vice-President, Secretary, and Treasurer/Auditor. The positions of Treasurer and Auditor may be filled by one person or separate persons. The CAO shall serve as Assistant Treasurer and Secretary to the Board. The President, Vice-President, Treasurer/Auditor shall be elected at the first meeting of the calendar year by a majority of the full Board of Directors and shall serve for two-year terms. The President, Vice-President, Treasurer/Auditor may be removed at any time by a two-thirds (2/3) vote of the full Board of Directors. In the event of resignation by, or removal of, the President, the Vice-President shall preside pro tern and the resulting vacancy shall be filled at the next regular meeting of the Board held after the vacancy occurs.

The Board of Directors may from time to time adopt and/or amend policies and procedures which shall amplify the general provisions of the Joint Powers Agreement or the Bylaws and give direction to the Executive Committee and the CAO

ARTICLE V

DUTIES OF THE OFFICERS

- A. The President shall be empowered in his or her discretion to undertake action necessary to administer the terms and conditions of the Joint Powers Agreement, these Bylaws and the policies and procedures adopted by the Board except to the extent that:
 - 1) Such action requires the approval of the Board of Directors, in which case the President shall act in conformity with the Board and carry out its instructions; or
 - 2) Such action is delegated by the Joint Powers Agreement, these Bylaws or the Board's policies or procedures to the CAO or other designated officer. However, if the position of CAO is vacant, the President shall exercise the powers and duties of the CAO until a successor is appointed and qualified.

The President shall preside at all meetings of the Board and the Executive Committee.

- B. The Vice-President shall preside in the absence or inability of the President and perform such other duties as the Board may specify from time to time.
- C. The CAO shall be the Secretary to the Board, and shall maintain all records of the Authority.

- D. The Board of Directors shall elect as Treasurer/Auditor a Finance Director or City Manager or Assistant City Manager with financial background of one of the Members. The Board may appoint someone other than the Treasurer to perform the functions of Auditor of the Authority but, if so, the appointment shall be from the same Member as the Treasurer. The CAO shall serve as Assistant Treasurer. The Assistant Treasurer and Treasurer/Auditor shall have those duties specified in Section 6505.5 and 6505.6 of the California Government Code and shall maintain or cause to be maintained all accounting and other financial records of the Authority and shall file all financial reports required of the Authority and shall perform such other duties required by the Joint Powers Agreement and as the Board may specify. The Assistant Treasurer and Treasurer/Auditor shall each furnish a fidelity bond in an amount acceptable to the Board, but in no case less than \$100,000.00, conditioned upon the faithful performance of his or her respective duties. Premiums for such bonds shall be paid by the Authority. The Assistant Treasurer shall also invest surplus funds in depositories approved by the Board and shall attempt to obtain the maximum return to the Authority. Surplus funds may be invested in any manner in which the Members may legally and customarily invest. The Assistant Treasurer shall prepare and recommend to the Board an Investment Policy and shall comply with the provisions of section 53646 of the Government Code.

In addition to those duties specified in Section 6505.5 and 6505.6 the Treasurer/Auditor is charged with monitoring compliance with these Bylaws and any policies and procedures adopted by the Board, and will report any unresolved discrepancies to the Executive Committee.

ARTICLE VI

OFFICERS AND EMPLOYEES - DUTIES

The Board shall retain and employ a CAO to perform the duties prescribed herein. The CAO shall a) serve at the pleasure of the Board; b) be chosen on the basis of qualifications; c) be paid a salary fixed by the Board commensurate with the responsibilities of the position; and d) not engage in any incompatible business or occupation.

In addition to the duties prescribed by the Joint Powers Agreement, these Bylaws and any policies and procedures adopted by the Board, the CAO shall:

- a) Appoint, remove and discipline all administrative officers and employees of the Authority except as otherwise provided herein;
- b) Annually, prepare and submit to the Board a proposed budget for the ensuing fiscal year, and properly administer the budget adopted by the Board;
- c) Keep the Board advised of the financial condition and future needs of the Authority and make such recommendations to the Board concerning the affairs of the Authority as are deemed necessary or desirable;
- d) Provide for the enforcement of all rules and regulations of the Authority; and
- e) Perform or make recommendations to the Board for the performance of the Authority's functions and responsibilities set forth herein and in the Joint Powers Agreement.

The Board may retain and employ a General Counsel who shall serve as the chief legal officer of the Authority and carry out all duties consistent therewith including but not limited to: a) preparation, review and approval of contracts, leases and other legal documents; b) prosecution on behalf of and defense of actions against the Authority; c) recommendations to the Board on form and content of coverage memoranda; and d) such other matters as the Board may prescribe. The General Counsel shall serve at the pleasure of the Board.

ARTICLE VII COMMITTEES

There is hereby established an Executive Committee of the Board which shall consist of the President, Vice-President, and three (3) individuals who are Directors on the Board designated by the Board, and the immediate Past-President, in the capacity as ex-officio officer. The immediate Past-President will not have a vote unless necessary to meet quorum requirements. The Executive Committee shall meet as necessary or as called by the President or CAO to conduct the business of the Authority. The Executive Committee shall receive recommendations from the CAO and other officers and employees of, and consultants to, the Authority and shall make recommendations thereon to the Board.

The Executive Committee shall review and have the authority to approve all recommended settlements, purchases and budget transfers as required by the applicable policies and procedures adopted by the Board.

The Board may from time to time appoint and dissolve other committees as necessary for the conduct of the Authority business.

ARTICLE VIII MEETINGS

The Board shall fix the time and place for its meetings and shall hold at least one regular meeting each year. Special meetings may be called from time to time by the President of the Board, or upon written demand by one-third (1/3) of the members of the Board. The CAO shall notify each Member in writing of the date, time, and place of each meeting and the business to be transacted. Such written notice must be delivered personally or mailed, so as to reach each board member, at least three working days prior to the time of such meeting.

All meetings of the Board, except duly authorized closed sessions, shall be open to the public and conducted in accordance with the Ralph M. Brown Act. Notice to the public of such meetings shall be given and/or posted as required by law. Each Board member shall be provided with the minutes as soon as possible after each meeting for their review.

Business shall not be transacted without a quorum of the Board members present. A quorum shall consist of at least ten Board members. Except as otherwise stated in these Bylaws or in the Joint Powers Agreement, actions by the Board shall be by a majority vote of the members present, provided there is a quorum.

**ARTICLE IX
BUDGET**

The annual fiscal year budget shall separately show the following:

- a) A General and Administrative Section.
- b) An Interest Income Section.
- c) The funds for each type of coverage afforded the Members of the Authority showing:
 - 1. The actuarial estimated claims including allocated claims adjustment costs;
 - 2. An equitable allocation of the general and administrative costs;
 - 3. An equitable allocation of the interest income;
 - 4. Reserves.

**ARTICLE X
DISBURSEMENT OF FUNDS**

The Assistant Treasurer may receive and invest funds as necessary for the operation of the Authority and shall disburse all funds as detailed in the annual budget adopted by the Board of Directors and consistent with the Joint Powers Agreement, these Bylaws and any policies and procedures adopted by the Board of Directors.

All checks drawn for the purpose of claim settlement in excess of \$100,000.00 and for the purchase of equipment, supplies or services in excess of \$50,000.00 shall be signed by any two (2) of the following officers of the Authority: The President, Vice-President, Assistant Treasurer and Treasurer/Auditor. All other checks shall be signed by the Assistant Treasurer and the appropriate Claims Manager as designated by the CAO.

**ARTICLE XI
MAINTENANCE OF FUNDS AND FINANCIAL RECORDS**

The CAO shall establish and maintain the funds and accounts in accordance with acceptable accounting practices and shall maintain such other records as the Board requires. Books and records of the Authority in the hands of the CAO shall be open to inspection to all reasonable times by representatives of the Cities.

The CAO shall have the custody of and disburse Authority funds as provided by accounting procedures developed in accordance with the Joint Powers Agreement, these Bylaws, and policies and procedures adopted by the Board, and in accordance with generally accepted accounting principles. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements, and shall comply with the laws relating to the subject, particularly Section 6505 of the Government Code.

ARTICLE XII AUDITS

Within 120 days after the close of each fiscal year, the CAO shall give a complete written report of all financial activities for that fiscal year to each Member. The Board shall either make an annual audit or contract with a certified public accountant to make an annual audit of the accounts and records of the Authority. In each case, the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to generally accepted auditing standards. When an audit is made by a certified public accountant, the Authority shall have a copy of the audit report filed as a public record with each Member. The audit report shall be filed within six (6) months of the end of the fiscal year under examination.

The Authority shall bear the costs of the audit, including any amounts paid to a certified public accountant.

ARTICLE XIII PROPERTY

No real property shall be acquired or disposed of except upon order of the Board. No purchase of equipment, services or supplies in excess of \$25,000.00 shall be made except upon order of the Executive Committee. Approval of the budget containing specific line item authorization to purchase equipment, services and supplies shall constitute approval by the Executive Committee.

ARTICLE XIV NEW MEMBERS

The Authority has established the following criteria for considering new members:

1. Pool Membership. Applicants accepted for membership must participate in the liability or workers' compensation pooled coverage program.
2. Coverage. The applicant shall agree to participation in the Authority for a minimum period of three (3) consecutive years following its admission as a new Member.
3. Vesting. The applicant shall agree to a five-year vesting schedule, providing an escalating share of any dividend or premium rebates as follows: after one year, not eligible for any rebate; after two years, eligible for 25% of its pro rata share; after three years, eligible for 50% of its pro rata share; after four years, eligible for 75% of its pro rata share; and after five years, eligible for 100% of its pro rata share.
4. Application Process. Any applicant desiring to be considered for membership by the Authority must follow the following procedure:
 - A Complete an application form which may include, but not be limited to, the following information:
 - i. Underwriting data for current year;

- ii. Payrolls for the prior five (5) years;
 - iii. Loss history for the prior five (5) years;
 - iv. A copy of the most recent claims audit and actuarial reports, if available;
 - v. A copy of the most recent audited financial statements;
 - vi. An indication as to the pooled coverage programs in which the applicant wishes to participate and the anticipated deductible level for such program; and
 - vii. Description of its Risk Management Programs.
- B. Provide an actuarial study in a framework that is acceptable to the Authority.
 - C. Submit to a staff analysis of its qualifications for membership and provide whatever documentation is required.
 - D. Comply with any other requests or considerations made by the Board.
 - E. Pay an application-processing fee as determined by the Board.

Additionally, applicants may, at their option, request a non-binding vote regarding their membership application. Subsequent to that vote, it shall be the applicant's decision as to whether or not it wishes to continue with the application process.

Upon review of an application, and after necessary site visits by staff, a report, containing a staff recommendation, will be presented to the Board. The applicant will be invited to attend a meeting of the Board to respond to questions concerning the application. The affirmative vote of two-thirds of the members of the entire Board is necessary for admission to the Authority.

ARTICLE XV ELIGIBILITY AND UNDERWRITING GUIDELINES

Any prospective member, including existing members not participating in a program, must meet the following minimum underwriting guidelines to participate in any of the Authority's pooled coverage programs.

- a. Have a loss rate calculated for the past three years that does not exceed the average loss rate measured over the same period for the current members.
- b. Demonstrate a commitment to support risk management and safety programs in order to control and prevent claims.
- c. Have a minimum deductible for participation in the Liability program of \$25,000.
- d. Pay an application fee equal to the cost charged by consultants retained to evaluate the member's eligibility for the program.

Where, in the opinion of the CAO and with the concurrence of two-thirds of the Board, the strict application of the guidelines in this Article would prevent the acceptance of

membership of an otherwise qualified applicant, the CAO may waive any guideline or any part of any guideline in this Article.

ARTICLE XVI CLAIMS AUDITS

An independent claims audit will be conducted on the Liability and Workers' Compensation Programs at least once every twenty-four (24) months to ensure compliance with reasonable claims administration practices.

ARTICLE XVII EXPULSION FROM AUTHORITY

The Board by a three-fourths vote of all members may expel, for default, any Member from the Authority after 180 days' written notice. The notice shall enumerate the reasons for the expulsion.

The following shall be considered "defaults" under the Joint Powers Agreement and these Bylaws:

1. Failure to observe and/or perform any covenant, condition, or agreement under the Bylaws and/or Joint Powers Agreement and/or any other policy or procedure adopted by the Board, including but not limited to risk management or loss reporting procedures;
2. Failure to pay any amount, including penalties and interest, due to the Authority for more than thirty (30) days;
3. Excessive losses as determined by the Board;
4. The filing of a petition applicable to the Member in any proceedings instituted under the provisions of the Federal Bankruptcy Code or under any similar act which may hereafter be enacted; or
5. Any condition of the Member, which the Board believes, jeopardizes the financial viability of the Authority.

The condition of default under paragraph 4 shall result in immediate termination of membership in the Authority. The Board shall give one hundred eighty (180) days' written notice of condition of default under paragraphs 1, 2, 3, and 5 prior to expulsion. Within ninety-(90) days of receiving such notice, the Member may attempt to correct or cure the condition of default to the satisfaction of the Board. The Board's decision as to the effectiveness of the cure shall be final.

The above list of grounds for expulsion shall not limit the Board's authority to determine whether a Member is in violation of the Joint Powers Agreement, Bylaws, or any policy or procedure adopted by the Board and, if so, to notify said Member that its participation in the Authority or in any coverage program provided by the Authority will be terminated. In the case of termination of membership for grounds other than those set forth hereinabove, the Board

shall give sixty (60) days' notice of termination and, in the Board's discretion, may give such Member an opportunity to cure the condition which is the basis for termination.

ARTICLE XVIII
EFFECT OF WITHDRAWAL OR EXPULSION

The withdrawal or expulsion of a Member shall not terminate the Authority nor alter any of the terms or conditions of the Joint Powers Agreement, Bylaws, or any policy or procedure adopted by the Board. The withdrawal or expulsion of a Member shall not terminate that Member's responsibility to contribute its share of contributions, assessments, or other funds to the Authority until all unpaid claims, or other unpaid liabilities, covering the period during which the Member was a participant in the Authority's coverage program or programs have finally been resolved and those program years are closed.

In addition, the withdrawal or expulsion of any Member shall not terminate its responsibility:

- (a) To cooperate fully with the Authority in determining the cause of losses and in the settlement of claims incurred during the coverage period(s), as defined in the Memorandum of Coverage, in which the Member participated.
- (b) To pay any cash assessments or other amounts determined by the Board to be due and payable for each program year of each program in which it participated until all claims or other unpaid liabilities covering such periods have been finally resolved.
- (c) To provide the Authority with statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement.
- (d) To cooperate with and assist the Authority in all matters relating to this Agreement.

Coverages under all pool coverage programs for the coverage periods in which that Member participated will remain in effect and continue until the conclusion of their respective program years.

Upon withdrawal or expulsion of a Member, that Member is entitled only to its pro rata share of the balance of the amount paid by it for the fiscal year in which withdrawal or expulsion takes place. That Member shall not participate in or be entitled to any other funds, property, or other assets of the Authority.

ARTICLE XIX
DISPUTES OR CLAIMS BETWEEN MEMBERS

After being notified in writing that one Member of the Authority has filed a formal claim, which is potentially covered by a program of the Authority, against another Member in accordance with provisions of the California Government Code, the Authority will no longer act on behalf of either Member without the written consent of all Members involved, insofar as the case giving rise to the claim is concerned.

ARTICLE XX
AMENDMENTS

These Bylaws may be amended by a majority of the Board provided that any amendment is compatible with the purposes of the Authority, is not in conflict with the Joint Powers Agreement and has been submitted to the Board at least fourteen (14) days in advance of a Board meeting. Any such amendments shall be effective immediately unless otherwise designated.