



● **Board of Directors**
Ethics, Organization, and Personnel Committee

8/15/2023 Board Meeting

7-5

Subject

Approve proposed amendment to Administrative Code Section 6471 to increase the amount of the Ethics Officer's authority to obtain professional services for external investigations from \$100,000 to \$250,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

In March 2023, the Ethics Office requested, and the Board approved, an increase to the Ethics Officer's authority to obtain outside investigators from \$50,000 to \$100,000 to account for the added investigation responsibilities, new investigation timeframes, and caseload management. Since March 2023, the investigation caseload has increased in amount and complexity.

This action therefore requests that the Board approve an increase to the amount of the Ethics Officer's authority to obtain outside investigators from \$100,000 to \$250,000 per contract annually.

Timing and Urgency

A delay in approval would likely impact the Ethics Office's ability to meet 90- and 180-day timeframes for investigations and require investigation firms to temporarily stop ongoing investigations until additional funds become available during the annual contract renewal process.

Details

Background

In 2018, the Board approved an increase to the amount of the Ethics Officer's authority to obtain professional services to conduct external investigations from \$40,000 to \$50,000 per contract per year. The Committee acknowledged that the Board could further amend the Ethics Office contracting amount if it ultimately proved insufficient for future needs. Subsequently, the Board approved changes to the Administrative Code which give the Ethics Officer responsibilities for conducting investigations through outside investigators for ethics investigations and certain Equal Employment Opportunity (EEO) investigations. Further, the Board has since adopted new deadlines for resolution of ethics investigations.

In March 2023, the Board approved a \$50,000 increase to \$100,000 to account for the increased investigative responsibilities, caseload, and shortened investigation timeframes. After several months of conducting investigations under the \$100,000 authorization, it has become clear that the current amount of authorized funds for outside investigation services is not meeting evolving needs. The Ethics Office continues to see an increase in complaints and has been managing multiple ethics and EEO investigations through outside firms.

Summary of Changes Requiring Outside Investigations and Stricter Timeframes

In 2021, the Board approved amendments to the Administrative Code including a requirement that ethics investigations involving directors and direct reports be managed by the Ethics Office through outside investigation firms, as opposed to internal Ethics Office staff.

In November 2022, the Board and internal policies delegated to the Ethics Officer the responsibility of managing certain EEO investigations of directors and employees through outside investigation firms when an EEO

complaint should be handled outside of the EEO Office to avoid real or perceived conflicts of interest, or to avoid potential bias or threats to impartiality.

In addition to added investigation responsibilities delegated to the Ethics Officer in 2021, the Board approved a 180-day deadline for most ethics investigations; EEO investigations are expected to be completed within 90 days.

Need for Increase in Authorized Contract Amount for Outside Investigation Services

Increasing the authority from \$100,000 to \$250,000 would allow staff greater flexibility to meet the office's mandates of additional investigation responsibilities and timely resolution of matters. The number and complexity of investigations are difficult to predict but have been steadily increasing. Without this authorization, staff would need to either place certain investigations on hold until a firm's one-year contract renewal period or come to the Board separately each time a firm is approaching \$100,000. In our view, these options are not an efficient approach.

In addition to this authorization request, staff is currently seeking contracts with additional firms. However, due to the complexity of cases, staff does not believe that adding more firms to the roster will on its own resolve the issue presented.

The authorization amount requested would bring the Ethics Office in alignment with the EEO Office's authorization amount for outside investigation firms. The EEO Office is currently authorized to expend up to the General Manager's contracting authority, or \$250,000.

In summary, this request is intended to more fully address:

- 2021 amendments to the Administrative Code requiring the use of external investigators for ethics investigations of directors and department heads.
- 2022 amendments to EEO policies delegating to the Ethics Officer responsibility to investigate certain EEO complaints involving directors, direct reports, and employees through external investigators.
- 2021 amendments to the Administrative Code requiring that ethics investigations generally be completed and resolved within 180 days, and internal procedures adopted in 2022 indicating that EEO investigations are expected to be completed within 90 days.
- Board and staff resources involved in seeking board authority to increase individual contracts on a case-by-case basis each time an outside investigator is approaching the \$100,000 contract limit. This option would require pausing investigations until additional funding is approved for each firm.

Further, with only one internal ethics investigator evaluating complaints, conducting ethics investigations, and managing contracts with outside investigation firms for ethics and EEO investigations, an increased contract limit would give the Ethics Officer flexibility to hire external firms to investigate routine ethics investigations as needed to avoid a backlog.

See **Attachment 1** for a redlined version of the proposed Administrative Code amendment.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities.

Metropolitan Water District Administrative Code Section 6471: Authority to Obtain Professional Services.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not defined as a project under CEQA because it involves government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Approve proposed amendment to Administrative Code Section 6471 to increase the amount of the Ethics Officer's authority to obtain professional services for external investigations from \$100,000 to \$250,000 per contract per year.

Fiscal Impact: This authorization would not modify the Ethics Office's authorized budget for FY 2023/24.

Business Analysis: This option will help avoid unnecessary delays in resolving investigations.

Option #2

Do not approve recommended amendment to the Administrative Code.

Fiscal Impact: None

Business Analysis: This option will delay resolution of Ethics Office investigations.

Staff Recommendation

Option #1



Abel Salinas
Ethics Officer

8/8/2023
Date

Attachment 1 – Redline Version, Proposed Administrative Code Amendment

Ref# e12692064

§6471. Authority to Obtain Professional Services.

(a) The Ethics Officer is authorized to contract for independent legal counsel as they deem necessary in fulfilling duties and responsibilities of the Ethics Office. The Ethics Officer may contract with one or more attorneys or law firms depending on the areas of expertise needed. The amount to be expended in fees, costs and expenses under any one contract in any one-year period shall not exceed \$100,000. The General Counsel shall review such contracts solely for consistency with Metropolitan's contract requirements. The General Counsel shall not have the authority to deny the Ethics Officer's ability to contract with any given party.

(b) The Ethics Officer is authorized to contract for professional services of outside investigators and investigation firms to conduct investigations under the Ethics Officer's purview. The amount to be expended in fees, costs, and expenses under any one contract in any one-year period shall not exceed ~~\$25100,000~~.

(c) The Ethics Officer is authorized to employ the services of other professional or technical consultants for advice and assistance in performing the duties assigned as may be required or as deemed necessary, provided that the amount to be expended in fees, costs and expenses under any one contract in any one year shall not exceed \$50,000.

(d) The Ethics Officer shall inform the Ethics, Organization and Personnel Committee whenever the authority granted under this section is exercised, and shall further report quarterly on activities concerning any agreements entered into under this section. Any such contracts shall be consistent with Metropolitan contract requirements and shall be reviewed by the General Counsel.

M. I. 45285 - April 8, 2003; amended by M. I. 46064 – January 11, 2005; amended by M.I. 46983 - February 13, 2007; amended by M. I. 47636 - September 9, 2008; renumbered from Section 6472 to 6471 and amended same by M.I. 51391 - November 6, 2018; added paragraph numbering to Section, added new paragraph (a) by M.I. 52941- August 16, 2022; amended paragraph (a) by M.I. 53014 – October 11, 2022; amended paragraphs (a) and (c) by M.I. 53064 – December 13, 2022; added new paragraph (b), and renumbered paragraphs (c) – (d) by M.I. 53185 - March 14, 2023.