



AGENDA ITEM

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Date: April 23, 2021

AGENDA ITEM 50 Requesting approval of Amended and Restated Bylaws of The Pittsburgh Water and Sewer Authority

STATEMENT OF THE ISSUE:

Requesting the approval of the Amended and Restated Bylaws of The Pittsburgh Water and Sewer Authority

**FINAL BOARD APPROVAL:
ADOPTED APRIL 23, 2021**

Michael Domach

Michael Domach, Assist. Secretary



AGENDA ITEM REPORT

AGENDA ITEM #:	50
DATE:	April 23, 2021
TO:	PWSA Board of Directors
SUBJECT:	Requesting approval of the Amended and Restated Bylaws of The Pittsburgh Water and Sewer Authority

STATEMENT OF THE ISSUE:

Requesting approval of the Amended and Restated Bylaws of The Pittsburgh Water and Sewer Authority

RECOMMENDED ACTION:

Approval of the Amended and Restated Bylaws of The Pittsburgh Water and Sewer Authority. These updated Amendments include adding an apostrophe after the word "Nominators" throughout and changing the month of the annual meeting in Article 4, Section 4.2, to February.

ALTERNATIVES:

Continue to be governed by the current Bylaws.

MBE/WBE/VBE/SDVBE STATUS:

N/A

DOCUMENTS ATTACHED:

Amended and Restated Bylaws of The Pittsburgh Water and Sewer Authority



FOR MORE INFORMATION:

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LEGAL REVIEW

ACCEPTED BY CHIEF EXECUTIVE OFFICER

DATE

WILL PICKERING DATE

**AMENDED AND RESTATED BYLAWS OF
THE PITTSBURGH WATER AND SEWER AUTHORITY**

ARTICLE 1

INTRODUCTORY

Section 1.1. Name. The Pittsburgh Water and Sewer Authority is a municipal authority formed under the provisions of the Municipality Authorities Act, Act 22 of 2001, as amended, 53 Pa. C. S. §§ 5601, et seq. (the "MAA"), as a body corporate and politic.

Section 1.2. Office. The Pittsburgh Water and Sewer Authority (the "Authority") shall maintain its principal office at Penn-Liberty Plaza I, 1200 Penn Avenue, Pittsburgh, Pennsylvania 15222, or at such other location designated by the Board from time to time.

Section 1.3. Other Places of Business. Branch or subordinate offices or places of business may be established at any time by the Board at any place or places where the Authority is qualified to do business.

Section 1.4. Fiscal Year. The fiscal year of the Authority shall begin on the first day of January and end of the last day of December of each year.

ARTICLE 2

MEMBERS

Section 2.1. Number and Powers. The Authority shall be governed by a Board consisting of not more than nine (9) members ("Member" or "Members") appointed in accordance with Section 219 of the Home Rule Charter of the City of Pittsburgh and the MAA. The Board shall have, and shall exercise on behalf of the Authority all of the powers provided in the MAA, as from time to time amended, and as otherwise provided under the laws of the Commonwealth of Pennsylvania.

Section 2.2. Nomination to the Board. A Nominators' Committee created by the Mayor of the City of Pittsburgh shall recommend Board candidates for appointment by the Mayor and submission for approval to the Pittsburgh City Council.

Section 2.3. Qualifications. As specified in the MAA, each Member of the Board shall be a taxpayer in, maintain a business in, or be a citizen of the City of Pittsburgh or be a citizen of a municipality into which one or more of the projects of the Authority extends or is to extend or to which one or more projects has been or is to be leased. A majority of the Members shall be citizens residing in the City of Pittsburgh.

Section 2.4. Term. The term of the Members shall commence on the date of their approval by Pittsburgh City Council. Members shall serve staggered terms up to a term of five (5) years, except that any person appointed to fill a vacancy shall be appointed to serve only the unexpired term. Any Member of the Board shall be eligible for reappointment. The term of a

Member will, if necessary, continue beyond its nominal expiration date until his or her successor in office shall have been appointed.

Section 2.5. Vacancy. Any vacancy occurring by reason of the expiration of the term of any Member, or the disqualification, incapacity, resignation or death of a Member shall be filled by a person appointed in accordance with Sections 2.2 and 2.4.

Section 2.6. Removal. A Member may only be removed in accordance with Pennsylvania law.

Section 2.7. Compensation. Members shall serve on the Board without compensation, but may be reimbursed for travel, parking, communications and other expenses incurred in connection with their services on behalf of the Authority.

Section 2.8. Duties of Members; Reliance Upon Third Parties. Each Member shall stand in a fiduciary relation to the Authority and shall perform such duties as a Member, including duties as a member of any committee of the Board upon which such Member may serve, in good faith, in a manner such Member reasonably believes to be in the best interests of the Authority, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing such duties, each Member shall be entitled to rely in good faith on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (i) one or more officers or employees of the Authority whom the Member reasonably believes to be reliable and competent in the matters presented; (ii) counsel, public accountants or other persons as to matters which the Member reasonably believes to be within the professional or expert competence of such person; and (iii) a committee of the Board upon which such Member does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the Member reasonably believes to merit confidence.

Section 2.9. Presumption. Absent breach of fiduciary duty, lack of good faith, or self-dealing, a Member's actions or failure to act shall be presumed to be in the best interests of the Authority.

Section 2.10. Manner of Voting. The voting on all questions coming before the Board shall be entered in the minutes of such meeting. The vote of a majority of the Members of the Board participating in and entitled to vote at a meeting at which a quorum is present shall constitute the action of the Board.

Section 2.11. Telephonic and/or Other Electronic Meetings. Regular and special meetings of the Board may be held by telephonic conference, video conferencing and/or some other means of electronic connection so long as all Members of the Board attending such meetings can hear each other at the same time. Any Member of the Board may request to participate in any meeting via telephone conference, video conference or other electronic means.

Section 2.12. Rules, Policies and Procedures. The Board, by the affirmative vote of a majority of its Members, shall be authorized to adopt rules, policies and procedures from time to time in connection with the management, operation and control of the Authority provided that they are not inconsistent with these Bylaws.

ARTICLE 3

BOARD OFFICERS

Section 3.1. Officers and Terms. The officers of the Authority shall be a Chair, Vice Chair, Secretary, Treasurer, and Assistant Secretary-Treasurer to be elected by the Board from the Members at the annual meeting of the Board. The same person may hold more than one office; provided, however, that the Chair may not hold more than one office. The terms of such officers shall extend for one year from the time of election or until their successors are elected.

Section 3.2. Chair. The Chair:

3.2.1. shall preside at all regular and special meetings of the Board;

3.2.2. may appoint from among the Members of the Board such committees, including an Executive Committee, both standing and ad hoc, as may be needed to investigate, evaluate and recommend matters of policy and matters involving specific courses of action to the Board, when appropriate in conducting the business of the Authority; and if an Executive Committee is appointed by the Chair it shall consist of such officers and Members of the Board in total not less than three as the Chair shall determine, and will have such duties and powers as the Chair shall determine;

3.2.3. shall maintain close liaison with the appropriate officials of the City of Pittsburgh in matters that are of common interest to the City and to the Authority;

3.2.4. shall call special meetings of the Board; and

3.2.5. may execute documents on behalf of the Authority when authorized to do so by the Board.

Section 3.3. Vice Chair. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair and, in the case of the resignation or death of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Board shall elect a new Chair.

Section 3.4. Secretary. The Secretary shall cause to be kept the records of the Authority; shall cause to be kept minutes of the public meetings of the Board; shall cause to be given all notices necessary or proper under these Bylaws; shall attest the signature of the Chair or Vice-Chair whenever it is requisite or appropriate to do so; and shall perform all other duties that may be prescribed by the Board or the Chair.

Section 3.5. Treasurer. The Treasurer shall oversee the full and accurate accounts and investments of the Authority's funds, as well as accounts of all receipts and disbursements in books belonging to the Authority, and shall oversee the prompt deposit of all monies and valuables in the name of and to the credit of the Authority in such depositories as may be designated by the Board. The Treasurer shall oversee the disbursement of funds of the Authority as authorized by the Board, and shall see to the taking of proper vouchers for all disbursements. The Treasurer shall cause to be rendered to the Chair and to the Board, whenever required and for any specified period, an

account of the Authority's transactions, and of the financial condition of the Authority. The Treasurer shall cause an annual report to be prepared of its fiscal affairs covering the preceding calendar year on such form as shall be prescribed by the Department of Community and Economic Development and shall cause the Authority's books, records and accounts to be audited by a certified public accountant, and shall cause such report and audit to be filed as required by Section 5612 of MAA.

Section 3.6. Assistant Secretary-Treasurer. The Assistant Secretary-Treasurer shall perform all the duties of either the Secretary or Treasurer in the absence or incapacity of the Secretary or Treasurer and, in the case of the resignation or death of the Secretary or Treasurer, the Assistant Secretary-Treasurer shall perform such duties as are imposed upon such deceased or resigning Secretary or Treasurer until such time as the Board of the Authority shall appoint a new Secretary or Treasurer.

Section 3.7. Additional Duties. The officers of the Authority shall perform such duties and functions as may from time to time be required by the Board, by these Bylaws, or by the Rules and Regulations duly adopted by the Board.

Section 3.8. Vacancies. Should the office of Chair, Vice Chair, Secretary, Treasurer, or Assistant Secretary-Treasurer become vacant, the Board shall elect a successor for the unexpired term of the office.

Section 3.9. Removal of Officers. Officers may only be removed prior to the expiration of their term for "cause" or for replacement due to a vacancy caused by death or incapacitating illness. "Cause" is defined to be the misfeasance or malfeasance of such officer in the conduct of her or her office, actions evidencing a disregard for the welfare of the Authority and the community, dishonesty or a criminal conviction, as well as failure to attend three Board Meetings in succession without an excused absence from the Board Executive Committee.

ARTICLE 4

MEETINGS

Section 4.1. Open to Public. All meetings of the Board shall be open to the public, except for such closed meetings or executive sessions as are expressly authorized by Pennsylvania's Sunshine Act, (the "Sunshine Act"), 65 Pa. C.S.A. §§ 701 – 716, as it may be amended from time to time.

Section 4.2. Annual Meeting. The February meeting of the Board shall be the annual meeting for the election of officers.

Section 4.3. Meeting Time and Date. Regular meetings of the Board shall be held on a Friday of each month, at 10:00 a.m. as determined by the Board or at such other dates and times as the Board may from time to time determine. In addition, special meetings of the Board may be called by the Chair, by the Vice Chair, or by any three members of the Board if the Chair or the Vice Chair fails or refuses to call a special meeting requested by any three members.

Section 4.4. Location. Meetings of the Board shall be held at the Principal Office of the Authority, or at such other public buildings as the Board may from time to time determine, or may be held virtually by electronic means, in a manner consistent with the Sunshine Act.

Section 4.5. Notice to Members. Notice of any meeting of the Board shall be in compliance with the Sunshine Act, given to each Member at least three business days in advance if given in person, by telephone, facsimile, or electronic mail, or at least four calendar days in advance if given by mail, and if given by mail, the date on which the letter is deposited in the United States mail, postage prepaid, shall constitute the date upon which notice is given. If notice is given other than in person or by telephone, it shall be sent to the current mailing or e-mail address of the Member as shown on the records of the Authority. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Notice of an adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken, and if the period of adjournment does not exceed thirty days in any one adjournment. Whenever any notice is required to be given to a Member under the provisions of Pennsylvania law or these Bylaws, a waiver thereof in writing, signed by the Member entitled to said notice, whether before or after the time stated therein, shall have the full legal effect of notice properly given.

Section 4.6. Manner of Public Notice. Notice of any meeting of the Board shall be posted on the Authority's website, and published and posted as required by Pennsylvania law.

Section 4.7. Quorum. At all meetings of the Board, the presence of a majority of the Members of the Board then in office and entitled to vote shall constitute a quorum for the purpose of transacting business. A majority of the Members of the Board present and entitled to vote, whether or not a quorum, may adjourn any meeting of the Board to another time and place. A Member of the Board shall be deemed present at a meeting if he or she is connected by telephone or other communication equipment and can hear and be heard by all participants in the meeting.

Section 4.8. Public Comments. The Board shall provide a reasonable opportunity at each advertised regular and advertised special meeting for residents of the City of Pittsburgh, ratepayers of the Authority, or other interested parties to comment on matters of concern, official action, or deliberation that are or may be before the Board. Those who wish to comment on such matters shall so inform the Authority's Chief Executive Officer, in writing, including electronic mail or by telephone at least two (2) days before the regular meeting and reasonably in advance of the special meeting at which they desire to speak. The Chair may limit the time for each speaker to three minutes. If the Board determines that there is insufficient time at a meeting for such public comment, the Board may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

ARTICLE 5

CHIEF EXECUTIVE OFFICER

Section 5.1. Appointment of Chief Executive Officer. The Chief Executive Officer shall be nominated and appointed by the Board. All other operating officers shall be appointed by the Chief Executive Officer.

Section 5.2. Chief Executive Officer. The Chief Executive Officer shall attend all meetings of the Board unless illness prevents such attendance or the Chair has excused attendance. The Chief Executive Officer shall have general supervision and management over the affairs of the Authority, subject to the instructions and policies expressed by the Board. Unless otherwise specified by resolution of the Board, the Chief Executive Officer shall sign on behalf of the Authority all leases, contracts, or other written instruments to which the Authority shall be a party; provided, however, that all such instruments shall first have been approved by the Authority's legal counsel. All such documents may also be executed by the Chair and one other officer of the Board instead of, or in addition to, the Chief Executive Officer. The Chief Executive Officer shall be responsible to prepare and submit budgets for operating revenues and expenses and for capital improvements to the Board for approval at least 30 days prior to the beginning of each fiscal year. The Chief Executive Officer, or his designee, shall also prepare and submit such other periodic or special financial reports as the Board may direct. The Chief Executive Officer shall have authority to hire and fire personnel. The Chief Executive Officer shall, in addition, perform all other duties as may from time to time be assigned by the Board.

ARTICLE 6

INDEMNIFICATION

Section 6.1. Right to Indemnity. Each person previously, now or hereafter a Member of the Board, a member of the Nominators' Committee, an officer, or an employee of the Authority, whether or not then serving, in office or employed, shall be indemnified and reimbursed by the Authority against the costs and expenses reasonably paid or incurred by or imposed upon him or her in connection with any civil action, suit, claim, proceeding, or investigation instituted or threatened, to which he or she may be made a party or prospective party by reason of being or having been a Member of the Board, a member of the Nominators' Committee, an officer or employee, or by reason of any act or thing alleged to have been done or omitted by him or her, either alone or with others, as a Member of the Board, a member of the Nominators' Committee, officer, or employee or by reason of any act or omission, or alleged act or omission, that the Member, member of the Nominators' Committee, officer, or employee believed in good faith to be within the scope of his or her office or employment and to be in the best interest of the Authority. In any case in which liability for any such acts or omissions of any such Member, member of the Nominators' Committee, officer, or employee is imposed or sought to be imposed upon the estate of such Member, member of the Nominators' Committee, officer, or employee, the right to indemnification and reimbursement herein conferred on the Member, member of the Nominators' Committee, officer, or employee shall extend to the heirs, executors and/or administrators of any such Member, member of the Nominators' Committee, officer, or employee, or any of them.

Section 6.2. Settled Claims. The right to indemnification and reimbursement hereby granted shall extend also to amounts paid or agreed to be paid for a Member, member of the Nominators' Committee, officer, or employee in settlement or resolution of any such civil action, suit, claim, proceeding or investigation, instituted or threatened.

Section 6.3. Not an Exclusive Right. The right to indemnification and reimbursement hereby granted shall not be exclusive of, but shall be in addition to, the rights of Members, member of the Nominators' Committee, officers, or employees to compensation for services performed and all other rights to which any such Member, member of the Nominators' Committee, officer, or employee shall be entitled as a matter of law or equity.

Section 6.4. Costs and Expenses. For purposes of this Article 6, "costs and expenses" shall include any award, damages, restitution, judgment, fines, penalties, amounts ordered to be paid, the cost of appeal bonds, court costs, amounts paid in settlements approved pursuant to Section 6.2, and reasonable costs of defense, including but not limited to reasonable attorneys' and expert witness fees. Provided that the Member, member of the Nominators' Committee, officer, or employee has made written request for indemnification and is entitled to indemnification under Section 6.1, the Authority will pay such costs and expenses as they are incurred or invoiced, as appropriate to the circumstance.

Section 6.5. No Indemnity for Willful Misconduct. The Authority may decline to provide a defense if the Authority determines, pursuant to a confidential, non-public proceeding, that the act or omission that gave rise to the action, suit, claim, proceeding, or investigation constitutes a crime, actual fraud, actual malice, or willful misconduct; however, if it is subsequently determined in any judicial, administrative, or arbitration proceeding that the act or omission did not constitute a crime, actual malice, actual fraud, or willful misconduct, the Authority shall promptly reimburse all costs and expenses incurred and, if applicable, shall provide a defense for any remaining or related legal proceedings. Notwithstanding anything to the contrary herein, the Authority will not indemnify a Member, member of the Nominators' Committee, officer, or employee where his or her acts or omissions are finally judicially determined to constitute a crime, actual fraud, actual malice, or willful misconduct. If the Authority provides a defense and indemnification hereunder, and it is subsequently judicially determined that the person's misconduct was criminal, malicious, fraudulent, or willful, then the person shall reimburse the Authority for all costs and expenses paid for his or her indemnification and defense.

Section 6.6. Control of Defense. When the Authority provides a defense under this Article 6, it may assume exclusive control of the defense, assuring that the person being defended is reasonably apprised of developments in the proceeding or with respect to the claim against him or her. Where the interests of the Authority and the person seeking indemnification conflict, or where two or more Members, member of the Nominators' Committee, officers, or employees are the subject of claims or actions, and their interests conflict with one another, so long as the conflict exists, the Authority shall supply independent representation.

Section 6.7. Insurance. The Authority may purchase and maintain insurance covering any past, present, or future Member, member of the Nominators' Committee, officer, or employee for any claims against him or her, or liability incurred by him or her in such capacity or arising from his or her acts or omissions as a Member, member of the Nominators' Committee, officer, or

employee. If insurance coverage and defense are available for any person entitled to indemnification and defense under this Article 6, then the Authority will require the person to look to the insurer for defense and indemnification, and will assist him or her in tendering the claim to the insurer.

Section 6.8. Costs and Expenses in Securing Indemnification. Should any Member, member of the Nominators' Committee, officer, or employee seeking defense or indemnity under this Article 6 reasonably require the services of legal counsel in order to assert such rights, and should the Member, member of the Nominators' Committee, officer, or employee substantially prevail in establishing a right to defense or indemnity, then the Authority will reimburse reasonable costs and expenses incurred in asserting such rights.

Section 6.9. Vested Right. The right to defense and indemnification set forth in this Article will apply to acts or omissions that pre-date the adoption of these Amended and Restated Bylaws, as well as those that post-date the adoption, regardless of when any related claim, action, suit, proceeding, or investigation may arise. The right to defense and indemnification hereunder is intended to be in the nature of a vested right such that, should this Article be revised or become inoperative so as to diminish the right of defense or indemnification presently set forth herein, Members of the Board, member of the Nominators' Committee, officers, and employees will continue to be entitled to the full rights of defense and indemnification set forth in this Article at the time of its adoption with respect to any actual or alleged occurrence, action, or omission prior to its adoption. Any successor to the Authority shall be subject to all of the obligations of the Authority to defend and indemnify as set forth in this Article 6.

ARTICLE 7

AMENDMENTS TO BYLAWS

These Bylaws may be amended at any regular or special meeting of the Board with the approval of a majority of the Members of the Board present and entitled to vote.

THESE AMENDED AND RESTATED BYLAWS WERE ADOPTED BY THE BOARD OF THE PITTSBURGH WATER AND SEWER AUTHORITY ON APRIL 23, 2021, BY RESOLUTION NO. 50 OF 2021.