



• **Board of Directors**
Legal and Claims Committee

10/11/2022 Board Meeting

7-12

Subject

Approve amendments to the Administrative Code to comply with recommendations of the California State Auditor regarding reporting requirements to the Board of Directors on personnel-related settlements and the contracting authority of the Ethics Officer; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

On April 21, 2022, the California State Auditor (Auditor) issued a report containing findings and recommendations regarding a wide-ranging audit of Metropolitan's processes and procedures. The report includes recommendations specifically addressing the reporting of personnel-related settlements and provisions in the Administrative Code relating to the Ethics Officer. The Auditor established an October 2022 deadline for implementing these recommendations. The Board previously adopted proposed changes to the Administrative Code intended to comply with the recommendations of the Auditor. After review, it was determined that additional minor changes to the language are necessary to comply with the recommendations. The requested changes are set forth below.

Details

Background

In 2021, the California State Legislature directed California's State Auditor to conduct an audit of Metropolitan on a wide range of issues including the requirements for the General Manager and General Counsel to report to the Board the settlement of matters relating to Metropolitan personnel and additional changes relating to the authority of the Ethics Officer. The final report of the Auditor was issued on April 21, 2022. The report included recommendations for changes in Metropolitan's Administrative Code.

In response to the recommendations of the Auditor, staff proposed changes to the Administrative Code. The Board approved the proposed changes relating to the Ethics Officer on August 16, 2022 (Board letter 7-8) and those relating to the reporting requirements on September 13, 2022 (Board letter 7-8). Subsequently, the language was reviewed, and it was determined that minor additional changes are necessary to fully comply with the intent of the Auditor's recommendations. The changes are set forth below. Staff recommends adoption of the minor changes.

Recommendations Related to Personnel-Related Settlements

On September 13, the Board adopted changes to Sections 2720 and 2721 of the Administrative Code regarding the reporting of personnel-related settlements to the Board by the General Manager and General Counsel to read as follows:

1. General Manager's Quarterly Reports

§ 2720(d). General Manager's Quarterly Reports.

(d) To the Legal and Claims Committee, jointly with the General Counsel, the exercise of any power delegated to them by Sections 6431, 6433 and 6434, including all personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of

settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

The proposed amendment to Section 2720 to clarify the reporting of all personnel-related settlements and comply with the Auditor's intent is:

(d) To the Legal and Claims Committee, jointly with the General Counsel, the exercise of any power delegated to them by Sections 6431, 6433 and 6434, **and, in addition, any and all other** personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

2. General Counsel's Quarterly Reports

§ 2721. General Counsel's Quarterly Reports.

The General Counsel shall quarterly report to the Legal and Claims Committee the exercise of any power delegated to the General Counsel by Sections 6431, 6433 and 6434, including all personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

The proposed amendment to Section 2721 to clarify the reporting of all personnel-related settlements and comply with the Auditor's intent is:

§ 2721. General Counsel's Quarterly Reports.

The General Counsel shall quarterly report to the Legal and Claims Committee the exercise of any power delegated to the General Counsel by Sections 6431, 6433 and 6434, **and, in addition, any and all other** personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

Recommendations Related to Ethics Officer's Contracting Authority

In its August 16, 2022 action, the Board added a new Section 6471(a) to the Administrative Code to expressly authorize the Ethics Officer to obtain independent legal counsel as follows:

§ 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.

The proposed amendment to clarify the autonomy of the Ethics Officer and comply with the Auditor's intent is:

§ 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. 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.

Summary

This action authorizes amendments to the Administrative Code to comply with the Auditor's recommendations regarding the reporting of personnel-related settlements and to clarify the autonomy of the Ethics Officer to contract with outside law firms. See **Attachment 1** for a clean copy of the revised Administrative Code provisions, if this item is approved, and **Attachment 2** for the redlined text of the recommended amendments as compared to the recently adopted Administrative Code language.

Project Milestone

October 2022 – Deadline for addressing California State Auditor's recommendations

Policy

Metropolitan Water District Administrative Code Section 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).

CEQA determination for Option #2:

None required

Board Options

Option #1

Approve recommended amendments to the Administrative Code.

Fiscal Impact: None

Business Analysis: This option will address the California State Auditor's recommendations for reporting to the Board personnel-related settlements and the autonomy of the Ethics Officer to contract with outside law firms within the prescribed deadline.

Option #2


Do not approve recommended amendments to the Administrative Code.

Fiscal Impact: None

Business Analysis: This option will not comply with the California State Auditor's recommendations for amendments to Metropolitan's Administrative Code.

Staff Recommendation

Option #1


Marcia Scully
General Counsel

10/5/2022
Date

Attachment 1 – Administrative Code – Clean Excerpts 2720 2721 6471

Attachment 2 – Administrative Code – Redlined Excerpts 2720 2721 6471

Ref# I12683973

Proposed Amendment to Administrative Code Section 2720**§ 2720. General Manager's Quarterly Reports.**

The General Manager shall quarterly make the following reports:

(a) To the Engineering and Operations Committee: a report on the Capital Investment Plan, including service connections approved by the General Manager pursuant to Sections 4700-4708 with the estimated cost and approximate location of each and the execution of any relocation agreements involving an amount in excess of \$100,000 under authority of Section 8122(c);

(b) To the Finance and Insurance Committee:

A summary of financial performance including Comparative Statements of Operations and Comparative Balance Sheets and variances thereof from estimates;

(c) To the Real Property and Asset Management Committee:

(1) Deeds or grants accepted during the preceding quarter;

(2) Easements, or similar rights, granted during the preceding quarter under the authority of Section 8220, and shall also include in such report any relocation or protection agreement made in connection therewith;

(3) All leases made during the preceding quarter under the authority of Sections 8222, 8223, 8230 and 8232;

(4) The details of any transactions during the preceding quarter in which an improvement was disposed of in such a manner as to make the improvement available for subsequent use by a party other than the District; and

(5) Property sold pursuant to the authority granted by Section 8240 et seq.

(d) To the Legal and Claims Committee, jointly with the General Counsel, the exercise of any power delegated to them by Sections 6431, 6433 and 6434, and, in addition, any and all other personnel-related settlements that invoke confidentiality or have any financial impact—including paid and reinstated leave—regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

(e) To the Organization, Personnel and Technology Committee:

(1) The status of all information technology projects throughout the organization.

(2) The employment of any professional and technical consultant, the extension of any professional and technical consulting agreement, on the exercise of authority under Section 8121(c) and 8122(h) and the execution of any contract authorized pursuant to Section 8122(g) during the preceding calendar quarter. The report covering the last calendar quarter of the year may be combined with and included in the annual report. Each such report shall indicate when a consultant is a former employee of the District.

Section 2720 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; paragraphs (a) and (d) amended by M.I. 39036 - June 11, 1991; paragraphs (a)(4) and (b)(e) added by M.I. 39080 - July 9, 1991; paragraph (f) added by M.I. 39840 - September 15, 1992; paragraph (f) repealed by M.I. 40768 - April 12, 1994; paragraph (e) amended by M.I. 41389 - May 9, 1995; paragraph (c) amended by M.I. 41615 - October 10, 1995; paragraph (b) amended by M.I. 42193 - December 10, 1996; paragraphs (b)(6), and (d) amended by M.I. 43587 - June 8, 1999; paragraph (f) added by M.I. 43963 - April 11, 2000; paragraphs (a) and (a)(1) amended, paragraph (b) deleted, sub-paragraphs (4)-(6) renumbered, paragraphs (c)-(f) renumbered and amended by M. I. 44582 - August 20, 2001; original paragraph (4) repealed and paragraphs renumbered; new paragraph (6) amended; old paragraph (d) repealed and renumbered (e) and amended by M. I. 45943 - October 12, 2004; paragraphs(a)(2), (a)(3), (b), (c), and (d) amended by M. I. 46371 - September 13, 2005; paragraphs (a) -(e) amended and renumbered by M. I. 46983 - February 13, 2007; paragraph (2) deleted, former paragraphs (3-8) renumbered, paragraph (c) divided to create paragraph (1), paragraph (2) added by M.I. 47998 - August 18, 2009; paragraph (a) and (1) amended, new paragraph (2)-(4) added, paragraph (c), (1) and (2) deleted, former paragraph (d) renumbered as new paragraph (c), paragraph (e) deleted by M.I. 48081 - November 10, 2009; paragraph (b) amended by M.I. 48534 - January 11, 2011; paragraph (a)(1) amended, paragraphs (a)(2)-(a)(3) deleted, former paragraph (a)(4) renumbered, paragraph (c) added, former paragraph (b)(3)-(b)(7) renumbered, former paragraph (e) renumbered, new paragraph (e) added by M.I. 48800 - September 13, 2011; paragraph (a) amended, subparagraphs (a)(1) and (a)(2) deleted, subparagraph (b)(1) amended to remove number, subparagraph (b)(2) deleted, subparagraph (e)(1) amended, and subparagraph (e)(2) added by M.I. 50155 - June 9, 2015.

Proposed Amendment to Administrative Code Section 2721

§ 2721. General Counsel's Quarterly Reports.

The General Counsel shall quarterly report to the Legal and Claims Committee the exercise of any power delegated to the General Counsel by Sections 6431, 6433 and 6434, and, in addition, any and all other personnel-related settlements that invoke confidentiality or have any financial impact—including paid and reinstated leave—regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

Section 2721 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; amended by M.I. 43587 - June 8, 1999; amended by M.I. 48800 - September 13, 2011.

(h) The Ethics Officer shall be the filing officer on behalf of the District to receive and file Statements of Economic Interest pursuant to the California Government Code and Section 7501 of this Administrative Code.

(i) The Ethics Officer shall have the authority to confer with the Chair of the Board and the Chair and Vice Chair of the Audit and Ethics Committee for the purpose of seeking advice and feedback on any policy and operational matters, or feedback on investigative matters, subject to the confidentiality requirements in section 7412 of the Administrative Code.

(j) The Ethics Officer shall have the authority to obtain, and have unrestricted access to all functions, documents, records, property, personnel and other information requested as part of an Ethics Office complaint or investigation without waiving any privileges that may apply.

M. I. 45285 - April 8, 2003; paragraph (e) deleted by M. I. 46338 - August 16, 2005; paragraph (e) added by M.I. 49648 - January 14, 2014; amended paragraphs (a), (b), (c) and (d), added paragraphs (e), (f) and (g), and renumbered former paragraph (e) to paragraph (h) and amended same by M.I. 51391 - November 6, 2018; amended paragraphs (e), (f), (g), and (h), and added new paragraph (i) by M.I. 52574 - November 9, 2021; amended paragraphs (c), (d), (g), and (i), and added new paragraph (j) by M.I. 52941- August 16, 2022.

§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. 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 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.

(c) The Ethics Officer shall inform the Audit and Ethics 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.

§6472. Reports to Audit and Ethics Committee.

(a) The Ethics Officer shall annually, in advance of the July Board meetings, submit to the Audit and Ethics Committee a business plan for the Ethics Office containing key priorities for the coming year for review and approval.

Proposed Amendment to Administrative Code Section 2720**§ 2720. General Manager's Quarterly Reports.**

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A summary of financial performance including Comparative Statements of Operations and Comparative Balance Sheets and variances thereof from estimates;

(c) To the Real Property and Asset Management Committee:

(1) Deeds or grants accepted during the preceding quarter;

(2) Easements, or similar rights, granted during the preceding quarter under the authority of Section 8220, and shall also include in such report any relocation or protection agreement made in connection therewith;

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