



● **Board of Directors**  
***Audit and Ethics Committee***

11/8/2022 Board Meeting

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**7-1**

**Subject**

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Approve proposed amendments to the Administrative Code Sections 2416 and 2131 relating to Equal Employment Opportunity policies and investigative procedures involving the Board of Directors and its Direct Reports; General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

**Executive Summary**

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In November 2021, a new process went into effect for Equal Employment Opportunity-related complaints involving the Board and its direct reports (General Manager, General Counsel, General Auditor and Ethics Officer). Circumstances and challenges arose that caused reconsideration of that process. This proposed action would initiate a new Equal Employment Opportunity (EEO) investigation process that would improve efficiency and consistency. This proposed action also would update the Administrative Code's EEO policy for the Board and its direct reports to comport with current laws and best practices.

**Board Direction**

The Board desires to amend the current ad hoc committee process to ensure a prompt, confidential and consistent process with adequate administrative support for the Board. In order to ensure there is no potential for or appearance of a conflict of interest by either any member of the Board or a direct report, if adopted, the new procedures will take effect on January 1, 2023, and will not be applicable to any pending matter.

**Description**

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Earlier in 2022, several directors suggested the consideration of a new ad hoc subcommittee process. At the Audit and Ethics Committee meeting held on August 16, 2022, the Ethics Officer presented a conceptual framework proposal that resulted from discussions with these Directors and the Chief EEO Officer. The basic elements of the concept were:

1. Moving forward, discontinue use of the recent ad hoc subcommittee process.
2. Centralize the ad hoc subcommittee process under direction of the EEO Officer. The EEO Officer would be responsible for ensuring investigations are fair, impartial, timely, and promptly initiated and completed by qualified personnel. Directors assigned to an ad hoc subcommittee will only be involved if an allegation is substantiated.
3. Instead of forming a new ad hoc subcommittee for each complaint, create one ad hoc subcommittee of three directors that serves for a set time. The single subcommittee would become involved only after a completed investigation substantiated an allegation.
4. Rather than oversee an EEO investigation, the ad hoc subcommittee's role would focus on how to address or respond to substantiated EEO violations. The ad hoc subcommittee would forward its recommendations to the Board of Directors for action.

At the September 27, 2022 meeting of the Audit and Ethics Committee, the Ethics Officer reported that there would be a more detailed proposal on a new ad hoc subcommittee process in October.

At the October 25, 2022 meeting of the Audit & Ethics Committee, the Ethics Office presented for discussion the elements of the proposed EEO ad hoc committee process and EEO investigative procedures for complaints received against the Board and its direct reports. Based on the discussion, the new EEO ad hoc committee process was developed, as described below. The EEO investigation procedures for the Board and its direct reports are described in **Attachment 3**.

### ***Elements of Proposed New Process***

The proposed changes are summarized below. The complete amendments are in the attachments.

1. ***Procedural amendments*** (see **Attachment 1** and **Attachment 2**, Section 2416)
  - a. Direct complaints and allegations to the EEO Officer rather than to the Board Chair or Audit and Ethics Committee Chair or Vice-Chair.
  - b. Change the ad hoc subcommittee's function from investigating allegations to responding to substantiated EEO violations.
  - c. The ad hoc subcommittee would only address cases where there is a substantiated finding of an EEO violation after a completed investigation.
  - d. Rather than creating a different ad hoc subcommittee for each case, the Executive Committee would create a single ad hoc subcommittee of three members and two alternates who would serve for a period of one year. Alternates would serve when conflicts precluded a member from participating in a case. The Executive Committee will also select an external law firm to serve as counsel to the ad hoc subcommittee to provide guidance, as needed, for post-investigation actions.
  - e. The ad hoc subcommittee would not be involved in decisions about when and how to conduct an investigation of allegations. Instead, the Executive Committee would delegate to the EEO Officer responsibility to designate an external investigator/law firm to conduct a fact-finding EEO investigation, when appropriate, and under the oversight of the EEO Officer.
  - f. The EEO Officer would refer substantiated findings of EEO violations via an attorney-client privileged communication to the ad hoc subcommittee to recommend appropriate action. At its discretion, the ad hoc subcommittee could consult with its ad hoc subcommittee counsel, EEO Officer, Ethics Officer, or General Counsel on appropriate action regarding a director or direct reports to the Board.
  - g. The ad hoc subcommittee will share the findings and recommended action with the respondent of the EEO investigation for an opportunity to respond.
  - h. The ad hoc subcommittee would report a substantiated finding of an EEO violation by a director or department head to the Board of Directors and recommend appropriate action for the Board's consideration. Appropriate action for directors could include counseling, training, a private warning letter, public censure, temporary or permanent removal from committee assignments, or referral to the director's appointing authority. Appropriate action for direct reports to the Board could include counseling, training, performance review, or imposition of discipline.
  - i. If the General Manager were the subject of a complaint, or if, in the judgment of the EEO Officer, the matter should be handled differently to avoid real or perceived conflicts of interest, bias, or threats to impartiality, the EEO Officer would delegate to the Ethics Officer or General Counsel the responsibility to retain an external investigator to conduct a fact-finding investigation. Substantiated findings would be reported directly to the ad hoc subcommittee for consideration of recommendations to the Board of Directors.
  - j. Any deviation from these investigation protocols by the EEO Officer could occur in some instances after written justification and approval of the ad hoc subcommittee.

2. ***Proposed EEO Policy Amendments for Administrative Code*** (see **Attachment 1** and **Attachment 2**, Section 2131.)

As part of this process, the EEO Officer proposes to amend the EEO policies within the Administrative Code to align with best practices set forth by the Civil Rights Division State of California, provide clarity through definitions, and update protected characteristics per federal, state and local laws.

The amendments include the following elements:

- a. Updates to the descriptions of protected characteristics to conform to current legal standards. For example, the addition of citizenship status, gender identity, and gender expression as classes protected under the policy.
- b. Definition of *covered individuals* to clarify who is protected by this policy.
- c. Definition of *discrimination* to conform to current legal standards and best practices.
- d. Definition of *harassment* to conform to current legal standards and best practices.
- e. Inclusion of examples of potential forms of harassment.
- f. Definition of *retaliation* to conform to current legal standards and best practices.

3. ***Proposed EEO Investigative Procedures for the Board and its Direct Reports*** (see **Attachment 3**)

For consistency, fairness, and transparency, and based on best practices in accordance with the Civil Rights Division, Association of Workplace Investigation Guidelines, and the California State Audit, the EEO Officer proposes EEO investigative procedures to be followed when a complaint is reported against the Board and its direct reports. Details of this procedure are in **Attachment 3**.

## **Policy**

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Metropolitan Water District Administrative Code Section 2131: [Discrimination, Harassment, and Retaliation by Directors], and 2416 [Duties of Executive Committee]

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

## **California Environmental Quality Act (CEQA)**

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### **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 it involves continuing administrative or maintenance activities that will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment (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 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

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### Option #1

Approve recommended amendments to Administrative Code Sections 2131 and 2416, as set forth in **Attachment 1** and **Attachment 2**, and approve Equal Employment Opportunity Investigative Procedures for the Board and its direct reports.

**Fiscal Impact:** Unknown

**Business Analysis:** Enhancement and improvement of EEO-related policies and procedures

### Option #2

Do not approve recommended amendments to Administrative Code Sections 2131 and 2416, as set forth in **Attachment 1** and **Attachment 2**, or the Equal Employment Opportunity Investigative Procedures for the Board and its direct reports.

**Fiscal Impact:** Unknown

**Business Analysis:** Delays to enhancement and improvement of EEO-related policies and procedures

### Option #3

Approve recommended amendments to Administrative Code Sections 2131 and 2416, as set forth in **Attachment 1** and **Attachment 2**, and further develop Equal Employment Opportunity Investigative Procedures for the Board and its direct reports based on committee discussion.

**Fiscal Impact:** Unknown

**Business Analysis:** Enhancement and improvement of EEO-related policies and procedures

### Option #4

Approve recommended amendments to Administrative Code Section 2131, as set forth in **Attachment 1** and **Attachment 2**, and further develop Administrative Code Section 2416 and the Equal Employment Opportunity Investigative Procedures for the Board and its direct reports based on committee discussion.

**Fiscal Impact:** Unknown

**Business Analysis:** Enhancement and improvement of EEO-related policies and procedures

## Staff Recommendation

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### Option # 1

  
\_\_\_\_\_  
Jonaura Wisdom  
Chief Equal Employment Opportunity Officer

11/2/2022  
Date

  
\_\_\_\_\_  
Adel Hagekhalil  
General Manager

11/3/2022  
Date

**Attachment 1 – Redline Version of Administrative Code Sections 2131 and 2416**

**Attachment 2 – Clean Version of Administrative Code Sections 2131 and 2416**

**Attachment 3 – EEO Investigative Procedures for the Board and its Direct Reports**

**Division II****PROCEDURES PERTAINING TO BOARD, COMMITTEES  
AND DIRECTORS****Chapter 1****Article 3****BOARD CONDUCT RULES**

Sec.

2131. Prohibition of Discrimination, Harassment, and Retaliation by Directors

**§ 2131. Prohibition of Discrimination, Harassment, and Retaliation by Directors.**

(a) Directors shall not, in the performance of their official functions, discriminate against or harass any ~~person~~ Covered Individual on the basis of age, race, color, sex, religion or religious creed, color, creed, age, marital status, national origin, ancestry, citizenship status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender or pregnancy, gender (including gender identity and gender expression), sexual orientation, marital status, medical condition, genetic information/characteristics, disability (physical or mental), protected military or veteran status, or any other characteristics protected by applicable federal, state, or local law.

(b) Directors ~~and they~~ shall cooperate in achieving the equal opportunity ~~and affirmative action~~ goals and objectives of Metropolitan. Metropolitan directors, officers, employees, and guests have the right to participate in official Metropolitan functions in an environment free from all forms of discrimination, harassment, and retaliation, ~~and conduct which can be considered harassing, coercive, or disruptive.~~ Discrimination or harassment based on any characteristic protected by law, as provided above, will not be sanctioned nor tolerated.

(c) Directors also shall not retaliate against any ~~person~~ Covered Individual for reporting discrimination or harassment prohibited by this section, or for cooperating in investigations or proceedings arising out of an alleged violation of this section. Reports of discrimination or harassment based a characteristic protected by law, or related retaliation, are taken seriously, and appropriate action will be taken against individuals found to have engaged in such conduct. The prohibition against discrimination, harassment, and retaliation applies to all transactions of Metropolitan's business, whether at a Metropolitan-operated facility or an external site.

(d) Allegations regarding director conduct in violation of this section shall be reported to the ~~Board Chair~~ EEO Officer, ~~except allegations regarding conduct by the Board Chair in violation of this section shall be reported to the Chair and Vice Chair of the Audit and Ethics Committee. An employee also has the option of submitting allegations regarding director conduct in violation of this section to Metropolitan's Equal Employment Opportunity Investigations staff for that staff's transmission to the Board Chair, or to the Chair and Vice Chair of the Audit and Ethics Committee, as applicable.~~

(e) Definitions applicable to Section 2131:

(i) “Covered Individual” – Covered Individual includes all Metropolitan applicants, employees, interns, volunteers, and contractors and members of the public.

(ii) “Discrimination” – As used in this section, discrimination is defined as the unequal treatment of Covered Individuals in any aspect of employment, including discrimination based on the Covered Individual’s actual or perceived Protected Characteristic(s). Discrimination also includes unequal treatment because of a Covered Individual’s association with an individual with a Protected Characteristic.

(iii) “Harassment” – Harassment is defined as disrespectful or unprofessional conduct, based on any of the Protected Characteristics listed above. Harassment prohibited by this Administrative Code also includes sexual harassment. Harassment may take many forms, but most commonly includes the following:

Verbal harassment such as epithets, derogatory statements, slurs, jokes, ridicule, unwelcome remarks about an individual’s body, dress, clothing, hair style, color, physical appearance, or talents, questions about a Covered Individual’s sexual practices, and/or patronizing terms or remarks;

Physical harassment such as assault, unwanted touching or physical contact, impeding or blocking normal movement, physical interference with normal work, and/or threatening, intimidating, or hostile acts that relate to a Protected Characteristic(s);

Visual harassment such as displaying offensive pictures, cartoons, drawings, posters, screensavers, virtual backgrounds, or electronic or media-based visuals (such as emails, text messages, memes, emojis, gifs, and video games), or displaying offensive objects, gestures, letters, or notes, or any other graphic material that denigrates or shows hostility or aversion towards a Covered Individual because of their Protected Characteristic(s); and

Use of social media to conduct discriminatory harassment (e.g., making targeted, offensive Facebook posts about a Covered Individual of a particular race; sending homophobic tweets to a gay covered individual on Twitter; posting demeaning, gender-based images to a Covered Individual on LinkedIn).

(iv) “Retaliation” – Retaliation occurs when a Covered Individual is subjected to an adverse employment action because they engaged in a protected activity, such as reporting suspected EEO violations and/or cooperating in investigations or proceedings arising out of an alleged EEO violation.

## Article 2

### EXECUTIVE COMMITTEE

Sec.

2410. Membership

2411. Selection of Nonofficer Members

2412. Term of Office for Nonofficer Members

2413. Limitation of Service

2414. Officers

2415. Day of Regular Meeting

2416. Duties and Functions

2417. Action by Board Officers

#### § 2416. Duties and Functions. [Executive Committee]

~~(a)(f)~~ The Executive Committee shall also:

(5) ~~Investigate~~ Address substantiated allegations of discrimination, harassment, and retaliation against directors, the General Manager, General Counsel, General Auditor, and Ethics Officer:

(i) The Executive Committee shall create an ad hoc subcommittee of three members and two alternates that will serve for a period of one year to address substantiated findings of violations determined as a result of Equal Employment Opportunity (EEO) investigations conducted for alleged violations of Section 2131 made against a director and for alleged violations to investigate any allegations of discrimination, harassment, or retaliation in violation of Section 2131 made against a director or allegations in violation of Section 6305 made against the General Manager, General Counsel, General Auditor, or Ethics Officer. If any director serving on the three-member subcommittee is an involved party to an EEO investigation, or has a conflict of interest with any involved party, the conflicted director shall recuse themselves from the matter. The Chief EEO Officer (EEO Officer) will select an alternate director to fulfill all subcommittee duties related to the particular matter. If the EEO Officer has a conflict of interest in the same matter, the Ethics Officer and/or General Counsel will select an alternate director. No director who is the subject of an allegation of discrimination, harassment, or retaliation shall be appointed to the subcommittee. Directors serving as alternates will not participate in ad hoc subcommittee matters unless or until called to serve.

(ii) ~~The Executive Committee will also select an external law firm to serve as counsel to the ad hoc subcommittee to provide guidance, as needed, for post investigation actions.~~

~~(iii)(ii)~~ The ad hoc subcommittee shall delegate to the EEO Officer the responsibility to designate an external investigator/law firm to conduct a fact-finding EEO investigation pursuant to this section. All EEO investigations will be fair, impartial, timely, and promptly initiated and completed by qualified personnel. Detailed EEO investigative procedures, pursuant to this section, can be found in *EEO Investigative Procedures for the Board and its Direct Reports*. The EEO Officer shall refer substantiated findings of EEO investigations, via an attorney client privileged communication, to the ad hoc subcommittee to determine recommended appropriate action. At its discretion, the ad hoc subcommittee may consult with its ad hoc subcommittee counsel, the EEO Officer, Ethics Officer, and/or General Counsel on appropriate action regarding a director or department head. The ad hoc subcommittee will share the findings and recommended action with the respondent of the investigation for an opportunity to respond. ~~ad hoc subcommittee may consult with the General Counsel, Ethics Officer, and/or Equal Employment Opportunity Officer in the course of an investigation into allegations of discrimination, harassment, or retaliation involving a director.~~ Appropriate action for directors may include, but is not limited to, 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. Appropriate action for department heads may include, but is not limited to, counseling, training, performance review, or the imposition of discipline, as deemed appropriate under the circumstances.

~~(iv)(iii)~~ When the General Manager is a party to the complaint or when in the judgment of the EEO Officer the matter should be handled differently to avoid real or perceived conflicts of interest, or to avoid potential bias or threats to impartiality, the EEO Officer shall delegate to the Ethics Officer or General Counsel the responsibility to retain an external investigator to conduct a fact-finding EEO investigation pursuant to this section. Substantiated EEO findings under this subsection shall be referred directly to the ad hoc subcommittee to determine recommended appropriate action for the Board's consideration.

~~(iii)~~—The ad hoc subcommittee shall report its findings for appropriate action as follows:

\_\_\_\_\_ a. ~~To the Executive Committee for allegations involving a director or the General Manager.~~

\_\_\_\_\_ b. ~~To the Legal and Claims Committee for allegations involving the General Counsel.~~

\_\_\_\_\_ c. ~~To the Audit and Ethics Committee for allegations involving the General Auditor or Ethics Officer.~~

(iv) A deviation of this investigation protocol by the EEO Officer may occur, in certain circumstances, with a written justification and approval of the ad hoc subcommittee responsible for EEO investigations of directors and department head.



### Article 3

## BOARD CONDUCT RULES

Sec.

2131. Prohibition of Discrimination, Harassment, and Retaliation by Directors

### **§ 2131. Prohibition of Discrimination, Harassment, and Retaliation by Directors.**

(a) Directors shall not, in the performance of their official functions, discriminate against or harass any Covered Individual on the basis of age, race, color, religion or religious creed, national origin, ancestry, citizenship status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender (including gender identity and gender expression), sexual orientation, marital status, medical condition, genetic information/characteristics, disability (physical or mental), military or veteran status, or any other characteristic protected by applicable federal, state, or local law.

(b) Directors shall cooperate in achieving the equal opportunity goals and objectives of Metropolitan. Metropolitan directors, officers, employees, and guests have the right to participate in official Metropolitan functions in an environment free from all forms of discrimination, harassment, and retaliation. Discrimination or harassment based on any characteristic protected by law, as provided above, will not be sanctioned nor tolerated.

(c) Directors also shall not retaliate against any Covered Individual for reporting discrimination or harassment prohibited by this section, or for cooperating in investigations or proceedings arising out of an alleged violation of this section. Reports of discrimination or harassment based a characteristic protected by law, or related retaliation, are taken seriously, and appropriate action will be taken against individuals found to have engaged in such conduct. The prohibition against discrimination, harassment, and retaliation applies to all transactions of Metropolitan business, whether at a Metropolitan-operated facility or an external site.

(d) Allegations regarding director conduct in violation of this section shall be reported to the EEO Officer.

(e) Definitions applicable to Section 2131:

(i) “Covered Individual” – Covered Individual includes all Metropolitan applicants, employees, interns, volunteers, and contractors and members of the public.

(ii) “Discrimination” – As used in this section, discrimination is defined as the unequal treatment of Covered Individuals in any aspect of employment, including discrimination based on the Covered Individual’s actual or perceived Protected Characteristic(s). Discrimination also includes unequal treatment because of a Covered Individual’s association with an individual with a Protected Characteristic.

(iii) “Harassment” – Harassment is defined as disrespectful or unprofessional conduct, based on any of the Protected Characteristics listed above. Harassment prohibited by this Administrative Code also includes sexual harassment. Harassment may take many forms, but most commonly includes the following:

Verbal harassment such as epithets, derogatory statements, slurs, jokes, ridicule, unwelcome remarks about an individual’s body, dress, clothing, hair style, color, physical appearance, or talents, questions about a Covered Individual’s sexual practices, and/or patronizing terms or remarks;

Physical harassment such as assault, unwanted touching or physical contact, impeding or blocking normal movement, physical interference with normal work, and/or threatening, intimidating, or hostile acts that relate to a Protected Characteristic(s);

Visual harassment such as displaying offensive pictures, cartoons, drawings, posters, screensavers, virtual backgrounds, or electronic or media-based visuals (such as emails, text messages, memes, emojis, gifs, and video games), or displaying offensive objects, gestures, letters, or notes, or any other graphic material that denigrates or shows hostility or aversion towards a Covered Individual because of their Protected Characteristic(s); and

Use of social media to conduct discriminatory harassment (*e.g.*, making targeted, offensive Facebook posts about a Covered Individual of a particular race; sending homophobic tweets to a gay covered individual on Twitter; posting demeaning, gender-based images to a Covered Individual on LinkedIn).

(iv) “Retaliation” – Retaliation occurs when a Covered Individual is subjected to an adverse employment action because they engaged in a protected activity, such as reporting suspected EEO violations and/or cooperating in investigations or proceedings arising out of an alleged EEO violation.

## Article 2

### EXECUTIVE COMMITTEE

Sec.

- 2410. Membership
- 2411. Selection of Nonofficer Members
- 2412. Term of Office for Nonofficer Members
- 2413. Limitation of Service
- 2414. Officers
- 2415. Day of Regular Meeting
- 2416. Duties and Functions
- 2417. Action by Board Officers

#### **§ 2416. Duties and Functions. [Executive Committee]**

(f) The Executive Committee shall also:

(5) Address substantiated allegations of discrimination, harassment, and retaliation against directors, the General Manager, General Counsel, General Auditor, and Ethics Officer:

(i) The Executive Committee shall create an ad hoc subcommittee of three members and two alternates that will serve for a period of one year to address substantiated findings of violations determined as a result of Equal Employment Opportunity (EEO) investigations conducted for alleged violations of Section 2131 made against a director and for alleged violations of Section 6305 made against the General Manager, General Counsel, General Auditor, or Ethics Officer. If any director serving on the three-member subcommittee is an involved party to an EEO investigation, or has a conflict of interest with any involved party, the conflicted director shall recuse themselves from the matter. The Chief EEO Officer (EEO Officer) will appoint an alternate director to fulfill all subcommittee duties related to the particular matter. If the EEO Officer has a conflict of interest in the same matter, the Ethics Officer and/or General Counsel will appoint an alternate director. Directors serving as alternates will not participate in ad hoc subcommittee matters unless or until called to serve.

(ii) The ad hoc subcommittee shall delegate to the EEO Officer the responsibility to designate an external investigator to conduct a fact-finding EEO investigation pursuant to this section. All EEO investigations will be fair, impartial, timely, and promptly initiated and completed by qualified personnel. Detailed EEO investigative procedures, pursuant to this section, can be found in *EEO Investigative Procedures for the Board and its Direct Reports*. The EEO Officer shall refer substantiated findings of EEO investigations to the ad hoc subcommittee to determine recommended appropriate action. At its discretion, the ad hoc subcommittee may consult with the EEO Officer, Ethics Officer, and/or General Counsel on appropriate action regarding a director or department head. The ad hoc subcommittee shall report

a substantiated finding of an EEO violation by a director or department head and recommend appropriate action for the Board's consideration. Appropriate action for directors may include, but is not limited to, 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. Appropriate action for department heads may include, but is not limited to, counseling, training, performance review, or the imposition of discipline, as deemed appropriate under the circumstances.

(iii) When the General Manager is a party to the complaint or when in the judgment of the EEO Officer the matter should be handled differently to avoid real or perceived conflicts of interest, or to avoid potential bias or threats to impartiality, the EEO Officer shall delegate to the Ethics Officer or General Counsel the responsibility to retain an external investigator to conduct a fact-finding EEO investigation pursuant to this section. Substantiated EEO findings under this subsection shall be referred directly to the ad hoc subcommittee to determine recommended appropriate action for the Board's consideration.

(iv) A deviation of this investigation protocol by the EEO Officer may occur, in certain circumstances, with a written justification and approval of the ad hoc subcommittee responsible for EEO investigations of directors and department heads.



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

## **EQUAL EMPLOYMENT OPPORTUNITY OFFICE**

### **Investigative Procedures for the Board and its Direct Reports**

#### **PURPOSE**

The Metropolitan Water District of Southern California ("Metropolitan") is committed to the fair, impartial, prompt, and thorough review and resolution of any complaint of discrimination, harassment (including sexual harassment), or retaliation, as defined in Metropolitan's Administrative Codes sections 2131 and 6305 (referred to jointly as EEO AC policies).

This document sets forth a general overview of Metropolitan EEO Office's complaint and investigation process to promptly receive and/or investigate and resolve a complaint of a violation of the EEO AC policies; and to provide a mechanism for identifying, responding to, preventing, and eliminating discrimination, harassment and/or retaliation in the workplace.

#### **AUTHORITY**

Metropolitan's Executive Committee (the "Committee") of the Board of Directors (the "Board") has delegated to the Chief Equal Employment Opportunity Officer ("EEO Officer") the authority to administer and enforce Metropolitan's EEO AC policies. The Committee shall create an EEO Ad Hoc Subcommittee (the "Subcommittee") of three Board members ("Board Member") and two alternate Board Members. The Subcommittee will operate for a period of one year. The Subcommittee will receive substantiated findings of EEO AC policies against any Board Member, or the General Manager, General Auditor, General Counsel, and/or Ethics Officer ("Direct Reports") and recommend responsive action to the Committee or Board, as appropriate.

#### **SCOPE**

This document is intended to be a general overview of the EEO complaint and investigative process for complaints against any director who sits on the Board ("Board Member"), or any direct report to the board, which includes the General Manager, General Auditor, General Counsel, and Ethics Officer ("Direct Reports"). A complaint may be made by any Metropolitan employee (including a former employee), applicant, intern, trainee, volunteer, and contractor of Metropolitan and members of the public (collectively, a "Covered Individual"). Anonymous complaints will also be considered.

#### **COMPLAINT PROCEDURES**

Any report of an alleged EEO violation submitted to any Metropolitan group (e.g., Human Resources, Water System Operations), department (e.g., Audit, Ethics, Legal), or Board Member must be immediately forwarded in writing to the EEO Officer, unless there is an exception to the EEO Office's jurisdiction as stated in the EEO AC policies. A referring group, department, or Board Member should notify the complainant, in writing, of the referral to the EEO Officer.



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

The EEO Office will confirm receipt of a complaint with the referring group, department or Board Director, and the complainant). The EEO Office will document any complaint or referral in its confidential EEO case database system<sup>1</sup>.

## **COMPLAINT INTAKE PROCEDURES**

### **A. The EEO Office's Confirmation of Complaint**

After the EEO Office is notified of an EEO complaint, the EEO Office will promptly (not to exceed three (3) business days) confirm receipt of the complaint in writing and will contact the complainant within five (5) business days to schedule an intake assessment for the purposes of obtaining additional information as necessary.

### **B. The EEO Office's Intake Assessment**

The EEO Office will conduct an intake assessment within ten (10) business days of receipt of a complaint to better understand the facts and circumstances surrounding the complaint. Any instances in which this timeline is exceeded will be due to extenuating circumstances of the parties involved (i.e. participants' leave of absence, their coordination with union representatives, participants' delays due to work schedule). In the case of an anonymous complaint, the intake assessment may be more limited in scope.

During the intake assessment, the complainant should be prepared to provide the following information:

- 1) The basis for the charge of discrimination, harassment, and/or retaliation;
- 2) A description of the specific action(s) about which they are complaining, including the date(s) and time(s) the alleged action(s) occurred; and
- 3) The names of all the individuals involved, including the subject of the complaint (respondent), and any witnesses who saw, heard or otherwise has knowledge of the alleged discrimination, harassment or retaliation.

### **C. EEO Jurisdiction**

After completing an intake assessment, and upon the collection and review of relevant documentation and information, the EEO Office will determine whether the EEO Office is responsible for handling the complaint. Only complaints that arise within three (3) years of the alleged conduct may be investigated.<sup>2</sup> If the allegation, in part or in whole, falls

<sup>1</sup> The EEO case database system is only accessible to necessary EEO Office staff.

<sup>2</sup> If a charge is filed, alleging that at least one act constituting EEO-related hostile work environment is within the three (3) year complaint period, then the whole time period of hostile work environment can be considered for investigation, even if it exceeds beyond three (3) years.



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

within the EEO Office's jurisdiction (a potential EEO AC policy violation), the EEO Office will determine whether the complaint is appropriate for informal resolution (see Informal Resolution section below), or investigation by an external investigator. The complainant will be notified of this determination within ten (10) business days of the date in which the complainant provides the EEO Office with all requested information necessary to establish EEO jurisdiction. There may be instances when the EEO Office will need to preliminarily gather information to determine jurisdiction, which may extend the ten (10) business day timeframe.

If the EEO Office determines that a complaint falls outside its jurisdiction, the EEO Office will promptly inform the complainant in writing and refer the matter in writing to the appropriate office (e.g., Human Resources, Ethics). The referral will be documented in the EEO Office's case database system.

#### **D. Interim Measures (applicable to Direct Reports)**

Once the EEO Office receives a complaint of a potential EEO AC policy violation, it will immediately begin assessing the situation to determine if interim measures should be implemented to restrict and/or eliminate contact between a complainant or respondent. If, at the discretion of the EEO Officer, an interim measure is required impacting a direct report, the EEO Officer will immediately inform the ad hoc committee, via an attorney client privileged communication, of the recommendation for an interim measure, the basis for the recommendation, and what specific measure is recommended. Such recommendations may include separating the employees by temporarily reassigning one or both employees, placing an employee on administrative leave, and/or modifying work activities or locations until the investigation is complete and appropriate action is taken. If the ad hoc committee agrees that either the recommended interim measure or another action is necessary and appropriate, the ad hoc committee will confidentially request that the Chair of the Board convene a special meeting to consider imposition of an interim measure.

When interim measures are implemented, it is best practice for the respondent to be subject to the interim measure pending the outcome of the investigation, unless the complainant voluntarily requests a temporary interim measure during the investigation.

Some examples of when interim measures may be taken include, but are not limited to:

- When there is a direct reporting relationship between the complainant and the respondent, and the complaint includes egregious allegations of discrimination, harassment and/or retaliation, including sexual harassment;
- To prevent the disruption or alteration of possible evidence;
- To prevent repetition of alleged conduct complained of;



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- When there is a reasonable belief that an employee's continued presence in the workplace raises concerns about safety in the workplace.

Once an interim measure has been imposed impacting a direct report, the EEO Office will continue to assess the situation to determine if the interim measure continues to be required and will keep the ad hoc subcommittee updated, accordingly.

The EEO Office encourages a complainant to communicate to the EEO Officer and an impacted direct report to communicate with the ad hoc committee if any challenges or ongoing issues arise because of the imposition of an interim measure. The EEO Office and the ad hoc committee, as applicable, will review the situation accordingly.

#### **E. Informal Resolution**

After the intake assessment is complete and relevant information is reviewed, the EEO Office (with input from the complaining party) may elect to address and resolve a complaint in an informal manner, instead of by investigation.

The informal resolution process may be effective when an allegation, as presented by the complainant, is not egregious enough to constitute a violation of Metropolitan's EEO policies, and/or the EEO Officer determines an informal resolution is the most effective approach to resolving the complaint. Some examples of when the EEO Officer may elect to informally resolve a complaint includes:

- Behavior that is not egregious or sufficiently severe in nature;
- When the general facts of an allegation aren't disputed by the parties involved and the respondent admits to the alleged conduct;
- When an incident arises from a misunderstanding or minor personality conflict;

At the end of the informal resolution process, the EEO Office will generate a summary report. The summary report will include any substantiated finding(s). The EEO Officer, in consultation with the EEO Office's outside legal advisor, will review the summary report and findings to ensure the investigative scope, process, evidence and analysis summarized in the report support the findings. If the EEO Officer concludes the summary report is in order, the report will be finalized and the EEO Officer will notify the Subcommittee of substantiated findings in the case. Upon receipt of the substantiated findings, the Subcommittee will recommend action to the Committee or Board, as appropriate.

#### **F. Investigation**

Once the EEO Office determines that a potential EEO Policy violation





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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

should be investigated, the investigation will immediately proceed in a prompt, thorough and fair manner by an external investigator/law firm. The investigation may include individual interviews with the parties involved and, where necessary, with witnesses who may have observed the alleged conduct or may have other relevant knowledge.

### **F1. Notification of Investigation**

Once the EEO Office determines that a potential EEO Policy violation should be investigated, the EEO Office will notify the complainant and respondent of the investigation in writing. As the investigation progresses, other witnesses will receive advance notice of their interview and will be notified of their responsibility to cooperate during the investigation. Notification includes the following:

- The **complainant** will be notified of the EEO Office's decision to investigate a complaint, in writing, within five (5) business days. The notice will contain the basis upon which the matter is being investigated and the assigned investigator's name.
- The **respondent** will be notified that an EEO AC complaint has been made against them, the basis upon which the matter is being investigated applicable to the respondent, and the assigned case investigator's name.
- **Witnesses** will be notified that they have been identified as a witness concerning an EEO investigation for the purposes of scheduling a witness interview. Witnesses will also be notified of their duty to cooperate during the investigation, which will include participating in a witness interview and providing appropriate records as requested during the investigation.

All notices to the complainant, respondent, witnesses will remind the parties that the matter is confidential and that retaliation for participating in an investigation is strictly prohibited.

### **F2. Investigation Timelines**

The investigation will proceed and conclude promptly, and the investigator will take the time necessary to ensure the investigation is fair to all parties and is thorough. Case investigations will take ninety (90) business days to complete. However, cases may extend this timeline due to the complexity of the investigation, including the number of protected characteristics listed, the number of allegations under investigation, the amount of parties or witnesses to be interviewed, the expansion of investigative scope, and/or scheduling challenges with involved investigative parties, and/or their representation. The EEO Office will inform involved parties, about the status of their investigation, through ongoing communication.



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

**F3. Confidentiality During the Investigation Process**

When conducting EEO investigations, transparency must be balanced with the importance of confidentiality, protection of personnel information, and individual privacy rights. Like most organizations, Metropolitan conducts EEO investigations confidentially. In addition to protecting individual privacy rights, this allows all persons who participate in an EEO investigation to trust in the integrity of the process and be protected from potential retaliation. Metropolitan will take reasonable steps to keep information provided in the complaint and during investigative process confidential. EEO AC investigations will be conducted in an attorney-client privileged manner. Similarly, the Informal Resolution process will be conducted in an attorney-client privileged manner.

Metropolitan will endeavor to keep the reporting of the Covered Individual's concern, complaint and/or investigation confidential; however, complete confidentiality cannot be guaranteed when it interferes with Metropolitan's ability to fulfill its obligations under EEO AC policies and applicable laws or to address the complaint, complete the investigation, and take appropriate action. All participants in an investigation are also asked to refrain from publicly disclosing their participation in an investigation or the substance of their participation.

**F4. False Allegations and Statements**

If the EEO Office becomes aware of information indicating an individual participating in an investigation has potentially acted in bad faith by making a false allegation of discrimination, harassment or retaliation, or has provided false information to the EEO Office during the course of an investigation, that information will be promptly and thoroughly assessed accordingly. Appropriate responsive action may follow if an individual participating in an investigation is found to have made a false allegation of discrimination, harassment or retaliation, or has provided false information to the EEO Office during the course of an investigation.

**F5. Investigation Conclusion**

At the completion of an investigation, the investigator will generate a written report with factual findings based on the preponderance of evidence standard.

Each factual allegation will be resolved by one of the following findings:

- **Substantiated.** Where the investigation results show that it is more likely than not that a factual allegation occurred.
- **Unsubstantiated.** Where the investigation results failed to show that it is more likely than not that a factual allegation occurred.

The investigator will also be called upon to make a finding on whether a



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

violation of Metropolitan policy or the Administrative Code, as applicable, has occurred.

#### **G. Post-Investigation Action (Unsubstantiated Findings)**

Once a report is complete, the investigation report and all relevant or supporting documentation will be reviewed by the Chief EEO Officer in consultation with the EEO Office's outside legal advisor.

In cases where there are **unsubstantiated findings**, the investigation will be closed, and a notification letter will be sent to the complainant and respondent. The complete report and all relevant supporting documentation will be maintained confidentially and in an attorney-client privileged manner by the EEO Office and not otherwise distributed unless required by law.

#### **H. Post-Investigation Action (Substantiated Findings)**

In cases where there are **substantiated findings**, the EEO Officer shall refer substantiated findings of EEO AC violations, via an attorney-client privileged communication, to the Subcommittee to determine recommended appropriate action.

#### **I. Exception**

A deviation of this investigation protocol by the EEO Officer may occur, in certain circumstances, with written justification and approval of the Subcommittee responsible for addressing substantiated EEO AC violations against the Board and its Direct Reports.

#### **REFERENCES**

- Metropolitan Water District of Southern California's [Administrative Code, Sections 2131 and 2416](#)
- Equal Employment Operating Policy ([H-07](#)) and Sexual Harassment Prohibition Policy ([H-13](#)) Applicable executive orders, federal, state, and local laws, statutes, and regulations, including:
  - Title VII of the Civil Rights Act of 1964
  - California Fair Employment and Housing Act (Government Code 12900 *et seq.*)
    - Gov. Code § 12940 *et seq.*
    - Gov. Code § 12960 *et seq.*
    - Cal. Code of Regulations, Title 2, Divisions 4 and 4.1
  - Pregnancy Discrimination Act
  - Equal Pay Act of 1963
  - Title I of the Americans with Disabilities Act of 1990



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

- Sections 501 and 505 of the Rehabilitation Act of 1973
- Age Discrimination in Employment Act of 1967
- EEOC Enforcement Guidance EEOC-CVG-1999-2
- Title II of The Genetic Information Nondiscrimination Act of 2008
- Applicable Metropolitan Board directives and policies