

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: September 12, 2023
Chair: John L. Varela

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. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when any member of the Board of Directors reasonably believes that another member of the Board has engaged in misconduct or has failed to act in the best interests of the District. The procedures shall not be effective in any case in which a non-board member seeks redress for alleged misconduct by a Board member. While the Board has discretion in deciding the actions it may choose to take in response to a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure.

6.3.1. Admonition

Admonition is the least severe form of action. An admonition may typically be directed to all members of the Board, reminding them that a particular type of behavior is not in the best interests of the District, and that, if it occurs or is found to have occurred, could make the member subject to sanction or censure. An admonition may be issued in response to a particular alleged action or actions, although it would not necessarily have to be triggered by a

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complaint of misconduct. 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 or separate public hearing to determine whether a complaint is true.

6.3.2. Sanction

Sanction is the next most severe form of action. Sanction should be directed to a particular member of the Board based on a particular action (or set of actions) that is determined to be misconduct but is considered by the Board not to be sufficiently serious to require censure. A sanction is distinguished from censure in that it does not constitute punishment. A written sanction may be based upon the Board's review and consideration of a written complaint. The member accused of such misconduct will have an opportunity to provide a written response to the complaint. A sanction may be issued by the Board, and because it is not punishment or discipline, it would not necessarily require an investigation or separate public hearing.

6.3.3. Censure

Censure is the most severe form of action in this policy. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for misconduct, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Board determines that the misconduct is a serious offense. In order to protect the overriding principle of freedom of speech, the Board shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the Board or the District. However, nothing herein shall be construed to prohibit the Board from collectively condemning and expressing their strong disapprobation of such remarks.

6.3.4. Referral to District Attorney

At any point during any of the processes hereinafter described, the Board may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

6.4. Available Procedures for addressing Misconduct

There are four separate methods for the Board to address Board member misconduct under this Policy: (1) written complaint; (2) request for admonition; (3) request for sanction; and (4) request for censure. Written complaints that specifically seek admonition, sanction, or censure as a specific remedy shall be treated as a request for that remedy (admonition, sanction, or censure), and the provisions of sections GP-6.5 and GP-6.6 shall not apply.

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6.5. Written Complaints

In the event a Board member reasonably believes another Board member has failed to act in the best interests of the District resulting in misconduct, a written complaint shall be submitted to the Chief People Officer. Upon receipt, the Chief People Officer, Human Resources Division shall transmit the complaint to the District Counsel for review. The District Counsel shall review complaints to determine whether there is a sufficient basis for further action.

6.5.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised by the District Counsel, and the matter shall be deemed concluded.

6.5.2. If a complaint adequately articulates a sufficient basis for further action, the District Counsel shall present the complaint to the Board Ethics and Conduct Ad Hoc Committee (the "Committee"), which shall be comprised of the Chair and two members of the Board. In the event the subject of a complaint is the Chair or any member of the Committee, the Board shall select another Board member to serve on the Committee in that member's stead. The District Counsel may recommend to the Committee that:

6.5.2.1. Fact finding as to the complaint should be conducted; or

6.5.2.2. Informal resolution of the complaint should occur; or

6.5.2.3. An independent investigation of the complaint should occur.

6.6. Prior to any determination by the Committee to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Committee or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Committee should consider:

6.6.1. Whether an investigation may compromise investigations regarding the same alleged misconduct, whether the misconduct may result in criminal charges, and whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.

6.6.2. Whether persons involved in the allegations may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of alleged events.

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6.6.3. Whether measures can be taken to protect the rights of the member accused of misconduct, the member making such allegations, and those who have information regarding the allegations.

6.7. Investigations

6.7.1. If the Committee determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct the investigation. District Counsel may select and manage an independent investigator to assist in conducting the investigation.

6.7.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. District Counsel may allow witnesses to choose to provide a signed declaration under penalty of perjury attesting to their knowledge of the facts surrounding the complaint.

6.7.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Committee and CEO. If the Committee is satisfied with the completeness of the investigation, it shall provide the Board with its findings and any recommendations. Following such findings and recommendations, any individual Board member may file a request for admonition, sanction, or censure.

6.7.4. If the Committee determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure.

6.7.5. Should any Board member file a request for admonition, sanction, or censure following investigation, the Committee shall submit to the Board a recommendation as set forth in sections GP-6.8.2, GP-6.9.2, or GP-6.10.2, below, and the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.10.5, below.

6.8. Request for Admonition

6.8.1. Any Board member may make a written request for an admonition which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) admonition is appropriate. A copy of the request for admonition shall be provided to the Board member accused of the misconduct.

6.8.2. The Committee shall review the request and submit it to the Board with a recommendation. The Committee's recommendation shall provide:

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6.8.2.1. Admonition is warranted; or

6.8.2.2. Admonition is not warranted; or

6.8.2.3. No further action is required.

6.8.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.8.4. An admonition can be approved by a majority of the Board.

6.9. Request for Sanction

6.9.1. Any Board member may make a written request for sanction which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) sanction is appropriate. A copy of the request for sanction shall be provided to the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the request. The time for service shall be tolled if the Board member is unavailable for service.

6.9.2. The Committee shall review the request and determine if an investigation is warranted. Following the investigation, or if no investigation was undertaken, following review of the request, the Committee shall submit the request to the Board with a recommendation. The Committee's recommendation shall provide:

6.10.2.1. Admonition, rather than sanction is warranted; or

6.10.2.2. Sanction is warranted; or

6.10.2.3. No further action is warranted.

6.9.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.9.4. The Committee's recommendation shall be subject to a majority vote of the Board.

6.10. Request for Censure

6.10.1. Any Board member may make a written request for a censure which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) censure is appropriate. A copy of the request for censure shall be served

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on the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the written request. The time for service shall be tolled if the Board member is unavailable for service.

- 6.10.2. The Committee shall review the request and submit the request to the Board with a recommendation. The Committee's recommendation shall provide:
 - 6.10.2.1. Further investigation of the request for censure is required; or
 - 6.10.2.2. Admonition or sanction is warranted; or
 - 6.10.2.3. The request for censure should be set for a separate Board public hearing; or
 - 6.10.2.4. No further action is required.
- 6.10.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.
- 6.10.4. If the Board determines that further investigation is required, the Board shall direct the Committee to lead the investigation which may be assisted by the CEO and District Counsel. The following guidelines apply to such an investigation:
 - 6.10.4.1. The Committee may be assisted by a separate independent investigator.
 - 6.10.4.2. Upon completion of the investigation, the Committee should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the misconduct occurred.
 - 6.10.4.3. The Committee shall issue to the Board a final a report and recommendation as approved by a majority of the Committee. The Committee's final report shall be made available to the public.
- 6.10.5. If a separate Board public hearing is required, it must be scheduled far enough in advance to provide the Board member subject to the charges adequate time to prepare a defense, and that Board member shall be given the opportunity to make an opening and closing statement and to question his or her accusers. The Board member subject to the charges may be represented and may have the representative speak or question on his/her behalf. The Chair or Vice Chair, if the Chair is the subject of the charges, shall preside at the public hearing. The rules of evidence shall not apply to the hearing of the matter, which is not a formal adversarial proceeding. If the District Counsel has assisted Board members in the

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investigation, independent legal counsel shall provide legal advice to the Board during the hearing of the matter.

6.10.6. A decision to censure requires the adoption of a resolution making findings with respect to the specific charges, based on substantial evidence and approved by a two-thirds vote of Board.

6.11. Complaints from non-Board members

This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedure shall be followed when a non-Board member files a written complaint stating his/her reasonable belief that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. While the Board has discretion in deciding the actions it may choose to take in response to such a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure as defined in sections GP-6.3.1, GP-6.3.2., and GP-6.3.3, of this policy.

6.12. At any point during any of the processes hereinafter described, the Board may refer the matter as appropriate to the Santa Clara County District Attorney for investigation. Following such referral, the Board may proceed with any of the actions described in this policy.

6.13. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when a non-Board member reasonably believes that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. A written complaint signed by the complainant shall be filed with the Chief People Officer, Human Resources Division. Upon receipt, the Chief People Officer shall transmit the complaint to the Chief Executive Officer (CEO) and the District Counsel for review. The CEO and District Counsel shall review the complaint to determine whether there is a sufficient basis for further action.

6.13.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised and the matter shall be deemed concluded.

6.13.2. If a complaint adequately articulates a sufficient basis for further action, the CEO and District Counsel shall present the complaint to the Chair of the Board. In the event the subject of the complaint is the Chair, the Vice Chair shall be presented with the complaint. The CEO and District Counsel may recommend to the Chair or Vice Chair that:

6.13.2.1. Fact finding as to the complaint should be conducted; or

6.13.2.2. Informal resolution of the complaint should occur; or

6.13.2.3. An independent investigation of the complaint should occur.

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- 6.14. Prior to the determination by the Chair or Vice Chair to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Chair or Vice Chair or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Chair or Vice Chair should consider:
- 6.14.1. Whether an investigation may compromise investigations regarding the same alleged misconduct and if the misconduct may result in criminal charges, whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.
 - 6.14.2. If persons involved in the allegation may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of the alleged events.
 - 6.14.3. Measures to protect the rights of the member accused of misconduct, the non-Board member making such allegations, and those who have information regarding the allegations.
- 6.15. Investigations
- 6.15.1. If the Chair or Vice Chair determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct an investigation, and District Counsel may select and manage an independent investigator to assist in conducting such investigation.

Alternatively, at the discretion of the Chair or Vice Chair, the Board's Ethics and Conduct Ad Hoc Committee (as described in Section 6.5.2 of the Board's Governance Policies) shall select an independent investigator to conduct the investigation.
 - 6.15.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. A witness may choose to provide a signed declaration under penalty of perjury attesting to his/her knowledge of the facts surrounding the complaint. Within ninety (90) days of the date an investigation begins, District Counsel shall inform the Board of the investigation's progress. Investigations should be completed within six (6) months from the date the investigation begins; however, in the event the investigation cannot be completed within the six (6) month time period, District Counsel shall so notify the Board.
 - 6.15.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Chair or Vice Chair. If the Chair or Vice Chair is satisfied with the completeness of the investigation, the Chair or Vice Chair shall provide the Board with findings and any recommendations. Following such findings and recommendation, any individual Board member may file a request for admonition, sanction, or censure.

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- 6.15.4. If the Chair or Vice Chair determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure as set forth in sections GP-6.8, GP-6.9, or GP-6.10 of this policy, save and except that whenever the term “Committee” appears therein, the term “Chair” or “Vice Chair” shall be applicable.
- 6.15.5. Should any Board member file a request for admonition, sanction, or censure following the Chair or Vice Chair’s findings and recommendations or determination that an investigation is not warranted as set forth in sections GP-6.15.1 through GP-6.15.4 above, the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.10.5, above.

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