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Metropolitan Water District Ethics Office: Revisions of Ethics Rules: Phase 3, Part 1

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Revisions of Metropolitan Ethics Rules: Phase 3, Part 1

- 4 Phases to Project - First two phases completed
- Major Revisions from Previous Phases:
 - Made the Audit and Ethics Committee a Standing Committee
 - Amended the Reporting Structure for the Ethics Officer
 - Clarified the Power and Duties of the Ethics Office

Phase III Topics

Phase III will be divided into two parts:

Part 1: Ethics Officer's jurisdiction over what ethics rules to investigate

- State ethic laws
- Metropolitan specific ethic rules

Part 2: Procedures for conducting investigations

Phase III Topics (Cont'd)

Goals for Today:

- Review proposed policy changes concerning:
 - Metropolitan Ethics Rules
 - The Ethics Officer's jurisdiction for conducting investigations
- Obtain input from the Committee

Overview of Phase III Proposals, (Part 1)

1. Incorporate State ethics law into the Metropolitan Administrative Code
2. Modify, delete, or move certain existing Metropolitan ethics rules
3. Add some new Metropolitan-Specific ethics rules
4. Move certain Operating Policies regarding ethics into the Administrative Code

Scope of Ethics Officer's Jurisdiction

Current Provisions:

- A hybrid of state conflict of interest rules
- Separate ethics rules unique to Metropolitan
- Many should not be within the jurisdiction of the Ethics Officer

– Administrative Code is missing:

- Several ethics rules now in the Operating Policies
- Rules mandated by SB 60
- Additional recommended Rules

Scope of Ethics Officer's Jurisdiction (Cont'd)

Proposal:

- Incorporate by reference specific state ethics laws into the Administrative Code including FPPC regulations and opinions
 - Delete current hybrid conflict of interest rules
- Modify existing Metropolitan ethics rules by eliminating some and clarifying others

Scope of Ethics Officer's Jurisdiction (Cont'd)

Proposal:

- Move relevant provisions of the Operating Policies to the Administrative Code
 - For those Operating Policies not incorporated into the Administrative Code would be handled by another Department (e.g., nepotism and romantic relationships)
- Add: Rules mandated by SB 60
- Additional recommended Rules

State Ethics Laws to be Incorporated into Administrative Code

Proposal:

- Incorporate 8 state ethics laws and regulations into the Administrative Code
- Give the Ethics Officer the authority to investigate alleged violations of these provisions

State Ethics Laws to be Incorporated into Administrative Code (Cont'd)

1. Government Code (GC) § 1090 et seq.
 - Public officials “shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

State Ethics Laws to be Incorporated into Administrative Code (Cont'd)

2. GC § 84308 as applied to Metropolitan Directors

- Prohibits soliciting or receiving a campaign contribution of more than \$250 from any party seeking a contract (other than competitively bid), license, permit, or other entitlement for use.

State Ethics Laws to be Incorporated into Administrative Code (Cont'd)

3. GC § 87100 *et seq.*

- “No public official at any level of state or local government shall make, participate in making or in any way attempt to use their official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

State Ethics Laws to be Incorporated into Administrative Code (Cont'd)

4. GC § 87407

- Ban on influencing prospective employment

5. GC § 89502

- “Ban on accepting an honorarium from any reportable source...”

State Ethics Laws to be Incorporated into Administrative Code (Cont'd)

6. GC § 89503

- Gift Limit of \$500 from a single source in a calendar year
- Regulations regarding gifts

7. GC § 87500 et seq.

- Requirement to file Form 700, Statement of Economic Interests

State Ethics Laws to be Incorporated into Administrative Code (Cont'd)

8. GC § 87460

- Prohibits loans to directors of more than \$250 from employees or contractors

State Ethics Laws to be Incorporated into Administrative Code (Cont'd)

- No director may receive a personal loan from:
 - Any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control.
 - Any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control.

Proposals to Modify Metropolitan Existing Ethics Rules

- **Currently:** 15 separate ethics rules unique to Metropolitan
- **Proposal**
 - Modify 8 rules to clarify
 - Move 2 rules to Board Governance Principles
 - Delete 3 (possibly 4) rules as vague, unenforceable or beyond the expertise of Ethics Office
 - Maintain 1 rule as drafted (Free Ticket Policy in § 7132)

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

1. Misuse of Position or Authority [§ 7104]

- **Current:** Prohibits Metropolitan officials from using their official authority to coerce someone else to provide an advantage or economic benefit to that official or any other person
- **Propose:** Metropolitan Officials shall not use their actual or perceived governmental authority to obtain a personal benefit other than one naturally arising from proper performance of governmental functions

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

2. “Revolving Door” and post-Metropolitan employment [§ 7122]

- **Current:** Prohibits former employees from representing non-governmental entities before Metropolitan for one year – difficult to enforce
- **Proposal:** Move this section to the new lobbying section and prohibit former employees from being a lobbyist for one year period

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

3. Gifts [§ 7130]

– **Current:** “No Board members, officers, or employees, shall receive or agree to receive, directly or indirectly, any compensation, reward or gift from any source, except from his or her appointing authority or employer, for any action related to the conduct of Metropolitan’s business.”

- Appears to prohibit quid pro quo – retain and revise

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

3. Gifts [§ 7130]

- **Proposal:** Add additional gift rule to prohibit gifts from those doing business with Metropolitan
 - Use FPPC definition of the term gift
 - New gift limit of \$50 annually
 - Limit to Metropolitan officials who file Form 700

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

4. Campaign Contributions [§ 7108]

– **Current:** [P]rohibits soliciting contributions at Metropolitan facilities or use of Metropolitan's seal

– **Proposal:**

- Keep the current language
- Add prohibition of contribution solicitations from Metropolitan employees by Directors and others in a position of authority

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

5. Contracts and Grants [§ 7105]

- **Current:** Prohibits Metropolitan officials from conduct to influence any transaction, contract, grant or sale to which Metropolitan is a party
 - Largely duplicative of state conflict of interest laws which would now be incorporated into the Administrative Code
- **Proposal:** Limit to existing restriction on the hiring of or contracting with Directors for a period of one year after they leave the board

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

6. Communications on Procurements [§ 7106]

- **Current:** Prohibits ex parte communications by Directors with staff regarding the selection of contractors/vendors
- **Proposal:**
 - Keep the current language
 - Add requirement to disclose ex parte communications between Directors and vendors/consultants

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

7. Use of Confidential Information [§ 7107]

– **Current:** Prohibits Metropolitan officials from using any confidential information for personal advantage or financial gain

– **Proposal:**

- Add definition of confidential information;
- Delete reference to financial gain or personal benefit.

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

Use of confidential information

- Ethics Office jurisdiction limited to:
- Employees releasing confidential information for financial gain or benefit
- Any unauthorized release by Directors
- All others handled by Human Resources

Proposals to Modify Metropolitan Existing Ethics Rules (Cont'd)

8. WhistleBlower Protections (§ 7110)

- **Current:** Ethics Office has jurisdiction over all Whistle Blower retaliation

- **Proposal:** Limit Ethics Office jurisdiction to WhistleBlower retaliation related to alleged violations ethics rules

Proposals to Move Metropolitan Existing Ethics Rules

1. Limitation on Associations [§ 7112]

– **Current:** Required by SB 60

- “Metropolitan shall not participate in any association structure or identification that is likely to mislead the public as to the association’s true identity, its source of funding, or its purpose.”

Proposals to Move Metropolitan Existing Ethics Rules

- Language unclear:
 - Applies to “Metropolitan” not individuals
 - The term “mislead” is not defined
- **Recommend:** move this to the Board Governing Principles [current § 1300]

Proposals to Move Metropolitan Existing Ethics Rules

2. Recusal Due to Bias [§ 7121]

- **Current:** “A Board member shall not make, participate in or attempt to influence any decision, if he or she is incapable of providing fair treatment to a matter before the Board due to bias, prejudice or because he or she has prejudged a matter.”

Proposals to Move Metropolitan Existing Ethics Rules

- Difficult to enforce
 - it does provide guidance to Board members to recuse themselves when they deem it appropriate
- **Recommend:** Move to Board Governance [current § 1300]

Proposals to Eliminate Metropolitan Existing Ethics Rules

1. Honoraria [§ 7131]

- **Current:** Incorporates the PRA/FPFC rules re honoraria
- **Recommend:** Eliminate: since the state ethics laws would now be part of the Administrative Code

Proposals to Eliminate Metropolitan Existing Ethics Rules (Cont'd)

2. Improper Activities and the Reporting of Such Activities [§ 7109]

- **Current:** Prohibits Metropolitan officials from interfering with the proper performance of the official duties of others or coercing such persons
- **Recommend:** Eliminate as unenforceable and vague

Proposals to Eliminate Metropolitan Existing Ethics Rules (Cont'd)

3. Fair and Equal Treatment [§ 7103]

- **Current:** “No Board member, officer, or employee shall grant any special consideration, treatment, or advantage to any person or group beyond that which is available to every other person or group in the same circumstances.”
- **Recommend:** Eliminate as unenforceable and vague

Proposals to Eliminate Metropolitan Existing Ethics Rules (Cont'd)

4. Nondiscrimination and Harassment [current § 7111]

- This section prohibits Metropolitan officials from discrimination based on various protected statuses
- Issue: Should Ethics Officer have jurisdiction to investigate alleged harassment by directors and if not, who should have jurisdiction

Proposals for New Metropolitan Specific Ethics Rules in Administrative Code

1. Add failure to cooperate with or knowingly providing false or misleading information to the Ethics Officer during an investigation is a violation of the Administrative Code (Currently in Guidelines for Investigations)

Proposals for New Metropolitan Specific Ethics Rules in Administrative Code (Cont'd)

2. Add lobbying provisions
 - SB 60 mandate
 - Require registration and reporting by persons compensated to influence decisions of Metropolitan officials over contracts or entitlements
 - Include current provisions concerning revolving door and apply it to former employees

Proposals for Moving Current Operating Policies into the Administrative Code

1. No Metropolitan official may accept or apply for employment with any vendor/contractor in negotiations with Metropolitan concerning the employee's area of responsibility [Current Operating Policy H-03, Par. 1]

Proposals for Moving Current Operating Policies into the Administrative Code (Cont'd)

2. Include portions of Operating Policy dealing with political activities
 - Use of Metropolitan facilities for political activities
 - Engaging in political activities during Metropolitan work hours [Current Operating Policy H-03, Par. 14 and 15]

Proposals for Moving Current Operating Policies into the Administrative Code (Cont'd)

3. Revise Operating Policies to eliminate Ethics Office jurisdiction over all other matters (i.e., most outside work/education activities, nepotism, romantic relationships and non-political community activities)

Next Steps

- February Audit and Ethics Committee Meeting
 - Phase 3, Part 2
 - Rules related to outside vendors and contracts
 - Rules related to the conduct of an investigation
- March Audit and Ethics Committee Meeting
 - Phase 4 training, education, compliance and advice

Next Steps

- April Audit and Ethics Committee Meeting
 - Administrative Code language presentation and Action
- May Board Meeting – Action
 - Consider approval of Administrative Code Changes