Ethics Committee

Proposed Revisions to Ethics Rules: Presentation of Preliminary Proposal and Opportunity for Feedback

Item 6c

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Subject

Proposed Revisions to Ethics Rules: Presentation of Preliminary Proposal and Opportunity for Feedback

Purpose

To solicit Committee feedback prior to finalizing preliminary proposal.

Background

Ethics Office Responsibilities for Rulemaking

- SB 60 and Metropolitan Administrative Code: develop ethics rules for Board adoption

Most Recent Amendments

- 2021 Overhaul – After multi-year review, new ethics rules developed in collaboration with outside and internal legal counsel and adopted by the Board
- 2022 Response to State Auditor Recommendations – Added new rules to strengthen Ethics Office independence

Proposal Origins

Proposed amendments and new rules stem from:

- ❑ Experience applying the current ethics rules in Education, Advice, and Investigation programs over five years
- ❑ Employee suggestions
- ❑ Discussions with stakeholders and ethics professionals
- ❑ Concerns raised
- ❑ Ethics risk areas

Preliminary Proposal: Clean-up Amendments

Proposal:

1. Update definitions and terminology throughout ethics provisions for clarity and consistency
2. Address formatting, numbering, and other non-substantive items

Preliminary Proposal: New Rules

New Rule #1:
Require outside employment disclosure form for employees.

Purpose:

- ❑ Several complaints and advice matters related to outside employment (e.g. outside work on MWD time, conflicts of interest with outside employer)
- ❑ Several rules implicating outside employment (conflicts of interest, ban on outside employment with specified entities, Form 700, etc.)
- ❑ Create access point for targeted training to employees who have outside employment, to prevent violations
- ❑ Common requirement for government employees
- ❑ Align with SB 60 mandate to develop rules on internal disclosure

Preliminary Proposal: New Rules

New Rule #2:

Prohibit threatening/imposing consequences on Ethics Office staff for being subject to ethics complaint or investigation

Purpose:

- ❑ Compliance staff commonly have protections.
- ❑ Currently, Metropolitan officials are prohibited from adverse actions against complainants, whistleblowers, others. Prohibition does not cover adverse actions against staff responsible for investigating their complaints.

Preliminary Proposal: New Rules

New Rule #3:
Prohibit director communications related to an ethics investigation until the matter is reviewed by Executive Committee or Board for potential action at a public meeting.

Purpose:

- ❑ Preserve integrity of ethics investigation and case resolution processes
- ❑ Communications ban protects against inadvertent Brown Act/serial meetings concerns involving a matter that may come before directors
- ❑ Protects against pre-judging matters in which directors may have to decide whether to impose remedial action

Preliminary Proposal: Rule Amendments

Rule Amendment #1:
Expand definition of Lobbyist to capture more lobbying activity by external parties.

Purpose:

- ❑ Responds to prior Committee input from directors
- ❑ Current standard captures very limited lobbying activity
- ❑ Expanding better aligns with SB 60 responsibilities and expectations related to lobbying and internal disclosure

Preliminary Proposal: Rule Amendments

Rule Amendment #2:
Add “Lobbyist” to the definition of “Restricted Source” for purposes of gift ban applicable to employees.

Purpose:

- ❑ Consistent with purpose of ban on gifts from other restricted sources (contractors, vendors, etc.)
- ❑ Addresses loophole of lobbyists paid to influence Metropolitan officials on behalf of restricted sources being permitted to provide gifts
- ❑ Expanding aligns with SB 60 lobbying responsibilities

Preliminary Proposal: Rule Amendments

Rule Amendment #3:
Clarify limited exception to ban on gifts from restricted sources.

Purpose:

- ❑ To help employees better understand the limited exception
- ❑ To clarify that meals and other gifts are not allowed during sales pitch meetings, and other misunderstandings
- ❑ Add examples based on frequently asked questions

Preliminary Proposal: Rule Amendments

Rule Amendment #4:
Add examples to the misuse of governmental position or authority rule.

Purpose:

- ❑ Address frequently asked questions by adding examples
- ❑ Provide more clarity about the types of behavior that could implicate rule
- ❑ Examples: Conducting outside work on Metropolitan time or using Metropolitan resources, using Metropolitan resources for personal purchases

Preliminary Proposal: Rule Amendments

Rule Amendment #5:
Require that employees disclose to the Ethics Office and General Manager when they file to run for elective public office.

Purpose:

- ❑ Currently employees disclose only if or when elected to public office
- ❑ Helps create access point to give targeted training to employees running for political office
- ❑ Helps to ensure officials positions are not used for political purposes
- ❑ Aligns with SB 60 emphasis on internal disclosure

Preliminary Proposal: Rule Amendments

Rule Amendment #6:
Clarify rule that employees may not recommend the hiring of a relative to a Metropolitan contractor

Purpose:

Clarify that this includes hiring for part-time, consulting, or internship positions

Preliminary Proposal: Rule Amendments

Rule Amendment #7:
Update state gift limit to reflect current limit.

Purpose:

Prevent confusion over changing state gift limit: gift limit under state law typically changes every two years.

Preliminary Proposal: Rule Amendments

Rule Amendment #8:
Amend rule prohibiting Metropolitan officials from soliciting political donations from other Metropolitan officials

Purpose:

- ❑ Current prohibition on soliciting from other district officials has been temporarily suspended due to court case, constitutional questions
- ❑ Amend rule to align with case law and instead prohibit officials from pressuring employees to make a political contribution, or suggesting adverse action based on donation decision
- ❑ Maintain prohibition on donations during work hours, or on district premises

Preliminary Proposal: Rule Amendments

Rule Amendment #9:

Update ban on director communications to more expressly cover sponsorships and donations of public funds to specific organizations.

Purpose:

- ❑ Sponsorships/donations are contracts in conflicts of interest law
- ❑ Decisions of whether to use public funds for a nonprofit/association should follow internal protocols, screening for conflicts of interest
- ❑ Aligns with SB 60 mandate to adopt rules that seek to avoid potential ethical abuses stemming from direct and indirect business relationships between directors and contractors

Preliminary Proposal: Rule Amendments

Rule Amendment #10:
Update ban on Metropolitan contracts with Metropolitan directors during their term to explicitly also prohibit contracts with entities directors own.

Purpose:

Aligns Administrative Code language with current interpretation

Preliminary Proposal: Rule Amendments

Rule Amendment #11:
Include directors as mandatory reporters of potential ethics violations.

Purpose:

- ❑ Aligns with EEO reporting obligations
- ❑ Aligns with obligation of all other Metropolitan managers to report potential ethics violations

Preliminary Proposal – Next Steps

Ethics Office will:

- Assess feedback and finalize draft Code language
- Review with outside counsel
- Send draft proposal to Ethics Committee Chair/Vice Chair, Department Heads, Bargaining Units for review and feedback
- Evaluate feedback and update draft Code language
- Review final proposal with outside counsel
- Return to Ethics Committee for action

THE ETHICS OFFICE

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Questions?

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