

Governance Policies of the Board

Title: Board Members' Code of Conduct

Category: Governance Process

Policy No. GP-6

Adopted: June 15, 1999
Chair: Larry Wilson

Latest Revision: December 10, 2024
Chair: Nai Hsueh

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The Board commits itself and its members to ethical, business-like, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

Board members who do not adhere to this code of conduct may be subject to the procedures of GP-6.3 through GP-6.5 listed below.

- 6.1. Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board, committees, commissions, staff and the public.
- 6.2. The Board may not authorize severance pay for a Board-appointed employee of the District when the employee voluntarily separates from District employment. "Severance pay" does not include any otherwise lawful payment required to be paid by the District under a pre-existing employment agreement or under a separation and release agreement resolving a claim or claims made or threatened against the District. The Board shall not agree to amend an employment contract after the employee announces or requests a voluntary separation, except upon a Board determination, in open session, that an adjustment in compensation is required to retain the employee and is in the best interest of the District.

6.3. Available Procedures for addressing misconduct

This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed where one believes a member of the Board of Directors has engaged in misconduct. Complainants shall follow either the Informal Complaint procedure under Section 6.4 or the Formal Complaint procedure under Section 6.5.

6.4 Informal Complaint Process

- 6.4.1. Complainants who do not wish to bring formal complaints against Board members under Section 6.5, below, shall have the option of bringing informal complaints instead.

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- 6.4.2. Informal complaints that a Board member has engaged in misconduct must be made to the Board Chair (where the complaint is against the Chair, “Vice Chair” is substituted for Chair throughout this section).
- 6.4.3 Informal complaints may be verbal or in writing, must be brought in the name of the actual name of the complainant, and may not be anonymous. Complainants may make informal complaints regarding Board member conduct towards third parties but must identify such third parties in the informal complaints.
- 6.4.4 When in writing, informal complaints must clearly state that they are informal or are being brought in accordance with this Section 6.4.
- 6.4.5 Complaints involving harassment or discrimination based upon protected class under state or federal law are not eligible for the informal complaint process and must be referred to the formal complaint process.
- 6.4.6 Complaints involving illegal conduct potentially harmful to Valley Water (e.g., fraud, theft, bribery, economic conflicts of interest, etc.) are not eligible for the informal complaint process and must be referred to the formal complaint process.
- 6.4.7 Prior to final resolution by the Chair, complainants may request that their informal complaints be changed to formal complaints by providing notice to the Chair and a written complaint to the Clerk of the Board complying with the provisions of Section 6.5.2.
- 6.4.8 Prior to final resolution by the Chair, complainants may withdraw their formal complaints.
- 6.4.9 Complainants may request that the Chair withhold their identity from the accused Board member, but the Chair alone shall determine whether such confidentiality is appropriate in any case given considerations of fairness to all parties involved. Following such a request, the Chair will advise the complainant whether or not their identity will be withheld from the accused Board member as requested.
- 6.4.10 Upon receipt of an informal complaint, the Chair shall have discretion on how to resolve it and may engage in warnings, counseling, or other informal measures deemed appropriate based upon the seriousness of the conduct at issue and any record of similar conduct by the accused Board member. Resolution shall not include admonition, sanction, or censure by the Board as such remedies are reserved for formal complaints under Section 6.5.
- 6.4.11 The Chair shall provide timely notice to the complainant regarding final resolution of the informal complaint.

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6.5 Formal Complaint Process

- 6.5.1 Scope of Complaints. Anyone may bring a formal complaint against a Board member for misconduct in accordance with this section. Misconduct under this section 6.5 shall be limited to: violations of the Board of Directors Code of Ethics and Conduct, violations of the Governance Policies of the Board, and/or violations of local, state, and/or federal law.
- 6.5.2 Written Complaint Procedure. Complaints must be in writing and signed in the complainant's true legal name. Complaints must identify the accused Board member(s) by name and should provide as much detail as possible about the alleged misconduct. Complainants must submit their written complaints to the Clerk of the Board. The Clerk of the Board shall provide the complaint the Board Chair ("Vice Chair" is substituted for "Chair" throughout this section 6.5 where the Chair is the subject of the complaint or is the complainant) with copies to the Chief Executive Officer and District Counsel.
- 6.5.3 Chair Consultation with District Counsel. Where complaints involve allegations of harassment or discrimination based upon a protected classification, retaliation, or violations of local, state, or federal law, the Chair must consult with Valley Water's District Counsel to receive advice regarding any legal implications of the complaints. Where complaints do not include any of these elements, the Chair may, but is not required to, consult with the District Counsel regarding the complaints. In the event of any conflict, the Chair shall meet with selected special counsel instead of Valley Water's District Counsel.
- 6.5.4 Initial Evaluation of Complaint. The Chair shall review complaints to determine if they articulate a sufficient basis for further consideration. Where they do not articulate a sufficient basis for further consideration, the Chair shall notify the complainant and the accused Board member, and the matter shall be deemed closed, and the procedure set forth in sections 6.5.5 et seq. shall not apply. Such closure shall not bar complainants from submitting amended written complaints to the Clerk of the Board.
- 6.5.5 Notice to the Accused Board Member. Where the Chair determines complaints do articulate a sufficient basis for further consideration, the accused Board member must be given written notice of the complaint in a timely manner.
- 6.5.6 Informal Resolution. The Chair may, but is not required to, attempt informal resolution of a complaint with the complainant and the accused Board member. If the complaint is informally resolved to the satisfaction of the complainant and accused Board member, then the matter shall be deemed closed.
- 6.5.7 Ethics and Conduct Ad Hoc Committee.
- 6.5.7.1 If informal resolution is unsuccessful or is not attempted, the Chair shall make a timely request to the Board to form an Ethics and Conduct Ad Hoc Committee to address the complaint ("Committee"). As part of this request, the Chair shall nominate an additional member for the Committee which shall consist of the Chair and one other. The Chair's request shall be agendized for a public meeting of the Board of Directors.

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- 6.5.7.2 The Board shall consider the Chair's request and nomination and must approve it before the Committee can formally convene and take action on the complaint.
- 6.5.7.3 For the public meeting on the Chair's request, the rights of the complainant and any witnesses must be respected. Information regarding the nature of the complaint must be kept to a minimum and the identity of the any complainant and witnesses must not be disclosed. Where any details have previously been made public, disclosure of such previously disclosed information is discouraged where unnecessary for Board consideration but is not prohibited.
- 6.5.7.4 For the public meeting on the Chair's request, the public agenda materials and the corresponding Board discussion must be undertaken to avoid compromising the integrity of the future investigation or bringing unnecessary or undue embarrassment to the complainant, the accused Board member, and any witnesses.
- 6.5.7.5 If the Board does not approve the Chair's request to form a Committee, the Chair alone must handle the complaint following the processes below (substituting "Chair" for "Committee").
- 6.5.7.6 If the Board does approve the Chair's request to form a Committee, the Committee is convened and may meet as necessary.
- 6.5.8 Committee Evaluation of Complaint. The Committee shall evaluate the complaint and determine whether it has sufficient information whether the alleged conduct both occurred and violated any Board of Directors Code of Ethics and Conduct, Board Governance Policies, or local, state, or federal law.
- 6.5.8.1 Disposition Without Investigation.
- (a) If the Committee determines that sufficient information exists that the alleged conduct both occurred and violated any Board of Directors Code of Ethics and Conduct, Board Governance Policies, or local, state, or federal law, it shall make findings and recommendations to the Board at a public meeting.
 - (b) If both members of the Committee do not agree, the members will make separate findings regarding whether the alleged conduct occurred and violated any Board of Directors Code of Ethics and Conduct, Board Governance Policies, or local, state, or federal law. The Committee members may also make separate recommendations to the Board.
- 6.5.8.2 Disposition Following Investigation. If the Committee determines that it needs additional information to conclude whether the alleged conduct occurred and/or constituted a violation of policy or law as set forth above, it may decide to have the complaint investigated.

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6.5.9 Retention of Investigator. The Committee has authority to retain an independent investigator to conduct investigations within the scope of this policy. The Committee shall select the investigator and may seek the assistance of the District Counsel in this effort.

6.5.10 Commencement of Investigation.

- 6.5.10.1 The Committee shall advise the Board within one month of the of the commencement of any investigation.
- 6.5.10.2 No Board member who participates in any investigation in any way may disclose any confidential information regarding the investigation including the identification of any known or suspected witnesses.
- 6.5.10.3 The Committee shall endeavor to have investigations completed within six months from their start. The Committee shall update the Board of the estimated completion date if this six-month goal will not be met. The Committee will provide the Board with further schedule updates as necessary.

6.5.11 Completion of Investigation.

- 6.5.11.1 Results of any investigation will be presented to the Committee. Only the Committee may possess and review the full investigation report.
- 6.5.11.2 If the Committee is satisfied with the completeness of the investigation, it will present findings and recommendations to the Board at a public meeting.
- 6.5.11.3 If both members of the Committee do not agree, the members will make separate findings and recommendations to the Board at a public meeting.
- 6.5.11.4 An executive summary of the investigation report shall be made with redactions of names, identifying information, and any other sensitive information. The executive summary shall be prepared in sufficient detail to allow the accused Board member a reasonable opportunity to respond to the charges and allegations. This executive summary will be available to the full Board and public in any future Board meeting on the investigation.

6.5.12 Board Consideration of Committee Findings. The Board will consider, by majority vote, whether to accept the Committee's findings (or where there is disagreement by members of the Committee, the separate findings of the two Committee members). Prior to any Board action on the findings, the accused Board member shall be given a reasonable amount of time to respond to the findings (verbally and/or in writing). If findings are not accepted, then the matter is concluded and shall be deemed closed. If the Board does accept findings, then the matter shall continue as set forth below.

6.5.13 Board Consideration of Committee Recommendations. At any meeting where the Board

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considers the Committee's findings, the Board may discuss any recommendations by the Committee, but will not take action on them at that meeting. At the meeting where the Board considers the Committee's findings, any Board member may request admonition, sanction, censure (as defined in section 6.5.20), or other measures in addition to any recommendations by the Committee.

- 6.5.14 Committee Recommendations to Board. The Committee will receive Board requests for admonition, sanction, or censure, and make recommendations to be considered at a future Board meeting. If both members of the Committee do not agree, the members will make separate recommendations to the Board at a future Board meeting. Valley Water will provide the accused Board member with separate written notice of any public Board meeting involving a Committee recommendation to admonish, sanction, or censure that Board member.
- 6.5.15 Accused Board Member's Response to Recommendations. Where the Committee is recommending admonition or sanction, the accused Board member will be given a reasonable amount of time to respond (verbally and/or in writing) taking into account the number of charges, the complexity of the charges, and any issues or questions raised during Board discussion on the matter. Where the accused Board member has previously responded to the findings, his or her response shall be limited to whether admonition or sanction is appropriate.
- 6.5.16 Special Rules Regarding Recommendations for Censure. Where the Committee is recommending censure:
- 6.5.16.1 A hearing will be scheduled at a public meeting and the public meeting must be scheduled to provide the accused Board member adequate time to prepare a defense.
 - 6.5.16.2 The accused Board member will have the opportunity to respond to the Committee's recommendation(s) and the accusations against him or her verbally and/or in writing before any Board vote on the matter.
 - 6.5.16.3 The accused Board member shall be given a reasonable amount of time to respond, taking into account the number of charges, the complexity of the charges, and any issues or questions raised during Board discussion on the matter.
 - 6.5.16.4 The accused Board member may present voluntary witnesses within the time prescribed but cannot compel the appearance or testimony of unwilling witnesses.
 - 6.5.16.5 The accused Board member will be entitled to representation of counsel at their own expense.
 - 6.5.16.6 The Chair will preside at the public hearing.
 - 6.5.16.7 The rules of evidence will not apply to the hearing of the matter, which is

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not a formal adversarial proceeding.

6.5.17 Board Action on Recommendations. A majority of the Board shall be required to approve any final action on Committee recommendations, but a 2/3 majority shall be required to approve a recommendation for censure.

6.5.18 Board Approval of Other Measures. In addition to or in lieu of admonition, sanction, or censure, the Board may approve other measures to address misconduct by a Board member and shall retain discretion on what measures to impose. A majority of the Board shall be required to approve such measures.

6.5.19 Referral to Law Enforcement or the Civil Grand Jury. At any point during the processes described herein, the Board may refer a matter to Law Enforcement and/or the Santa Clara County Civil Grand Jury for investigation or other action. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

6.5.20 Definitions.

6.5.20.1 Admonition. Admonition is the least serious form of action. Admonition is a warning and a reminder that a particular type of behavior is not in the best interests of Valley Water and can involve minor violations of the BOD Code of Ethics and Conduct or the Board Governance Procedures. An admonition may be issued by the Board prior to any findings of fact regarding any complaint, and because it is a warning or reminder, would not necessarily require an investigation to determine whether a complaint is true. Admonition authorized through this policy is separate and apart from, and is not intended to limit, the Chair's independent right to admonish Board members for their conduct as prescribed elsewhere in the Governance Process.

6.5.20.2 Sanction. Sanction is the second most severe form of action. Sanction should be directed to a member of the Board based upon an action or series of actions determined to be misconduct for violations of the BOD Code of Ethics and Conduct, (GP) or local, state, or federal law, but is not determined to be sufficiently serious to require censure. Sanction is distinguished from censure in that it does not constitute punishment.

6.5.20.3 Censure. Censure is the most severe form of action. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action which serves as a penalty for misconduct, but it carries no fine or suspension of the rights of the members as an elected official. Censure should be reserved for cases in which the Board determines that the misconduct is a serious offense. Censure does not limit the Board's ability to impose additional measures to address misconduct.

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