

M Management Committee

For the Metropolitan Council Meeting of July 25, 2012

Meeting date: June 27, 2012

ADVISORY INFORMATION

Date: June 19, 2012

Subject: Proposed Resolution Authorizing the Litigation Review Committee to
Oversee and Monitor Litigation and Claims Matters

District(s), Member(s): All

Policy/Legal Reference: Minnesota Statutes sections 473.123, 473.125 and 473.127

Staff Prepared/Presented: Donald J. Mueting, General Counsel 651.602.1463

Division/Department: Office of General Counsel

Proposed Action

That the Management Committee recommends Council adoption of the attached resolution authorizing the Litigation Review Committee to oversee and monitor litigation and claims matters.

Background

In a directly related business item, depending on action by this Committee, the Council will consider proposed amendments to the Council's Bylaws. If adopted, those proposed Bylaws amendments would streamline litigation management by delegating litigation and claims management authority to the Chair and the Regional Administrator, in consultation with the General Counsel. In conjunction with those proposed Bylaws amendments, the attached resolution would: (1) change the Litigation Review Special Committee to a standing committee; and (2) make the Litigation Review Committee responsible for monitoring and reviewing pending and potential litigation and claims matters involving the Council on an ongoing basis.

The proposed resolution would require the General Counsel and the Director of Risk Management and Claims to report to the Committee on pending and potential litigation and claims matters involving the Council and, as appropriate, bring pending litigation matters or claims to the Committee for consideration and recommendations. In consultation with the Council Chair, the Litigation Review Committee could refer to the Council for its consideration or action matters that may have significant policy implications or substantial financial consequences.

If the attached resolution is adopted, previous Council resolutions that delegated certain settlement authority will be rescinded.

Rationale

The proposed resolution will establish a method to exercise the Council's oversight function by monitoring on an ongoing basis litigation and claims matters that involve the Council and in particular those matters that have significant policy implications or substantial financial consequences.

Funding

No funding implications or impacts.

Known Support / Opposition

N/A

METROPOLITAN COUNCIL
390 Robert Street North • Saint Paul, Minnesota 55101-1805

RESOLUTION NO. 2012-13

**RESOLUTION AUTHORIZING THE LITIGATION REVIEW COMMITTEE
TO OVERSEE AND MONITOR LITIGATION AND CLAIMS MATTERS**

WHEREAS, Minnesota Statutes section 473.123, subdivision 1 places the Metropolitan Council (“Council”) under the general supervision and control of a seventeen-member governing body; and

WHEREAS, the operation and maintenance of its regional wastewater treatment and transit systems and the performance of its regional planning functions and other responsibilities give rise to significant numbers of contract, personal injury, employment and other types of claims that involve the Council in litigation and administrative proceedings on an ongoing basis; and

WHEREAS, at its June 13, 1996 (Resolution No. 96-17) regular meeting the governing body of the Council established a Litigation Review Special Committee with certain settlement authority so the Council could “respond and resolve litigation matters and claims in an efficient manner, assist the Council in performing its duties and responsibilities, and permit the governing body of the Council to focus its attention on those matters which may affect Council policies and have substantial financial consequences for the Council”; and

WHEREAS, at its June 13, 1996 (Resolution No. 96-18) regular meeting the governing body of the Council also delegated certain litigation and claims settlement authority to its Regional Administrator and authorized the Regional Administrator to re-delegate settlement authority to appropriate Council staff subject to certain limitations and conditions; and

WHEREAS, at its ____, __ 2012 regular meeting the Council amended its Bylaws and authorized its Chair and Regional Administrator, in consultation with the General Counsel, to exercise certain litigation and claims management authorities on behalf of the Council; and

WHEREAS, the governing body of the Council reserves to itself the right to exercise discretionary or legislative powers granted to it by the Legislature but finds: (1) it is both in the public interest and necessary for the efficient resolution of litigation and claims matters to delegate certain litigation and claims management responsibilities; and (2) it is appropriate and prudent for the Council to monitor and review on an ongoing basis the exercise of the litigation and claims management authorities that have been delegated to the Chair, the Regional Administrator and the General Counsel by the Council’s Bylaws.

NOW THEREFORE, BE IT RESOLVED:

1. **Committee Charge.** The Litigation Review Committee (“Committee”) shall be responsible for monitoring and reviewing pending and potential litigation and claims matters involving the Council. The General Counsel and the Director of Risk Management and Claims (or their designees) shall report to the Committee on pending and potential litigation and claims matters involving the Council. In consultation with the Committee Chair, the Regional Administrator, the General Counsel and the Director of Risk Management and Claims may

bring pending litigation matters or claims to the Committee for its consideration and recommendations. In its discretion and in consultation with the Chair of the Council, the Committee may refer to the governing body of the Council for consideration or action matters that may have significant policy implications or substantial financial consequences.

2. **Membership; Terms.** The Committee shall consist of four members who shall be appointed in accordance with the Council's Bylaws. One member shall serve as the Chair of the Committee and shall preside at Committee meetings. One member shall be designated Vice-Chair and shall preside at Committee meetings during absences of the Committee Chair or upon request of the Committee Chair. Committee members shall serve one-year terms, or until the members' successors are appointed. A Committee member may serve consecutive terms. Council members not serving on the Committee may attend and participate in meeting discussions but may not vote or be counted for the purposes of making a quorum.
3. **Meeting Schedule; Quorum.** Unless cancelled by the Committee Chair, the Committee shall meet quarterly, but may meet more frequently if deemed necessary or appropriate by the Committee Chair. Subject to the requirements of the Minnesota Open Meeting Law, the time and place of the Committee's regular meetings may be adjusted as determined by the Committee Chair and as specified in the notice for each meeting. Two members shall constitute a quorum of the Committee.
4. **Agendas.** The agenda for each Committee meeting shall be established by the Committee Chair and shall be sent to the Committee members prior to the meeting.
5. **Conduct of Meetings.** Committee meetings shall be conducted in accordance with the rules contained in the most current edition of *Robert's Rules of Order Newly Revised*, unless the Committee deems it expedient to waive the rules and conduct the meetings in an informal manner. The Committee Chair shall conduct Committee meetings in a manner consistent with the discussion of attorney-client privileged matters and other confidential information. The Committee may discuss with Council attorneys and staff attorney-client privileged matters related to pending civil legal actions and threatened litigation and may seek legal advice regarding specific acts and their consequences. During any meeting closed to the public for the purposes of considering litigation, litigation strategy and settlement, the Committee shall not seek general legal advice or discuss issues not related to the pending or threatened litigation.
6. **Open Meeting Law Requirements.** Committee meetings shall be conducted in accordance with the Minnesota Open Meeting Law. Notices of Committee meetings shall be published or posted in accordance with Minnesota Open Meeting Law requirements and general Council policies and procedures. When appropriate and necessary, and consistent with the requirements of the Minnesota Open Meeting Law and other applicable law, the Committee may close any of its meetings (or portions of any meetings) to discuss attorney-client privileged matters and other matters for which meetings may be closed.
7. **Recording Secretary.** The General Counsel shall designate a Recording Secretary to assist the Committee in carrying out the Committee's responsibilities.

8. ***Liability Limitations; Immunities.*** By delegating litigation management authority in Article IV, Section F of the Council Bylaws and oversight and review authority under this resolution the Council: (a) does not waive any liability limitations, defenses or immunities available to it under Minnesota Statutes Chapter 466 or other applicable state or federal statutes or laws; and (b) expressly reserves its right to assert all liability limitations, defenses and immunities available to the Council under applicable state and federal law.
9. ***Previous Resolutions Rescinded.*** This resolution supersedes and rescinds the following Council resolutions and all re-delegations of authority made pursuant to those resolutions:

Metropolitan Council Resolution No. 2010-10 (*Resolution Delegating Litigation and Claims Settlement Authority to the Litigation Review Special Committee*) (April 28, 2010);

Metropolitan Council Resolution No. 2000-10 (*Resolution Authorizing the Council's Regional Administrator to Assert or Recover Claims and to Commence Certain Types of Proceedings on Behalf of the Metropolitan Council*) (March 22, 2000);

Metropolitan Council Resolution No. 96-18 (*Resolution Delegating Authority and Conferring Authority on the Council's Regional Administrator to Settle Litigation and Claims Involving the Council*) (June 13, 1996); and

Metropolitan Council Resolution No. 95-26 (*Resolution Delegating Authority and Authorizing Certain Council Staff Who Are Not Attorneys to Represent the Council in Conciliation and Small-Claims Courts*) (April 27, 1995).

Adopted this ____th day of _____, 2012.

Susan Haigh, Chair

Emily Randleman, Recording Secretary