



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

3/14/2023 Board Meeting

7-12

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 \$50,000 to \$100,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

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. Since 2018, the Board has approved additional changes to the Administrative Code which give the Ethics Officer responsibilities for conducting certain Equal Employment Opportunity (EEO) and ethics investigations through outside investigators. Further, the Board has since adopted new deadlines for resolution of ethics investigations, 180 days, and internal procedures established by the EEO Office set a new timeframe for investigations, 90 days.

This action, therefore, requests that the Board approve an increase to the amount of the Ethics Officer's authority to obtain outside investigators from \$50,000 to \$100,000 to account for the added investigation responsibilities, recently established investigation timeframes, and caseload management.

Timing and Urgency

A delay in approval would likely impact the office's ability to meet the 90- and 180-day timeframes for investigations.

Details

Background

In 2018, the Board approved a package of ethics-related amendments to the Administrative Code which included an increase in the authorized contract amount for the Ethics Officer to obtain consulting services, including outside investigation firms, from \$40,000 to \$50,000 per contract per year. Prior to approval, members of the Audit and Ethics Committee engaged in discussions about the appropriate maximum amount to authorize. Ultimately, the Committee proposed \$50,000 with acknowledgment that the Board could further amend the amount if it ultimately proved insufficient for future needs.

As detailed below, a need to increase the amount of authorized funds for outside investigation services has arisen due to recent Administrative Code and internal amendments increasing the Ethics Officer's use of outside investigators. These include newly-delegated responsibilities of overseeing outside investigations of certain EEO complaints, recent mandates requiring the use of outside firms to investigate ethics complaints involving directors and department heads, and the recent adoption of investigation deadlines for ethics and EEO investigations.

Recent Administrative Code Changes Requiring Outside Investigations Managed by Ethics Officer

In 2021, the Board approved a package of ethics-related amendments to the Administrative Code which included a requirement that ethics investigations involving directors and direct reports (department heads) be managed by the Ethics Office but investigated by outside firms, as opposed to internal Ethics Office staff.

Subsequently, at its November 2022 meeting, the Board approved amendments to EEO investigation procedures delegating to the Ethics Officer the responsibility of managing certain EEO investigations of directors and the

General Manager through outside firms if, in the judgment of the EEO Officer, a matter should be handled outside of the EEO Office to avoid real or perceived conflicts of interest, bias, or threats to impartiality. Recently updated internal procedures for EEO investigations of employees similarly delegate this investigative responsibility to the Ethics Officer through the use of an external investigator.

In addition to added investigation responsibilities delegated to the Ethics Officer since 2018, new investigation procedures also require that these investigations generally be resolved more quickly. In 2021, the Board approved a 180-day deadline for most ethics investigations; EEO investigations are expected to be completed within 90 days.

August 2022 Ethics-Related Amendments to the Administrative Code

In August 2022, the Board approved an amendment to the Administrative Code giving authority to the Ethics Officer to enter into contracts for outside, independent legal counsel in the amount of \$100,000 per contract. This proposal was in response to the California State Auditor's recommendation that the Ethics Officer be granted authority to obtain outside counsel for purposes of receiving independent legal advice. However, the amount authorized for contracts for outside investigation services remained at \$50,000 for the Ethics Officer. By comparison, the General Counsel is currently authorized to expend up to \$100,000 for special counsel and investigators retained to advise or assist the office in representing Metropolitan. The EEO Office is currently authorized to expend up to the General Manager's contracting authority, or \$250,000.

Need for Increase in Authorized Contract Amount for Outside Investigation Services

This request is intended to address the following:

- 2021 amendments to the Administrative Code requiring the use of external investigators for ethics investigations of directors and department heads;
- 2022 amendments to the Administrative Code delegating to the Ethics Officer responsibility to investigate EEO complaints involving directors and direct reports through external investigators when the EEO Office has a conflict, and internal procedures delegating this responsibility for EEO complaints involving employees when the EEO Office has a conflict;
- 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 may near the \$50,000 contract limit. This option would require halting investigations until additional funding is approved.

Further, with only one internal investigator reviewing complaints, conducting ethics investigations, and managing contracts with outside investigation firms, an increased contract limit would also give the Ethics Officer flexibility to hire external firms to investigate routine ethics investigations as needed to avoid a backlog. Although in recent years, the Ethics Office has been able to conduct all routine ethics investigations internally, a steady increase in the number of complaints from 2018 to the present, and the additional responsibility for overseeing outside investigations, may ultimately require the use of outside firms for some routine ethics investigations:

Year/Number of Complaints

2018 – 28

2019 – 29

2020 – 28

2021 – 32

2022 – 72

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

Conclusion

In summary, Board approval of an increase to the maximum allowable contract amount for outside investigation firms would address the increased demand for outside investigation services and the Board's expectation of timely investigations.

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 \$50,000 to \$100,000.

Fiscal Impact: Up to \$50,000 per contract per year

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 may impact the ability to resolve investigations in a timely manner.

Staff Recommendation

Option #1



Abel Salinas
Ethics Officer

2/22/2023

Date

Attachment 1 – Redline Version, Proposed Administrative Code Amendment

Ref# e12691461

§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 the 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 \$100,000.

~~(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.