



Executive Committee

9/26/2023 Committee Meeting

7-7

Subject

Review and consider action for an ethics policy violation by a Director; the General Manager has determined that this proposed action is exempt or otherwise not subject to CEQA

Executive Summary

In November 2022, the Ethics Office received a complaint alleging that a director violated an ethics policy. In accordance with Board-adopted procedures, the Ethics Office conducted a fact-finding investigation through an outside firm and made a finding of an ethics policy violation. Pursuant to Administrative Code section 7432, the Ethics Officer is now referring this policy violation to the Executive Committee for review and consideration of further action, if the Committee finds that further action is appropriate under the circumstances.

Details

Background

In 2022, Metropolitan Director Anthony Fellow ran for re-election to the Board of Directors of Upper San Gabriel Valley Municipal Water District, a Metropolitan member agency. The re-election campaign website included a photo of another Metropolitan director standing in Metropolitan's board room. The photo depicted Metropolitan's official seal in the background. When the photograph was displayed on the campaign website, there was a link soliciting contributions.

The Ethics Office received a complaint alleging Director Fellow used a photograph which included the official seal of Metropolitan for political campaign purposes, in violation of Metropolitan Administrative Code section 7123(b). Section 7123(b) states that:

Metropolitan officials shall not use Metropolitan's seal, trademark, stationery, or other indicia of Metropolitan's identity, or facsimile thereof, in any solicitation for political contributions

The Ethics Office followed Administrative Code procedures including: retaining an outside firm to conduct the investigation, giving the director an opportunity to review the investigation report and Ethics Officer findings report, allowing the Director to provide a written response prior to a final determination, and basing the finding on the preponderance of the evidence standard.

Policy Determination/Finding

The preponderance of the evidence substantiates a finding that Director Fellow violated the plain language of Administrative Code Section 7123(b): "Metropolitan officials shall not use Metropolitan's seal, trademark, stationery, or other indicia of Metropolitan's identity, or facsimile thereof, in any solicitation for political contributions." The seal was used in a solicitation for political contributions for a campaign.

Based on the Administrative Code Section 7123(b) violation and the mitigating factors, this matter is a Level IV (Incidental Violation), pursuant to Administrative Code Section 7431. Level IV is a violation that is a minor infraction that is technical in nature. In mitigation, the Ethics Officer considered that the director cooperated with the investigation, and the violation was unintentional. The Ethics Officer did not find any applicable aggravating factors.

Committee Process

The Executive Committee's only action is to determine whether any type of action should be taken and, if so, what type. Options are provided in the Administrative Code section detailed below.

Administrative Code sections 7431 – 7432 set forth the Board-adopted process, in pertinent part, for addressing ethics policy violations by directors:

§7431. Levels of Violations.

In any Ethics Officer report that finds a violation, the finding shall include a conclusion about the severity of the violation. This conclusion shall be based upon the severity of the underlying offense, along with any relevant mitigating or extenuating circumstances.

(a) Levels of violations:

- (1) Level I (Severe Violation): One or more violations that seriously undermine or threaten the integrity of Metropolitan's governmental decision-making processes.
- (2) Level II (Significant Violation): One or more violations that undermine or threaten the integrity of Metropolitan's governmental decision-making processes.
- (3) Level III (Violation): One or more violations that are isolated or limited in nature, and that provide no more than a minimal personal benefit.
- (4) Level IV (Incidental Violation): A minor infraction that is technical in nature and does not constitute a Level III violation. Multiple or repeated Level IV infractions collectively may constitute a Level III violation.

(b) Mitigating and aggravating factors.

In determining the appropriate level for a specific violation, the Ethics Officer report shall include any applicable mitigating or aggravating factors including, but not limited to, the following:

- (1) The nature and seriousness of the offense, and its relationship to the employee's duties and responsibilities.
- (2) The official position of the subject, including its responsibilities, prominence, or fiduciary role.
- (3) Acceptance of responsibility by the subject.
- (4) The degree to which the subject cooperated in the investigation.
- (5) Whether the subject had notice of the rules that were violated, or had been warned about the conduct in question.
- (6) Whether the offense was intentional, technical, negligent, or inadvertent, or was frequent.

§7432. Penalties for Violations.

- (a) Whenever the Ethics Officer finds a violation of a Metropolitan ethics rule, the Ethics Officer shall determine the level of violation pursuant [to] section 7431.
- (b) Whenever the Ethics Officer finds a violation of a Metropolitan ethics rule, the Ethics Officer shall refer the Ethics Officer report and the accompanying determination of level of violation as follows:
 - (1) Violations by Directors shall be referred to the Executive Committee for review and consideration of further action if appropriate under the circumstances which may include counseling, training, a private warning letter, public censure, temporary or permanent removal from committee assignments, or referral to the Director's appointing authority requesting appropriate action.

Pursuant to Administrative Code section 7432, the Ethics Officer refers this finding to the Executive Committee for review and consideration of further action if the Committee finds that further action is appropriate under the circumstances. Further action may include any of the options described in section 7432(b)(1) above.

Policy

Metropolitan Administrative Code §7405: Investigations of Directors, General Manager, General Counsel, General Auditor, or Ethics Officer.

Metropolitan Administrative Code §7420: Public Information on Investigations.

Metropolitan Administrative Code §7431: Levels of Violations.

Metropolitan Administrative Code §7432: Penalties for Violations.

Metropolitan Administrative Code §11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not subject to 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, the proposed action is not subject to CEQA because it involves organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the state CEQA Guidelines).

Board Options

Option #1

Consider action for a finding of an ethics policy violation by a Director.

Fiscal Impact: None

Business Analysis: Not applicable

Staff Recommendation

Not applicable



Abel Salinas
Ethics Officer

9/21/2023