



Policy Number: 2110
Policy Title: Ethical Procedures and the Prevention of Fraud

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Section 1. Purpose and Scope.

The policy of the Fair Oaks Water District is to require its Board Members and staff to maintain the highest standards of ethics including the prevention of illegal or inappropriate use of public funds and public property. The proper operation of the District requires decisions and policy to be made openly, that public office not be used for personal gain, and that all individuals associated with the District remain responsible towards the public. Accordingly, it is the policy of the District that Board members and District employees will maintain the highest standard of personal honesty and fairness in carrying out their duties. This policy governing ethical procedures and the prevention of fraud sets forth the minimal standards to be followed.

Section 2. Responsibilities of Public Office.

Board members are obligated 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.

(Government Code Section 1360; Article 20, Section 3 of the California Constitution.)

Section 3. Fair and Equal Treatment.

Board Members and staff will not, in the performance of their official functions, discriminate against any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition or disability. Board Members and staff 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.

(See, e.g., Article 1, Section 31 of the California Constitution; Age Discrimination in Employment Act of 1967 (29 U.S.C., Section 621-634); Americans with Disabilities Act of 1990 (42 U.S.C., Section 12101 et. Seq.); Fair Employment and Housing Act (Government Code, Section 12900 et Seq.); Rehabilitation Act of 1973 (29 U.S.C., Section 701 et. Seq.); Title VII of the Civil Rights Act of 1964 (42 U.S.C., Section 2000e et. Seq.); Labor Code Section 1102.1.)

Section 4. Proper Use and Safeguarding of District Property and Resources.

District-owned vehicles, equipment, telephones, materials or property will not be used for personal profit. A Board member will not ask or require a District employee to perform services for the personal convenience or profit of a Board member or employee. All personnel must protect and properly use any District asset within his or her control, including information recorded on paper or in electronic form. District property, equipment, moneys and assets must be safeguarded against unauthorized use or removal, as well as from loss due to criminal act or breach of trust. All personnel are responsible for maintaining written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on the District's behalf, in accordance with the District's policies for reimbursement of expenses.

(Article 16, Section 6 of the California Constitution; Government Code Section 8314; Penal Code Section 424; see *People v. Battin* (1978) 77 Cal.App.3d 635.)

Section 5. Use of Confidential Information.

A. A Director is not authorized, without approval of the 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 a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the alleged illegality of an action taken by the District an elected official or employee, (2) expressing an opinion concerning the propriety or legality of actions taken by the District 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, 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.

(Government Code Section 54963.)

Section 6. Conflict of Interest.

- A. District personnel will not have a financial interest in a contract with the District, buy items from the District or sell items to the District unless authorized under Government Code section 1090, 1091 or 1091.5, or other provisions of law. A Board member will not participate in the discussion, deliberation or vote on a matter before the Board of Directors, or in anyway 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 conflicts of interest. Generally, a Director has a financial interest in a matter if it is reasonably foreseeable that the Board decision would have a material financial effect (as defined by the Fair Political Practices Commission (“FPPC”) regulations) that is distinguishable from the effect on the public generally.

(Government Code sections 87100 and following.)

- 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 District’s General Manager and the District’s legal counsel 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 and the District’s legal counsel 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 exists, 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. The Director may speak on an uncontested matter during the time the general public speaks on the issue.

- C. A Board member will not recommend the employment of a relative by the District. 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 District.
- 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.

(Government Code Sections 1090, and following, 81000 and following, and 87105;
Penal Code Sections 68 and 70.)

Section 7. Soliciting Political Contributions.

Board members are prohibited from soliciting political funds or contributions at District facilities, or from District employees. A Board member will not accept, solicit or direct a political contribution from (a) District employees, officers, consultants or contractors, or (b) any person or entity who has a financial interest in a contract or other matter while that contract or other matter is pending before the District. A Director will not use the District's seal, trademark, stationary or other indicia of the District's identity, or facsimile thereof, in any solicitation for political contributions contrary to state or federal law.

(Government Code Section 3205.)

Section 8. Incompatible Offices and "Revolving Door" Policy.

- A. Any Board member appointed or elected to a public office of another public entity, the duties of which may require action contradictory or inconsistent with the interest of the first entity (as determined under applicable law), will resign from the former office.

(See, generally, 73 Ops.Cal.Atty.Gen. 357 (1990); see also Government Code Section 53227.)

- B. For a period of one year after leaving office, Directors or staff will not represent for compensation non-governmental entities before the District with regard to any issues over which that officer had decision-making authority during the three years prior to leaving office.

- C. For purposes of this section, “represent” will mean for compensation to actively support or oppose a particular decision in a proceeding by lobbying in person the officers or employees of the District or otherwise acting to influence a decision of the District.
- D. These restrictions will not apply to representation of not-for-profit charitable entities before the District.
- E. These restrictions may be waived in specific cases by a two-thirds vote of the District’s Board of Directors.
- F. Nothing in this section is intended or will be applied to prevent a former Director from participating in meetings of the Board in the same manner as other members of the public. (See, for example, Government Code section 54954.3.)

Section 9. Board-General Manager Relationship.

- A. The Board sets the policy for the District. The District’s General Manager (a) has full charge and control of the maintenance, operation and construction of the water system of the District, (b) has full power and authority to employ and discharge all employees and assistants at pleasure, consistent with other provisions of law, (c) prescribes the duties of employees and assistants, consistent with District policy, and (d) fixes and alters the compensation of employees and assistants, subject to approval by the Board. The Board will, after considering the recommendation of the General Manager, appoint the District’s Chief Financial Officer/Treasurer (who will report to the General Manager). The Chief Financial Officer/Treasurer will install and maintain a system of auditing and accounting that will completely and at all times show the financial condition of the District in accordance with generally accepted accounting principles and legal requirements. The Board will retain an auditor as an independent contractor of the District (other than the Chief Financial Officer/Treasurer) to conduct an annual audit of the District’s books, records and financial affairs. The auditor will report to the Board, which will periodically review the auditor’s work. The audit firm will be changed at least once every five years.
- B. The District’s General Manager serves at the pleasure of the Board. The Board will provide policy direction and instructions to the General Manager on matters within the authority of the Board by majority vote of the Board during duly-convened Board and Board committee meetings. Members of the Board will deal with matters within the authority of the General Manager through the General Manager, and not through other District employees, except as it pertains to the functions of the Chief Financial Officer/Treasurer and District consultants, including the District auditor. Members of the Board will refrain from making requests directly to District employees (rather than to the General Manager) to undertake analyses, perform other work assignments or change the priority of work assignments. Individual members of the Board may request non-confidential, factual information regarding District operations from District employees providing that the effort to respond does not significantly alter District priorities or costs.

(Water Code sections 30540 and 30580 through 30582.)

**Section 10. 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 District's Employee Handbook, and ensuring that District 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 District according to law and the policies approved by the Board. Board members are encouraged to fulfill their obligation to the public and the District 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 or other District personnel 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 District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board member or District employee.
- C. A Board member or other District personnel will not use or threaten to use any official authority or influence to affect any action as a reprisal against a District Board member or District employee who reports or otherwise brings to the attention of the General Manager any information regarding the subjects described in this section.
- D. Any person who believes that he or she has been subjected to any action prohibited by this section may file a confidential complaint with (1) the General Manager, or (2) a member of the Board of Directors if the complaint involves the conduct of the General Manager, who will thereupon refer the matter to the full Board to investigate the complaint. Upon the conclusion of the investigation, the General Manager (or the Board in the case of a complaint against the General Manager) will take appropriate action consistent with the District's Employee Handbook and applicable law.

(Labor Code section 1102.5, and following, and Government Code sections 53298 and 53298.5.)

Section 11. Compliance with the Brown Act.

The members of the Board of Directors, and persons elected but who have not yet assumed office as members of the Board, will fully comply with the provisions of the State's open meeting law for public agencies (the Brown Act).

(Government Code sections 54950 and following, and 54952.1 and 54959.)

Section 12. Directors' Compensation and Expense Reimbursement.

The members of the Board of Directors will fully comply with the provisions of the Board's Policies 2040, 2060 and 2070.

(Water Code sections 20200, and following.)

Section 13. Changes in Compensation.

Changes in the compensation of the Board will require the approval of the Board during an open meeting of the Board held within sixty days prior to the effective date of the change.

(Water Code Sections 20200 and following.)

Section 14. Candidate's Statement.

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

(Elections Code section 13313.)

Section 15. Violation of Ethics Policy.

A perceived violation of this policy should be reported as set forth in Section 10 above 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 District, including but not limited to: (a) adoption of a resolution expressing disapproval of the conduct, (b) injunctive relief, (c) referral of the violation to the District Attorney and/or the grand jury, (d) dismissal of the employee(s) or other disciplinary action.