



● **Board of Directors**
Audit and Ethics Committee

May 12, 2009 Board Meeting

7-1

Subject

Approve amendments to the Metropolitan Water District Administrative Code to amend ethics provisions

Description

This letter proposes amendments to Metropolitan's Administrative Code to conform with current practices, to clarify ethics complaint procedures, and to make enforcement policies more consistent with employees' ethics policies.

The proposed amendments clarify how director, officer, or employee rights under existing disciplinary procedures may be invoked in the event of an allegation of noncompliance with ethics provisions in the Administrative Code.

The proposed changes are shown in [Attachment 1](#), with strikeovers reflecting deletions and underlining reflecting additions. [Attachment 2](#) sets forth the provisions as they would now appear in Metropolitan's Administrative Code.

Policy

Metropolitan Water District Administrative Code Section 7111: Nondiscrimination and Affirmative Action
Metropolitan Water District Administrative Code Section 7140: Violation of Ethics Policy
Metropolitan Water District Administrative Code Section 7141: Inquiry and Review Committee

California Environmental Quality Act (CEQA)

CEQA determination for Staff Recommendation:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

Staff Recommendation

Adopt the CEQA determination and approve amendments to the Administrative Code set forth in **Attachment 2** to reflect the changes recommended in this letter.

Fiscal Impact: None

Business Analysis: To conform to current practices


Derr Elliott
Ethics Officer

4/20/2009
Date

Attachment 1 – The Administrative Code of The Metropolitan Water District of Southern California (showing additions and deletions)

Attachment 2 – The Administrative Code of The Metropolitan Water District of Southern California (changed provisions only)

BLA #6542

§ 7111. Nondiscrimination ~~and Harassment and Affirmative Action.~~

Board members, officers, and employees shall not, in the performance of their official functions, discriminate against any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition, ~~or~~ disability, disabled veteran status, Vietnam era status, or other characteristic protected by law and they shall cooperate in achieving the equal opportunity and affirmative action goals and objectives of Metropolitan. Metropolitan Board members, officers, employees and guests have the right to participate in official Metropolitan functions in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive, or disruptive. Harassment based on race, color, religion, citizenship, or other characteristic protected by law, will not be sanctioned nor tolerated. Reports of harassment are taken seriously, and appropriate action will be taken against individuals found to have engaged in harassing conduct. The prohibition against discrimination and harassment applies to all transactions of Metropolitan's business, whether at a Metropolitan-operated facility or an external site. Allegations regarding officer or employee conduct in violation of this section shall be reported to Metropolitan's Equal Employment Opportunity Program Office. Allegations regarding director conduct in violation of this section shall be reported to the Ethics Officer or Board Chair.

§ 7140. Violation of Ethics ~~Provisions~~Policy

(a) When the Ethics Officer concludes, after investigation by the Inquiry and Review Committee, with the advice of General Counsel, that substantial evidence exists that indicates that a member of the Board is in non-compliance with state law, the matter will be referred to the Fair Political Practices Commission, Attorney General, or District Attorney, as applicable, with notice of the referral provided to the ~~Board, Board member~~ Executive Committee, director and the appointing member agency at the time of the referral. When the Ethics Officer concludes, after investigation by the Inquiry and Review Committee, with the advice of General Counsel, that substantial evidence exists that indicates that a member of the Board is in non-compliance with the ~~Ethics Policy or ethics provisions contained in the~~ Administrative Code, the matter will be referred to the Executive Committee, with prompt notice to the Board member, with a recommendation for appropriate action, which can include, but is not limited to: ~~(1) notification of finding of non-compliance; (2) letter of reprimand; (3) letter of reprimand with copy to the appointing agency; (4) request to the appointing agency for replacement of the Board member.~~ (1) find that the complaint was unsubstantiated or substantiated; (2) public or private censure by the Executive Committee with or without a copy of the letter to the appointing agency; (3) temporary or permanent removal of the Board member from one or more Board committees; (4) request to the appointing agency for replacement of the Board member; or (5) any other sanction determined by the Executive Committee to be appropriate and reasonable based upon the nature of the violation. All sanctions are subject to review of General Counsel for legal compliance. The Chair will be responsible for carrying out the determination of the Executive Committee.

(b) A Director who is subject to a finding of non-compliance with the ~~ethics provisions in the Administrative Code Ethics Policy~~ by the Ethics Officer shall, ~~at the time of matter is referred to the Executive Committee,~~ be provided a copy of all the material upon which the determination was based, and have the opportunity to present any relevant information, data, or facts in his or her own defense prior to the ~~Inquiry & Review Committee Executive Committee~~ determination.

(c) Any Director, including one who has brought a concern to the Ethics Office, who is dissatisfied with a determination by the Ethics Officer, ~~and/or after investigation~~ by the Inquiry and Review

Committee, that no violation or non-compliance occurred may appeal ~~the determination~~ to the Executive Committee for further review.

(d) Violations of the ~~Ethics Policy~~ ethics provisions contained in the Administrative Code by officers or employees will be handled through existing disciplinary procedures. Findings from the Inquiry and Review Committee will be referred to the appropriate Department Head for further action. An officer or employee who is subject to a finding of non-compliance with the ~~Ethics Policy~~ ethics provisions contained in the Administrative Code by either the Ethics Officer and/or Inquiry and Review Committee, may ~~can~~ challenge such determination pursuant to Section 6218(b) and (c) of the Administrative Code or the applicable memorandum of understanding. ~~Such officer or employee shall be provided a copy of all the material upon which the determination was based, and have the opportunity to present any relevant information, data, or facts in his or her own defense prior to a final determination regarding any discipline for such non-compliance.~~

§ 7141. Inquiry and Review Committee.

(a) The Inquiry and Review Committee is a committee that investigates ethics complaints against Metropolitan directors, officers and employees. The committee shall be composed of the Ethics Officer, three elected members of the Board, and three staff members, one appointed by the General Manager, one appointed by the General Counsel and one appointed by the General Auditor. The elected directors shall serve staggered three-year terms, with the initial terms being for either one, two or three years. Members of the committee may be re-elected or reappointed to their positions.

(b) The Ethics Officer shall refer ethics complaints to the committee, and is a non-voting member of the committee. The General Counsel shall advise the committee on legal matters and shall review the recommendations of the committee for legal compliance.

(c) The committee shall collect relevant data, including requesting internal or external investigations. Five of the six voting members of the committee, comprised of the directors and executive staff, The committee shall vote on the findings of an investigation of a complaint according to the following rules:

(1) Prior to voting on the findings of an investigation of a complaint, the director, officer, or employee who is under investigation will be notified by the Ethics Officer and provided an opportunity to submit any material he or she would like the committee to review and to meet with the Inquiry and Review Committee.

(~~2~~) For an allegation against a director, all ~~one~~ of the staff members shall be excused from participating in the investigation of that complaint and from voting on findings of the investigation. The General Counsel and Ethics Officer shall serve in an advisory function for the committee.

(~~3~~) Five of the six voting members of the committee shall vote on the findings of an investigation of ~~For~~ an allegation against an employee or officer; one of the director members shall be excused from participating in the investigation of that complaint. The directors shall take turns excusing themselves from participating on the findings of an investigation of an allegation against an employee or officer.

(43) Committee members shall ~~be take turns excused in themselves from participating in a complaint, as required by Sections 7141(c)(2) and 7141(c)(3). In addition, except that~~ members must excuse themselves, or may be removed by vote of the other committee members, from participating in the investigation of a complaint involving his or her conflict of interest, or the appearance of a conflict of interest or any impropriety. No committee member shall be involved in the investigation of a complaint that involves his or her area of responsibility.

(d) The committee shall submit findings involving employees, along with any dissent, to the appropriate ~~D~~department ~~H~~head for action. ~~The Ethics Officer will file a separate report with findings involving employees to the appropriate Department Head for action. For complaints involving directors, t~~The committee shall submit findings ~~involving directors, along with recommendations for action,~~ along with any dissent, to the Executive Committee ~~for action. The Ethics Officer will file a separate report with findings, along with recommendations for action, to the Executive Committee.~~ A report on action to be taken in response to the findings must be submitted to the Ethics Office within thirty (30) days.

(e) The Ethics Officer shall review and summarize all ethics complaints in a monthly quarterly report to the Board of Directors. The General Counsel shall receive a copy of all findings, reports and actions concerning complaints.

§ 7111. Nondiscrimination and Harassment

Board members, officers, and employees shall not, in the performance of their official functions, discriminate against any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition, disability, disabled veteran status, Vietnam era status, or other characteristic protected by law and they shall cooperate in achieving the equal opportunity and affirmative action goals and objectives of Metropolitan. Metropolitan Board members, officers, employees and guests have the right to participate in official Metropolitan functions in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive, or disruptive. Harassment based on race, color, religion, citizenship, or other characteristic protected by law, will not be sanctioned nor tolerated. Reports of harassment are taken seriously, and appropriate action will be taken against individuals found to have engaged in harassing conduct. The prohibition against discrimination and harassment applies to all transactions of Metropolitan's business, whether at a Metropolitan-operated facility or an external site. Allegations regarding officer or employee conduct in violation of this section shall be reported to Metropolitan's Equal Employment Opportunity Program Office. Allegations regarding director conduct in violation of this section shall be reported to the Ethics Officer or Board Chair.

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(b) A Director who is subject to a finding of non-compliance with the ethics provisions in the Administrative Code by the Ethics Officer shall be provided a copy of all the material upon which the determination was based, and have the opportunity to present any relevant information, data, or facts in his or her own defense prior to the Inquiry and Review Committee determination.

(c) Any Director, including one who has brought a concern to the Ethics Office, who is dissatisfied with a determination by the Ethics Officer, and/or by the Inquiry and Review Committee, that no violation or non-compliance occurred may appeal to the Executive Committee for further review.

(d) Violations of the ethics provisions contained in the Administrative Code by officers or employees will be handled through existing disciplinary procedures. Findings from the Inquiry and Review

Committee will be referred to the appropriate Department Head for further action. An officer or employee who is subject to a finding of non-compliance with the ethics provisions contained in the Administrative Code by either the Ethics Officer and/or Inquiry and Review Committee, may challenge such determination pursuant to Section 6218(b) and (c) of the Administrative Code or the applicable memorandum of understanding.

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(3) Five of the six voting members of the committee shall vote on the findings of an investigation of an allegation against an employee or officer; one of the director members shall be excused from participating in the investigation of that complaint. The directors shall take turns excusing themselves from participating on the findings of an investigation of an allegation against an employee or officer.

(4) Committee members shall be excused as required by Sections 7141(c)(2) and 7141(c)(3). In addition, members must excuse themselves, or may be removed by vote of the other committee members, from participating in the investigation of a complaint involving his or her conflict of interest, or the appearance of a conflict of interest or any impropriety. No committee member shall be involved in the investigation of a complaint that involves his or her area of responsibility.

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