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FISHBURN

LLP

Clarifying the Role and Enhancing the Operational Effectiveness of the Metropolitan Ethics Office

Metropolitan Water District
Audit and Ethics Special Committee

May 22, 2018

Lance Olson and Chris Waddell

Today's Objectives

- Review statutory requirements
- Discuss subject areas we have identified for review
- Provide initial recommendations
- Seek Committee input and direction

Approach

- SB 60 requirements
- Clear definition of Ethics Office role
- Compliance with applicable state laws

Statutory Requirements: SB 60

- Metropolitan Board shall “establish and operate”
- Independent entity: is not subject to political influence”
- Professional, qualified staff
- Rules regarding:
 - Internal disclosure
 - Lobbying
 - Conflicts of interest
 - Contracts
 - Campaign contributions
 - Ethics

Statutory Requirements: SB 60 — Cont'd

- Educate
- Investigate
- Confidentiality of sources
- “Whistle blowers”
- Due process rights of the “accused”
- Make investigation results public
- Propose a schedule of penalties

Areas to Address

- Reporting structure and independence
- Role and jurisdiction of Ethics Office
- Investigations
- Training, compliance and advice

Reporting Structure and Independence

- Harmonize the SB 60 requirements:
 - “[T]he MWD Board shall establish and operate”
 - Office “shall operate as independent entity”
 - “[I]ndependent entity” ≠ “separate and apart” from MWD
 - Ethics Office must do its job in an unbiased manner
 - Ethics Office remains ultimately accountable to the MWD Board

Proposed Reporting Structure

- Maintain current structure
 - Ethics Officer reports to the Board
 - Through the Audit and Ethics Committee
 - Ethics Office role and responsibilities defined in Administrative Code or Board adopted policies
- Communicate directly with Audit and Ethics Committee including its Chair.
- Free from interference in fulfilling its responsibilities

Proposed Reporting Structure – Cont'd

- Collaborative relationship among:
 - Ethics Office
 - Board
 - General Manager
 - General Counsel
- Ethics Officer annually confirms to the Board the organizational independence and compliance with collaborative relationship

Role and Jurisdiction of Ethics Office

- Proposes ethics rules
- Provides training and advice;
- Investigates potential violations;
- Proposes penalties
- State law conflict and financial interest
 - Political Reform Act
 - Government Code
 - Metropolitan Administrative Code

Role and Jurisdiction of Ethics Office – Cont'd

- State law
- Administrative Code
- Other Metropolitan Ethics Rules

Role and Jurisdiction of Ethics Office – Cont'd

- Clarity of Ethics Regulations
 - Some provisions vague
 - May be unenforceable
 - Clarify that Ethics Office may conduct investigations of potential violations of state ethics laws by staff (and Board), including when to refer violations to outside agencies.
 - Clarify that Ethics Office may conduct investigations of potential Metropolitan Administrative Code violations by staff (not just MWD Board), including internal disciplinary referrals.

Role and Jurisdiction of Ethics Office – Cont'd

- Administrative Code not complete
- SB 60 requires
 - lobbying
 - penalties for ethics violations
- Administrative Code overbroad. Not all conduct should be subject to Ethics Office jurisdiction.
 - Human Resources matters
- Some vague: may be unenforceable

Role and Jurisdiction of Ethics Office – Cont'd

- Recommendations:
 - Eliminate Administrative Code ethics provisions that are duplicative of state ethics laws;
 - Outside Ethics purview
 - Human Resources matters
 - Clarify requirements
 - Staff and Board awareness
 - Prepare manual
 - Form 700 Filings
 - Employee surveys
 - Track time and funds

Investigations

- Big Picture Issues
 - Clear and consistent process
 - Clear description of violations Ethics Office may investigate
 - Amend Administrative Code to adopt revised investigation policies

Investigations—Cont'd

- Investigation
 - Board Members and Senior Management
 - Use outside counsel
 - General Manager, Auditor and General Counsel.
 - Review of contract by General Counsel
- All other investigations to be conducted by Ethics Office

Investigations – Cont'd

- Maintain Confidentiality
 - Subjects
 - Complainants
 - Witnesses
- Clear Timeline
- Regular reporting
- Establish procedures: balances Ethics Office access to relevant evidence while protecting Metropolitan's attorney-client privilege

Investigations – Cont'd

- Access to information
 - Attorney-client privilege
 - Proposed process
 - Ethics Officer and General Counsel meet and confer regarding scope of document request;

Investigations – Cont'd

- Following meet and confer, any unresolved matters submit to the Chair of Audits and Ethics Special Committee for determination regarding their release.
 - Unclear whether provision of privileged communications to Ethics Officer during an investigation constitutes a waiver of privilege.
 - Closed session not permitted under Brown Act for Board to waive privilege; therefore Board must delegate its authority to waive any privilege.
 - Development by General Counsel of formal privilege log as recommended by WilmerHale would be unduly burdensome.

Conclusion of Investigation

- Refer to outside regulatory agencies when a serious violation of state law has been determined after investigation using preponderance of evidence standard.
 - Define “serious” to involve violations of conflict of interest rules and failures to disclose financial interests associated with such violations.
 - Non-serious violations (e.g., failure to disclose a reportable financial interest where no conflict of interest has occurred) would not need to be referred.
 - All violations of state laws would result in referral to appropriate MWD authority for appropriate internal disciplinary action.
- Refer violations of internal MWD ethics rule violations after investigation using preponderance of evidence standard to appropriate MWD authority and/or the Human Resources Group.

Conclusion of Investigation – Cont'd

- Making Investigation Results Public
 - If violation not proven after investigation, then publish nature of alleged violation and results of investigation without naming subject of complaint.
 - If violation is found and involves state law violation which is referred to appropriate outside agency, then do not make public until resolution of matter by outside agency. Public after that.
 - If violation of non-serious state law violation (not referred) or MWD rule found, then make results of investigation public including name of subject of complaint (subject to CBA rules).

Training

- Building upon existing training
- Applicable state ethics laws, Administrative Code provisions, and Metropolitan ethics policies
 - Role, stature and jurisdiction of Ethics Office
- Identify appropriate target audiences, training content and optimal frequency
 - Coordinate with state-required training such as AB 1234 ethics training

Training, Compliance and Advice

- Proactively review Form 700s
 - Provide prophylactic advice
- Importance of advice
 - Supports ethical culture
 - Immunity from investigation/enforcement of potential violations of the Administrative Code ethics provisions but does not provide immunity from violations of state ethics laws.

Next Steps

- Direction from Committee
- With Committee direction, OHF to draft proposed revisions to Administrative Code and applicable Metropolitan policies
- Acting Ethics Officer to review and provide comments on draft revisions
- Present proposed draft revisions to Committee for their review and comment
- Present Administrative Code revisions to MWD Board for adoption