



Santa Clara Valley Water District

File No.: 16-0858

Agenda Date: 2/28/2017

Item No.: 8.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Reporting Structure of the Office of Ethics and Corporate Governance.

RECOMMENDATION:

- A. Receive the Ethics Office Evaluation Benchmarking Report (Ethics Report) and the summary of recommendations; and
- B. Receive information regarding proposed changes to the Ethics Office structure.

SUMMARY:

At the June 9, 2015 Board meeting, the Board discussed the structure of the Office of Ethics and Corporate Governance (Ethics Office). Specifically, the Board requested a review of other similar agencies in terms of structure and scope of the ethics functions, the goal being to identify a better reporting structure for the Ethics function at the District. This Ethics Report provides a summary of the findings contained in the benchmarking analysis conducted by a third-party consultant, SOAProjects Inc. (Attachment 2) as well as staff responses to the recommendations. This report also describes the new reporting structure and various programmatic aspects of the Ethics Office.

Background

At the time of the direction from the Board on June 9, 2015, the Ethics Officer, also the Director of Ethics and Corporate Governance, reported directly to the CEO. The Director of Ethics and Corporate Governance position was vacated in July 2015.

SOAProjects Inc. began the benchmarking study in November 2015. The scope of their study was limited to studying options for the placement of the Ethics function, the reporting structure, and best practices of ethics programs. The consultant included five (5) comparator agencies: City of San Jose, Metropolitan Water District, San Francisco Public Utilities Commission, Valley Transportation Authority, and County of Santa Clara. They also included Alameda Health System and City of Oakland because of their more comprehensive ethics programs. The following chart summarizes the differences in the reporting relationships in the five responding comparable agencies.

	Comparable Agency	Responsible Party	Reporting Entity
1	City of San Jose	City Manager	Ethics Commission
2	County of Santa Clara	County Counsel	Ethics Commission
3	Metropolitan Water District	Ethics Officer	Board of Directors
4	San Francisco Water Power	HR, City Attorney, Citywide roles as warranted	Ethics Commission
5	Valley Transportation Authority	Director of Business Services, General Counsel, or Auditor General	Board of Directors

SOAProjects Inc. found that most public agencies do not have a dedicated Ethics office and even the above agencies selected by the consultant differ widely in their structure, reporting entity, and size. Further, the Ethics functions also differ greatly in their scope, staffing levels and authority. For example, some of the above agencies are focused on elections, and issues related to elected officials as opposed to issues related to employees.

The consultant’s report discussed 5 reporting models as described below.

1. Ethics Officer Reports to the District Counsel

The consultant viewed the legal office as being in a better position to understand the scope and responsibilities of an Ethics Officer and the importance of legal requirements such as ethics training. The consultant therefore saw the District Counsel’s Office as being able to offer insights and guidance to the Ethics Officer. But the other models that do not require a reporting relationship to the District Counsel also allow attorneys in the District Counsel’s Office to provide insights and legal guidance on an as needed basis. As the consultant report states, the focus and roles of the Ethics Office and the legal office are dissimilar which could impose significant conflict. District records indicate that during the last two years only about 2% of the contacts made to the Ethics Office have resulted in legal intervention. Thus, the District Administration decided to chose one of the other models discussed below.

2. Ethics Officer Reports to the Board

In this scenario, the program could report directly to the Board with the Ethics Officer becoming a Board Appointed Officer. The report envisioned the Ethics Officer to be more impartial and avoid potential conflicts of interest. But there were several challenges with this option. This would make receiving programmatic direction difficult. Further, adding a Board Appointed Officer would require changes to the Board’s policy and an additional Executive for the Board to evaluate annually. Additionally, it might negatively impact timeliness and resolution to issues.

3. Ethics Officer Reports to the CEO

Under this option, the Ethics Office would be focused strictly on ethics matters. The Ethics

Officer was envisioned under this scenario to better able to directly influence and advise the CEO on key initiatives for a culture of ethical compliance. While the function might be perceived as having a higher profile in the Office of the CEO, the Ethics function already has a high profile in the District and any perceived enhancement would be negligible. The downsides include the potential/perceived lack of independence required of the office, and a possible conflict of interest should an ethical concern involve the CEO or a member of his or her office, either of which would impose a burden to the function.

4. *Ethics Officer Report to Ethics Committee*

As noted in response to Finding #4 below, the District Administration has determined that there is sufficient Ethics & EEO expertise in Human Resources thus it does not warrant the formation of an Ethics Committee. As stated in the consultant report, the intent of this committee would be to provide a forum for District Counsel, Human Resources, and other related personnel to collaborate. Professionals representing these offices already collaborate on a regular basis, and this collaboration has been strengthened by moving the Ethics functions back under Human Resources.

5. *Ethics Officer Reporting to the CFO/COO*

This is the model chosen by the District Administration. With the role of Ethics Officer assigned to the Human Resources Deputy Administrative Officer, the role reports directly to the COO-Administrative Services. Per the consultant, this will enable the Ethics Officer to be involved in strategic planning meetings, operational reviews, and also be informed regarding aspects of the District's day-to-day operations with the ability to emphasize the importance of ethics and compliance in all related areas of the District.

While the following option is not included in the consultant's report, staff considered the option of an independent 3rd party agency that may serve the role of the Ethics Officer devoted to investigations.

6. *Ethics Officer is an Independent 3rd Party*

Given that case work load is often unpredictable, an Ethics Officer, independent of the District, can be on-call for expert knowledge and consultation. Under this scenario, other ethics related functions including the Annual Statement of Economic Interest (Form 700), management audits, and mandatory training could reside under the direction of Human Resources or District Counsel.

Ultimately, this option was discarded because the disadvantages of this approach would be greater than any real benefit. Because of the higher anticipated costs and slower response times it would be better to manage the function internally. Further, several labor intensive portions of the Ethics function would continue to be performed internally and would need programmatic direction from someone so simply contracting out the Ethics Officer role would not be effective.

Consultant Recommendations

The following are the eleven recommendations by the consultant followed by staff actions/responses.

1. *Fill the vacant Ethics Officer role.* - **Implemented**

Staff Response: The role of Ethics Officer has been assigned to the Human Resources Deputy Administrative Officer. This assignment is in alignment with one of the models discussed by the consultant which is to have the Ethics Officer position report to a Chief Operating Officer.

2. *Developing the Ethics Office as a stand-alone department by separating other programs that do not immediately relate to Ethics (Office of CEO Support, Communications, Diversity and Inclusion, and Equal Opportunity Programs).* **Implemented**

Staff Response: The Ethics Office was separated from other CEO Support programs and moved back to the HR Department where it had previously resided.

3. *Establishing a direct report function between the District Counsel and the Ethics Officer.* **Not Implemented**

Staff Response: As discussed, during the last two years only about 2% of the contacts made to the Ethics Office have resulted in legal intervention. Since the majority of the contacts were handled and/or resolved by the HR Department, the Ethics Officer function was placed with the Human Resources Deputy Administrative Officer. However, all reported ethics issues involving the Human Resources Deputy Administrative Officer, Chief Operations Officer - Administrative Services, and/or the CEO will be immediately referred to District Counsel's office for resolution. Additionally, in accordance with current practice, District Counsel's office will continue to provide legal advice on an as-needed basis to Ethics program staff. It should also be noted that none of the respondent comparator agencies have the Ethics function reporting to the legal Counsel's office.

4. *Establishing an Ethics Committee responsible for programmatic direction of the Ethics Office.* **Not Implemented**

Staff Response: There is sufficient expertise in the Ethics & EO functions in Human Resources and thus it does not warrant the formation of an Ethics Committee.

5. *Establish process where Ethics Committee regularly meets with Board and provides updates, and addresses any urgent issues.* **Not Implemented**

Staff Response: Staff has determined that continuing the current practice whereby issues that rise to the level of requiring Board notification (e.g. litigation) are provided to the Board in closed session is sufficient and effective.

6. *Creation and implementation of a Whistle Blower and stand-alone Anti-Retaliation Policy.* **In Process**

Staff Response: An Anti-Retaliation policy is being developed in collaboration with District Counsel's office and will incorporate all areas (Ethics, Equal Opportunity, Health & Safety, and Labor Relations) that by law have retaliation prohibitions. The need for a stand-alone Whistle Blower policy is currently under District Counsel review.

7. *Augmenting the hotline mechanism for anonymous ethics reporting by engaging third party to receive and monitor ethics complaints.* **Not Implemented**

Staff Response: The District had for several years contracted with a third-party provider to manage the hotline for Ethics/EEO complaints/reporting. The service was discontinued in October 2010 for lack of utilization. Since March 2010, the District has utilized an online, anonymous Ethics/EO complaint form. Ethics program staff will periodically post reminders of the form's availability as part of its Ethics program communication efforts going forward.

8. *Effective communication of ethics policies through physical posting in communal areas.* **In Process**

Staff Response: Upon completion of Ethics policy revision, policy will be posted on webpage and all District bulletin boards. Additionally, notice of the revised policy will be announced in News You Can Use. Ethics based posters that are currently hung throughout the campus to be replaced with updated verbiage reflective of the revised policy.

9. *Strengthening of partnerships between HR, Legal, Internal Audit and Ethics Office through quarterly meetings.* **On-going**

Staff Response: Currently Ethics staff, Human Resources and District Counsel meet regularly to collaborate on policy development, investigations, and dispute resolution. Ethics and EO staff will continue to work with Internal Audit staff to monitor progress of action items resulting from District audits.

10. *Establish Annual Compliance confirmation process.* **On-going**

Staff Response: Ethics staff currently monitors compliance for AB-1234 training and Form 700 filing and will provide at minimum, an annual report to the Human Resource Deputy Administrative Officer.

11. *Review Ethics policy of an annual basis and augment policies as needed.* **In Process/ Ongoing**

Staff Response: Ethics will continue to review Ethics policies in collaboration with District Counsel.

Organizational Restructure

After reviewing the consultant's report and meeting with staff, District Administration chose one of the options listed and discussed by the consultant - namely to have the Ethics function report to the Chief

Operating Officer for Administrative Services (COO). As a result, the Deputy Administrative Officer for Human Resources was designated as the District's Ethics Officer and reports directly to the COO for Administrative Services. This organizational change was made effective on Oct. 10, 2016. Below is a brief description of the Ethics and Equal Opportunity programs.

The Ethics Program

The Ethics portion of the program includes administration and oversight of the Annual Statement of Economic Interest (Form 700) and Biennial Conflict of Interest Code review. The annual filing season for the Statement of Economic Interest is between February and April of each year. Statements of Economic Interests are also completed year-round for other reasons such as leaving office or promotions. This process applies to both employees and consultants who are determined to be designated filers as defined by the Fair Political Practices Commission. Additional responsibilities of staff include conducting the Ethics complaint resolution process which is categorized by Ethics-based consultations, interventions, and investigations. Most case work remains at the consultation and intervention level. From January 2015 to December 2016, there have been approximately 60 ethics related issues brought to the Ethics Programs office; less than 2% have been referred to District Counsel's office for investigation. Lastly, the program is responsible for ensuring the District meets its state mandatory Ethics training (AB 1234) requirement every other year. The Form 700 process and Ethics training are both monitored on a continuous basis throughout the year to ensure compliance.

The Equal Opportunity Program

Staff in the Ethics and Corporate Governance is also responsible for addressing Equal Opportunity-based complaints and providing the mandatory Sexual Harassment Prevention training (AB1825).

EEO and Ethics issues are often intertwined with Human Resources issues. Combining these programs under one umbrella will better enable EEO/Ethics and HR staff to work together to resolve these disputes. Having the HR Deputy also serve as the Ethics Officer will also allow Ethics to be viewed through an HR lens. This is helpful since the vast majority of contacts to the EEO office do not result in discipline/legal intervention.

On-call outside investigative services have been contracted to assist with case load and issues requiring expertise beyond that of District staff. Ethics staff will continue to work with Internal Audit staff to monitor progress of action items resulting from District audits.

Attachment 4 provides a summary of the administrative determinations regarding consultant recommendations.

FINANCIAL IMPACT:

Further analysis is necessary to determine the financial impacts associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

- Attachment 1: Org Chart
- Attachment 2: Benchmark Report
- Attachment 3: Ethics Case Flow Chart
- Attachment 4: Recommendations/Determinations

UNCLASSIFIED MANAGER:

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