



Audit & Ethics Committee

# Approve Ethics-Related Amendments to the Administrative Code

Item 7-8

August 16, 2022

## Response to Audit Recommendations

### Today's Presentation

- Brief summary of amendments proposed in June
- Updates to proposed Admin Code amendments since June
- Additional proposed amendments
- Next steps

## Audit Recommendations

### Amendments to State Law

- Establish Ethics Officer as sole authority for interpreting ethics rules.
- Grant Ethics Officer authority to contract for independent legal counsel.
- Authorize unrestricted access to records without waiver of privileges.
- Explicitly prohibit director and employee interference in investigations.

## Audit Recommendations

### Amend MWD Administrative Code

“Prohibit interested parties from participating in the office’s investigation process, except when necessary to provide information or otherwise respond to allegations.”

## Audit Recommendations

### Amend MWD Administrative Code

“Establish the best practices highlighted in this report for protecting the independence of the ethics office, such as ensuring that the ethics officer has sole authority to interpret MWD’s ethics rules and that the ethics office can obtain advice from outside legal counsel.”

## Audit Recommendations

### Amend Retaliation Policy

- Enhance policies to formally define retaliation.

## Summary of Proposed Revisions

### Administrative Code Amendments

- Sole authority to interpret ethics rules
- Authority for independent legal advice
- Unrestricted access to records
- Non-interference in ethics investigations
- Enhanced retaliation policy

## Updated Revisions

### Administrative Code Amendments

#### Authority/funding for independent counsel

- Increases funds based on director feedback
- Retains oversight over use of public funds
- Supports transparency in use of public funds



# Authority/funding for independent counsel

## §6471. Authority to Obtain Professional Services.

———(a) The Ethics Officer is authorized to contract for independent legal counsel as he or she deems 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.

(b) 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.

## Additional Revisions

# Administrative Code Amendments

- Closed Session Procedures – Ethics Matters
- Ethics Officer Annual Evaluation Process
- Other minor changes

# Closed Session Procedures

## § 2105. Closed Meeting Procedure.

(a) The Chair shall be responsible for ensuring that procedural requirements, other than requirements for notice, are fulfilled when a closed meeting is held. The Board Executive Secretary shall be responsible for fulfilling any notice requirements relating to closed meetings. The General Counsel shall be responsible for the preparation of any documents required by Government Code Section 54956.9 with regard to litigation. The General Counsel, General Manager and when appropriate the Auditor and Ethics Officer shall designate staff members and others who shall remain in the closed session to assist the Board in its deliberations. The General Counsel shall also designate staff members to record the minutes of the closed meeting.

# Ethics Officer Annual Evaluation Process

## (b) Duties and Functions with respect to Ethics Officer

- (1) ~~As part of the Department Head annual evaluation process, The Audit and Ethics Committee shall be responsible for recommending to the Board of Directors employment and termination of the Ethics Officer. The Committee shall further conduct~~engaging in periodic performance expectations discussions, including progress checks, with ~~reviews of~~ the Ethics Officer ~~and provide a written report to the Board of Directors regarding that review.~~

# Next Steps

- Committee Approval
- Board Approval by Auditor's deadline
- Questions/Comments

# Options

- Option #1
  - Approve ethics-related amendments to the Administrative Code.
- Option #2
  - Do not approve ethics-related amendments to the Administrative Code.

# Staff Recommendation

- Option #1

