

## POLICY AND PROCEDURE

<b>POLICY TITLE:</b> <b>Board Policy on Conducting Business</b>	<b>NUMBER:</b> <b>2012-02</b>	<b>PAGE:</b> <b>1 of 11</b>
<b>APPROVED BY:</b> <b>Zone 7 Board</b>	<b>REVISION:</b>	<b>EFFECTIVE DATE:</b> <b>September 19, 2012</b>

### PREAMBLE

The most fundamental principle of public service ethics was stated by Henry Clay in 1829: "Government is a trust, and the officers of government are the trustees; and both the trust and the trustees are created for the benefit of the people."

### SECTIONS:

1. PURPOSE AND SCOPE
2. RESPONSIBILITIES OF PUBLIC OFFICE
3. FAIR AND EQUAL TREATMENT
4. PROPER USE AND SAFEGUARDING OF AGENCY PROPERTY AND RESOURCES
5. USE OF CONFIDENTIAL INFORMATION
6. CONFLICT OF INTEREST
7. SOLICITING POLITICAL CONTRIBUTIONS
8. CANDIDATE'S STATEMENT
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14. BOARD OF DIRECTORS ROLES AND DUTIES; GENERAL MANAGER ROLE AND DUTIES
15. BOARD MEMBER-GENERAL MANAGER RELATIONSHIP
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17. BOARD MEETINGS; QUORUM; VOTING
18. BOARD MEETING AGENDA
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### **1. PURPOSE AND SCOPE**

The policy of the Zone 7 Water Agency is to maintain the highest standards of ethics by its Board Members in carrying out their duties to achieve the Agency's missions. The proper operation of the Agency requires decisions and policies to be made in the proper channels of

governmental structure, that public office not be used for personal gain, and that all individuals associated with the Agency remain impartial and responsible toward the public. Accordingly, it is the policy of the Agency that Board Members and Agency employees will maintain the highest standard of personal honesty and fairness in carrying out their duties and to do so in conformity with these Agency Guidelines for operations and procedure. This policy sets forth the minimum ethical standards to be followed by the Board of Directors of the Zone 7 Water Agency and the manner in which the Agency and the Zone 7 Board of Directors shall operate. The objectives of this policy are (1) to establish uniform guidelines and operating procedures for the Board of Directors; (2) to heighten awareness of ethics and values and critical elements in Board Members' conduct; (3) to provide guidance for dealing with ethical issues; and (4) to improve ethical decision-making and values-based management.

## **2. RESPONSIBILITIES OF PUBLIC OFFICE**

Board Members are sworn to uphold the Constitution of the United States and the Constitution of the State of California. Board Members will comply with applicable laws regulating their conduct, including conflict of interest, financial disclosure, and open government laws. Board Members will work in cooperation with other public officials unless prohibited from so doing by law or officially recognized confidentiality of their work.

## **3. FAIR AND EQUAL TREATMENT**

Board Members will not, in the performance of their official functions, discriminate against or harass any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition or disability. A Board Member will not grant any special consideration, treatment or advantage to any person or group beyond that which is available to every other person or group in similar circumstances.

## **4. PROPER USE AND SAFEGUARDING OF AGENCY PROPERTY AND RESOURCES**

Except as specifically authorized, a Board Member will not use or permit the use of Agency owned vehicles, equipment, telephones, materials or property for personal convenience or profit. A Board Member will not ask or require an Agency employee to perform services for the personal convenience or profit of a Board Member or employee. Each Board Member must protect and properly use any Agency asset within his or her control, including information recorded on paper or in electronic form. Board Members will safeguard Agency property, equipment, moneys and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust.

## **5. USE OF CONFIDENTIAL INFORMATION**

A. A Director is not authorized, without approval of the full Board of Directors, to disclose information that qualifies as "confidential information" under applicable provisions of law to a person not authorized to receive it, that (1) has been received for, or during, a closed

session meeting of the Board; (2) is protected from disclosure under the attorney/client or other evidentiary privilege; or (3) is not required to be disclosed under the California Public Records Act.

B. This section does not prohibit any of the following: (1) making a confidential inquiry or complaint to the Agency's General Counsel or grand jury concerning a perceived violation of law, including disclosing facts to the Agency's General Counsel or grand jury that are necessary to establish the alleged illegality of an action taken by the Agency; (2) expressing an opinion concerning the propriety or legality of actions taken by the Agency in closed session, including disclosure of the nature and extent of the allegedly illegal action; or (3) disclosing information acquired by being present in a closed session that is not confidential information. Prior to disclosing confidential information pursuant to (1) or (2), above, however, a Board Member will first bring the matter to the attention of either the President of the Board or the full Board, in a lawful and appropriate manner, to provide the Board an opportunity to cure an alleged violation.

C. A Director who willfully and knowingly discloses for pecuniary gain confidential information received by him or her in the course of his or her official duties may be guilty of a misdemeanor under Government Code section 1098.

## **6. CONFLICT OF INTEREST**

A. A Board Member will not have a financial interest in a contract with the Agency or be a purchaser at a sale by the Agency or a vendor at a purchase made by the Agency unless the Board Member's participation was authorized under Government Code section 1091. A Board Member will not participate in the discussion, deliberation or vote on a matter before the Board of Directors, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter, as defined in the Political Reform Act, Government Code sections 81000, and following, relating to financial conflicts of interest.

Generally, a Director has a financial interest in a matter if it is reasonably foreseeable that the Board's decision would have a material financial effect:

- a) on a business entity in which the Director has a direct or indirect investment greater than \$2000.00 or in an amount as established by the FPPC, whichever is lower;
- b) involving real property in which the Director has a direct or indirect investment interest, worth greater than \$2000.00 or in an amount as established by the FPPC, whichever is lower;
- c) involving a source of income of the Director greater than \$500.00 or in an amount as established by the FPPC, whichever is lower, within twelve months before the Board decision;

- d) involving a source of gifts to the Director greater than \$360.00 or as adjusted January 1 of each odd-numbered year by the FPPC, within twelve months before the Board decision; or
- e) on a business entity in which the Director holds a position as a director, trustee, officer, partner, manager, or employee.

The above circumstances would constitute a material financial effect if distinguishable from the effect on the public generally. For additional information or questions, see [www.FPPC.ca.gov](http://www.FPPC.ca.gov) or contact the FPPC at 1-866-ASK-FPPC.

An "indirect interest" means any investment or interest owned by the spouse or dependent child of the Director, by an agent on behalf of the Director, or by a business entity or trust in which the Director, or the Director's spouse, dependent child, or agent, owns directly, indirectly, or beneficially, a ten percent or greater interest. A Director will not accept gifts that exceed the limitations set forth above in subsection (d) or honoraria. Board Members will report all gifts, honoraria, campaign contributions, income, and financial information as required under the Agency's Conflict of Interest Code and the provisions of the Fair Political Practices Act and the FPPC Regulations.

B. If a member of the Board believes that he or she may be disqualified from participation in the discussion, deliberations or vote on a particular matter due to a conflict of interest, the following procedure will be followed:

- a) if the Director becomes aware of the potential conflict of interest before the Board meeting at which the matter will be discussed or acted on, the Director will notify the Agency's General Manager of the potential conflict of interest, so that a determination can be made whether it is a disqualifying conflict of interest;
- b) if it is not possible for the Director to discuss the potential conflict with the General Manager before the meeting, or if the Director does not become aware of the potential conflict until during the meeting, the Director will immediately disclose the potential conflict during the Board meeting, so that there can be a determination whether it is a disqualifying conflict of interest; and
- c) upon a determination that there is a disqualifying conflict of interest, the Director (1) will not participate in the discussion, deliberation or vote on the matter for which a conflict of interest exist, which will be so noted in the Board minutes; and (2) will leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters, except that the Director may speak on the issue during the time that the general public speaks on the issue.

C. A Board Member will not recommend the employment of a relative by the Agency. In addition, a Board Member will not recommend the employment of a relative to any person known by the Board Member to be bidding for or negotiating a contract with the Agency.

D. A Board Member who knowingly asks for, accepts, or agrees to receive any gift, reward, or promise thereof for doing an official act, except as may be authorized by law, may be guilty of a misdemeanor under Penal Code section 70.

## **7. SOLICITING POLITICAL CONTRIBUTIONS**

Board Members are prohibited from soliciting political funds or contributions at Agency facilities or from Agency employees. A Board Member will not accept, solicit, or direct a political contribution from Agency vendors or consultants who have a material financial interest in a contract or other matter while that contract or other matter is pending before the Agency. A Director will not use the Agency's seal, trademark, stationery or other indicia of the Agency's identity, or facsimile thereof, in any solicitation for political contributions as per state or federal law.

## **8. CANDIDATE'S STATEMENT**

A Board Member will not include false or misleading information in a candidate's statement for a general Agency election filed pursuant to section 13307 of the Elections Code.

## **9. INCOMPATIBLE OFFICES**

Pursuant to California Government Code Section 1099, it shall be prohibited for any Board Member appointed or elected to the Zone 7 Board of Directors to simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

- 1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
- 2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
- 3) Public policy considerations make it improper for one person to hold both offices.

When two public offices are incompatible, the Director shall be deemed to have forfeited his/her Directorship on the Zone 7 Board upon acceding to the second. Offices which may be deemed incompatible with being a Director of the Zone 7 Board, include but are not limited to: Council members of the Dublin, Pleasanton or Livermore City Council, the Mayor of any of these three cities, Supervisors of the Alameda County Board of Supervisors and Directors of the East Bay Regional Park District.

## **9A. POTENTIALLY INCOMPATIBLE POSITIONS**

Pursuant to California Government Code Section 53227, active Zone 7 employees may not be sworn into office as a member of the Zone 7 Board of Directors unless he/she resigns as an employee. Failure to resign shall result in his/her employment automatically terminating upon his/her being sworn into office.

Section 9 above generally does not apply to employees of other local agencies whose public offices may be deemed incompatible. However, in the event that the scope and nature of the employment and associated authority is such that any of the factors set forth above are present, then such employment may be deemed incompatible with that of the Office of Zone 7 Director.

## **10. DIRECTORS' COMPENSATION AND EXPENSE REIMBURSEMENT**

Members of the Board of Directors shall comply with the provisions of the current Zone 7 Board of Directors' Compensation and Expense Reimbursement Policy.

## **11. VIOLATION OF ETHICS POLICY**

A perceived ethical violation by a Board Member should be referred to the President of the Board or the full Board of Directors for investigation, and consideration of any appropriate action warranted. A violation of this policy may be addressed by the use of such remedies as are available by law to the Agency, including but not limited to:

- a.) adoption of a resolution expressing disapproval of the conduct of the Board Member who has violated this policy;
- b.) injunctive relief; or
- c.) referral of the violation to the Agency General Counsel and/or the Grand Jury.

## **12. IMPROPER ACTIVITIES AND THE REPORTING OF SUCH ACTIVITIES; PROTECTION OF "WHISTLE BLOWERS"**

A. The General Manager has primary responsibility for (1) ensuring compliance with the Agency's personnel policies and procedures and ensuring that Agency employees do not engage in improper activities; (2) investigating allegations of improper activities; and (3) taking appropriate corrective and disciplinary actions. The Board has a duty to ensure that the General Manager is operating the Agency according to law and the policies approved by the Board. Board Members are encouraged to fulfill their obligation to the public and the Agency by disclosing to the General Manager to the extent not expressly prohibited by law, improper activities within their knowledge. Board Members will not interfere with the General Manager's responsibilities in identifying, investigating, and correcting improper activities, unless the Board determines that the General Manager is not properly carrying out these responsibilities.

Nothing in this section affects the responsibility of the Board to oversee the performance of the General Manager.

B. A Board Member will not directly or indirectly use or attempt to use the authority or influence of his or her position for the purpose of intimidating, threatening, coercing, commanding or influencing any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the General Manager or the Board any information that, if true, would constitute: a work-related violation by a Board Member or Agency employee of any law or regulation, gross waste of Agency funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of an Agency official or employee, use of an Agency office or position or of Agency resources for personal gain, or a conflict of interest of an Agency Board Member or Agency employee.

C. A Board Member will not use or threaten to use any official authority or influence to affect any action as a reprisal against an Agency Board Member or Agency employee who reports or otherwise brings to the attention of the General Manager any information regarding the subjects described in this section.

### **13. COMPLIANCE WITH THE BROWN ACT**

The members of the Board of Directors will fully comply with the provisions of the State's open meeting law for public agencies (the Brown Act; Government Code Section 54950, *et seq.*). Interpretation of Brown Act provisions shall be within the purview of the Agency's General Counsel.

### **14. BOARD OF DIRECTORS ROLES AND DUTIES; GENERAL MANAGER'S ROLE AND DUTIES**

A. The Board of Directors holds governing authority for the Agency and its roles and responsibilities are:

1. Establish policies, procedures, and regulations for District operations;
2. Establish and oversee the Agency's finances and budgets;
3. Provide the resources needed by management and staff to carry out Agency policy;
4. Determine the mission of the Agency
5. Approve and ensure the development and implementation of the Agency's Strategic Plan; and
6. Appoint and evaluate the General Manager

B. Directors Individually: Apart from his/her normal function as a part of the Board of Directors, each individual Director's roles and responsibilities are as follows:

1. Function only as one member of the Board;
2. Have no individual authority;
3. May not commit, nor represent that they can commit, the District to any policy, act, or expenditure; and
4. Support decisions made by the Board

C. The Agency's General Manager:

1. Has full charge and control of the construction, maintenance and operation of the water system, flood control systems and other facilities of the Agency;
2. Has full charge and control of the day-to-day management, operation, and administration of the Agency;
3. Has full power and authority to employ and discharge employees and assistants, consistent with Agency policy and other provisions of law;
4. Prescribes the duties of employees and assistants, consistent with Agency policy; and
5. Fixes and alters the compensation of employees and assistants, subject to approval by the Board.

## **15. BOARD-GENERAL MANAGER RELATIONSHIP**

The Board sets the policy for the Agency. The Agency's General Manager serves by appointment of the Board. The Board provides policy direction and general instructions to the General Manager on matters within the authority of the Board by the requisite vote of the Board during duly convened Board meetings. Members of the Board will deal with matters within the authority of the General Manager through the General Manager and not through other Agency employees. Members of the Board will refrain from making requests directly to Agency employees (rather than to the General Manager) to undertake analyses, perform other work assignments or change the priority of work assignments. A director's requests for non-confidential, factual information regarding Agency operations should be made through the General Manager, an Assistant General Manager, or the District Secretary so that the appropriate Agency staff members may be engaged and coordinated to provide the information for the Board Member(s) in the most efficient and effective manner.

## **16. BOARD OFFICERS AND BOARD COMMITTEES**

No later than the first regularly scheduled Board meeting of each July, the Board shall elect its President and Vice President to serve for the following twelve month period. Nominations shall be made by Board Member(s) and if the nomination is seconded, it shall be submitted to a vote of the Board. A majority vote of members present shall be required to ratify the election of the nominated Member.

The Board President shall be responsible for determining the Board committees and committee assignments no later than the first regularly scheduled Board meeting in August of each year.



If a Board member is not satisfied with the committee or his/her assignment, that member may take his/her request or complaint to the full Board for consideration and action at the next regularly scheduled Board meeting.

The Board President shall be responsible for the orderly and timely conduct of Board meetings and shall have the discretion to impose reasonable time limits for statements or discussion by members of the public and members of the Board.

The Vice President of the Board shall preside over any Board meeting at which the Board President is absent and shall assume the responsibilities of the Board President for the conduct of that meeting.

## **17. BOARD MEETINGS; QUORUM; VOTING**

A. The Agency's Board meetings shall be conducted following the general guidelines of "Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21<sup>st</sup> Century," League of California Cities, 2003, attached hereto and incorporated herein as Appendix B.

B. Regular meetings of the Board shall be held on the third Wednesday of each month, beginning at 7:00 pm in the Agency's Board room located at 100 North Canyons Parkway, Livermore, California. The agenda for regular Board meetings shall be posted in a public place at least 72 hours prior to the meeting. Any changes to that schedule must be determined at a regularly scheduled board meeting at least two months earlier than the scheduled meeting.

C. Special meetings of the Board shall be held for the purpose of discussing Agency matters that either (1) require prompt Board consideration and action which cannot be delayed until the next regularly scheduled Board meeting; (2) concern matter(s) of a specialized topic/nature which would benefit from focused Board consideration and deliberation; (3) matters continued from the last regular Board meeting; or (4) at the discretion of the President of the Board of Directors. Notice and posting of Special Meetings shall be in conformity with the provisions of the Brown Act.

D. The Board hereby ratifies and re-approves Resolutions 1296 and 95-1777 which detail the manner in which the Agency and the General Manager will respond to emergency situations (i.e., taking necessary actions to protect public health or safety). In non-emergency situations where action is required prior to the time when the Board is able to convene a Special Meeting (i.e. those times when it is critical from a business standpoint to take immediate action), the Board hereby delegates all necessary authority to respond to such urgent circumstances to the General Manager, who shall consult with either the President of the Board or, if unavailable, one of the other Directors, prior to taking the action. The General Manager shall report his/her actions to the full Board of Directors during its next meeting.

E. A quorum of the members of the Board of Directors shall be present in order to convene an official regular or special meeting of the Board for the transaction of business. A

quorum is established by the presence of no less than four (4) Directors. In the event a quorum of the Board is not present at a noticed and agendized regular or special meeting, the meeting shall be adjourned to a future date pursuant to the provisions of Government Code sections 54955 or 54954.2(b)(3).

F. Board members shall at the earliest opportunity, advise the Board Secretary in the event that he/she is unable to attend a scheduled meeting of the Board.

G. A majority vote of the members of the Board present at a regular or special meeting shall be required to constitute an official act of the Board unless a greater number of votes are otherwise required by law. Abstentions are to be considered neutral and do not count as affirmative or negative votes.

H. Committee Meetings shall be held on an "as needed" basis and at the discretion of the Board President. Board Members desiring to convene meetings of a standing committee or to establish an ad hoc committee, shall submit, for consideration, such request to the Board President in writing detailing the nature and purpose for such meeting. If the Board President grants the request to convene a meeting of a standing or ad hoc committee, the Board President shall refer the matter to the General Manager for the scheduling of such meeting at the earliest practical opportunity. Alternatively, Board Members may during the "Items for Future Agendas" portion of the agenda at a regular meeting of the Board, request that a committee meeting be convened, and such request shall be submitted to a vote of the Board members present. The General Manager may convene meetings of committees as necessary to further Agency operations as he/she deems necessary and may also submit specific matters to the Board President for referral to standing or ad hoc committees.

## **18. BOARD MEETING AGENDAS**

Any Board member may place items on the board agenda by submitting a request to the President of the Board and General Manager no later than ten (10) business days prior to the scheduled Board meeting at which the item is requested to be considered, a written document explaining the item and offering recommendations. Alternatively, Board Members may request that items be calendared for future Board agendas during the "Items for Future Agendas" portion of the agenda at a regular meeting of the Board. The Board President shall have the final decision on board meeting agenda matters and for the purpose of orderly and timely conduct of meetings, may exercise his/her authority to limit, postpone or delay any Board member's requested agenda matter.

Zone 7 staff shall send regular Board meeting agendas and supporting documents to each member of the Board no later than the Friday immediately preceding the regularly scheduled Board meeting. Board members should thoroughly review the agenda and accompanying documents and materials and be prepared to discuss same at the scheduled Board meeting. Any questions regarding the agenda, items contained therein and/or supporting documents

and materials, shall be directed to the General Manager, an Assistant General Manager, or the District Secretary at the earliest opportunity.

## 19. BOARD DECORUM

Board members shall at all times conduct themselves with the utmost decorum. Members shall afford due respect to one another, Agency staff and the public. Members shall be courteous and shall not engage in personal attacks or make malicious or offensive statements or comments during the conduct of Agency business. In carrying out their duties, Board members shall bear in mind the Board's role, the Agency's mission, and the interests of the constituency the Board serves. Director participation shall be relevant to the subject matter at hand and should be expressed in a thoughtful, clear, succinct, and articulate manner.

During the section of the agenda of "Director Reports," directors reporting at the Board meeting shall limit verbal reports to topics related to Zone 7's mission and limited to five minutes per director. If the Director has additional information to share with the Board, such information shall be provided in advance to the General Manager as a written report that can be included in the agenda package.

When communicating with members of the public or other public agency representatives, individual board members shall refrain from making personal commitments or promises for the Agency. In addition, when expressing *personal views and opinions* to third parties concerning matters within the jurisdiction of or affecting the Agency, Directors shall duly qualify them as such to avoid misinterpretation of those views and opinions as those of the Board of Directors. Conversely, when authorized by the Board of Directors to speak for the Agency at other public agencies' meetings, clearly state that what is said has been approved by the Board or that the Board has no position on an issue.

Directors are encouraged to support District policy and avoid personal statements that conflict with Board adopted policy and decisions. Members shall afford due respect for other Member's differing opinions and viewpoints. When expressing a dissenting view to members of the public, other public agencies, other public officials and/or to the media, to avoid stimulating or inflaming controversy, Directors are encouraged to support adopted Board policy.

## HISTORY

Date	Action	Resolution
December 17, 2008	Originally adopted	09-3266
February 15, 2012	Amended	12-4162
September 19, 2012	Amended	13-4217