

Board of Director's Code of Conduct

ADMINISTRATIVE CODE 5-10 & PUBLIC UTILITIES CODE §130051.20 & §130600-130730

5-10-010 Incorporation of Statutory Provisions. The provisions of Chapter 6, entitled *Code of Conduct for the Board of the Los Angeles County Metropolitan Transportation Authority*, of Division 12 of the Public Utilities Code (commencing with Section 130600), and Public Utilities Code Section 130051.20, along with such other provisions as are included in this chapter, shall constitute the code of conduct for members of the Board of Directors. Any other code of conduct for Board Members which is in existence on the effective date of this chapter is repealed.

5-10-020 Enforcement and Sanctions.

A. An alleged violation of this chapter by any member of the Board of Directors or by a member or his or her staff shall be referred to the Inspector General for investigation. Upon completion of the investigation, and if the matter has been determined not to be criminal in nature and can be disclosed, the Inspector General shall report the findings to the Board of Directors. If the matter is determined to be criminal in nature, the Inspector General shall refer the matter to the appropriate enforcement authorities for prosecution.

B. For any matter reported to the Board of Directors under paragraph A., the Board shall determine the appropriate sanction, if any, to be imposed. The sanction imposed should depend upon the severity of the violation and may be progressive unless the violation is determined to be so egregious as to warrant more severe action as an initial sanction.

C. The Board of Directors may consult with the Inspector General, the Ethics Officer and/or the General Counsel for an opinion regarding the sanctions appropriate for any violation. The sanctions imposed may include any of the following:

1. Public or private censure by the Board of Directors;
2. Disqualification from participation in any discussion or vote on the matter related to the violation;
3. Removal of the Board member from one or more Board committees for a specified period of time;
4. Permanent removal of the Board member from one or more Board committees;
5. Suspension from all Board of Director actions for a period of time;
6. A monetary fine in an amount determined by the Board of Directors, including but not limited to, forfeiture of the stipend for participation as a member of the Board of Directors; and
7. Any other sanction determined by the Board of Directors to be appropriate and reasonable based upon the nature of the violation.

D. In an instance where a violation of this chapter has been committed by a person who is staff to a member of the Board of Directors, in addition to any sanction imposed on the staff member, a sanction may be imposed on the member of the Board of Directors to whom that staff member reported if the Board of Directors determines that the member of the Board of Directors knew or reasonably should have known of the conduct of the staff member which violated this chapter.

E. If a violation of this chapter results in a criminal prosecution or the imposition of civil liability, the Board of Directors may recommend additional sanctions after the criminal or civil proceedings are completed.

5-10-030 Communications With Staff and Contractors Concerning Procurements.

Metro Board Members and their staff shall observe and maintain a communication blackout period in connection with the Metro procurements. The communication blackout period shall commence when 1) the procurements solicitation documentation is issued and continue until staff makes public the recommendation for award; and 2) when a protest on the recommendation or procurement is filed with Metro and continue until the notice of determination is issued by Metro.

The blackout period is required as a part of the statutory Code of Conduct¹ adopted by the state legislation and effective January 1, 1997. The statutory Code of Conduct has been incorporated in its entirety into this Administrative Code at section 5-10-10. The purpose of the communication blackout period and the restrictions on the release of information is to maintain the independence of Metro's professional Procurement Department and other staff and to assure the integrity, Metro Board Members and their staff shall not attempt to: a) influence the Metro staff concerning pending procurements including its decision making, processes, and deliberations, or recommendation for award during the procurement blackout period; nor b) obtain confidential information about such pending procurement during the blackout period.

As part of the legislation creating the statutory Code of Conduct, the legislature found and declared that, among other things, "Board members and their staff must exercise discretion and judgment to adhere to the spirit of the Code of Conduct. It is essential to recognize that an act is not ethical simply because it is legal and conduct is not proper simply because it is permissible. Board members should be willing to do more than the law requires and less than it allows. Strict compliance is not necessarily enough, and attempts to evade or circumvent ethics laws and rules are improper." (A.B. 584 Villariagosa). This section 5-10-30 of the Administrative Code is intended to implement the spirit of that legislative finding and declaration and codify Metro's procurement practices and policies that have been observed since the 1997 imposition of the statutory black out period.

- A. During the blackout period, Metro Board Members and their staff shall not seek, and Metro staff, including the CEO, shall not disclose to Board Members or their staff, any confidential information relative to a pending procurement or protest.

Information deemed confidential during a blackout period, includes, but is not limited to:

- 1) the names of the source selection team members;
- 2) the documents received by Metro in response to any procurement (“Proposal Documents”);
- 3) the contents of the Proposal Documents, including the number and identity of the proposers;
- 4) any analysis, evaluation, ranking scores, opinion, or other review of the Proposal Documents, the respective bidders/proposers, for a pending procurement; or
- 5) any document or information related to a procurement that is exempt from disclosure under law including the California Public Records Act,

Notwithstanding any expiration of a black out period, if a Board Member or their staff comes into possession of confidential information as described herein, neither the Board Member nor their staff shall release such information to the public until after the information is publicly available under Metro policy.

- B. During the blackout period, Metro Board Members and their staff shall not communicate with Metro staff, other than the CEO or as provided herein, regarding the procurement or protest. Metro Board Members or their staff may request only from the CEO or his/her designee, and the CEO may disclose to Board members or their staff only information that is: publicly available; has no reasonable likelihood of jeopardizing the integrity of the procurement process or the public’s confidence in decision making processes at Metro; and is otherwise not confidential as described herein. During the blackout period the CEO may disclose to Board Members and their staff information that is not precluded by the foregoing and which is:
 - 1) documents that would be available for disclosure pursuant to a California Public Records Act request, such as Metro published procurement documents;
 - 2) Metro standard policies or procedures;
 - 3) Information concerning the procurement process, schedule, or status including the blackout period or protest period
- C. When in doubt as to whether particular information is the type which is considered confidential during the blackout period, the CEO shall consult with appropriate personnel including the Procurement, Legal, and Ethics Departments. Any uncertainty concerning the disclosure shall be resolved in favor of maintaining and preserving the integrity of Metro’s procurement process by not disclosing the information.
- D. The CEO shall keep a log of all requests for information regarding pending procurements with Board Members and their staff, including requests made and responses given. This log shall be reported at the Board Meeting where action on subject procurement is scheduled.
- E. Notwithstanding the existence of any blackout period Board Members and their staff may communicate concerning any procurement at any time with the Legal Department to ask for legal opinions relative to a procurement, and with the Ethics Department for ethics advice or information such as a lobbyist filing or the interpretation of the Board Code of Conduct.
- F. The communication blackout also applies to communications between Metro Board members and contractors who submitted proposals in response to a procurement.

During the blackout period concerning the recommended contract award or protest, Board Members and their staff shall not communicate or participate in discussions with bidders, proposers or their agents as described in Chapter 5-20 herein, concerning the procurement or any confidential information, the award of a contract, or any protest regarding the procurement. A Board member who receives such communication shall report it to Metro's Inspector General.

5-10-040 Definition of Procurement. In the spirit of the legislature's finding and declaration quoted in section 5-10-30 of this Administrative Code, the term, "procurement," and the restrictions associated there with, shall include any process involving solicitation or award of contract, including real estate and joint developments or other transactions for money or benefits party with a person or entity other than a governmental entity, to which Metro is a party.

130051.20. (a) (1) No construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the Los Angeles County Metropolitan Transportation Authority shall give to a member, alternate member, or employee of the authority, or to any member of their immediate families, a contribution of over ten dollars (\$10) in value or amount. A "contribution" includes contributions to candidates or their committees in any federal, state, or local election.

(2) Neither the owner, an employee, or any member of their immediate families, of any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority shall make a contribution of over ten dollars (\$10) in value or amount to a member, alternate member, or employee of the authority, or to any member of their immediate families.

(3) No member, alternate member, or employee of the authority, or member of their immediate families, shall accept, solicit, or direct a contribution of over ten dollars (\$10) in value or amount from any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority.

(4) No member, alternate member, or employee of the authority shall make or participate in, or use his or her official position to influence, a contract decision if the member, alternate member, or employee has knowingly accepted a contribution of over ten dollars (\$10) in value in the past four years from a participant, or its agent, involved in the contract decision.

(5) No member, alternate member, or employee of the authority, or member of their immediate families shall accept, solicit, or direct a contribution of over ten dollars (\$10) in value or amount from a construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity that has contracted with the authority in the preceding four years.

(b) A member, alternate member, or employee of the authority who has participated as a decisionmaker in the preparation, evaluation, award, or implementation of a contract and who

leaves the authority shall not, within three years of leaving the authority, accept employment with any company, vendor, or business entity that was awarded a contract as a result of his or her participation, evaluation, award, or implementation of that contract.

130600. For purposes of this chapter, the following terms have the following meanings:

(a) “Board” means the board of directors of the Los Angeles County Metropolitan Transportation Authority.

(c) “Entitlement for use” includes all contracts except competitively bid, labor, or personal employment contracts, regardless of whether an individual accepts, solicits, or directs the contribution for himself or herself or on behalf of any other candidate or committee.

(d) “Gift” has the same meaning as defined in Section 82028 of the Government Code.

(e) “Indirect investment or interest” means any investment or interest owned by the spouse or dependent children of an individual, by an agent on behalf of the individual, or by a business entity or trust in which the individual, the individual’s agents, spouse, or dependent children own directly, indirectly or beneficially a 10 percent interest or greater.

(f) “Participant” means any person, other than a party, as defined in subdivision (g), who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license permit or other entitlement for use, including contract actions, and who has a financial interest in the decision. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the board members or MTA employees, testifies in person before the MTA, or otherwise acts to influence officers of the agency.

(g) “Party” means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use to competitively bid on contracts, including contract amendments and change orders.

(h) “MTA” means the Los Angeles County Metropolitan Transportation Authority.

130605. Any reference in this chapter to “chief executive officer,” “general counsel,” “counsel,” “inspector general,” “board secretary,” or “secretary” is to the officers of the Los Angeles County Metropolitan Transportation Authority appointed under Sections 130051.9 and 130051.25.

130610. (a) The board shall appoint an ethics officer, who shall report to the board.

(b) When in doubt as to the applicability of any provision of this chapter to any particular situation, a board member shall contact the general counsel or the ethics officer for advice.

130615. (a) The provisions of this chapter shall be enforced by the inspector general.

(b) Any violation of this chapter that is also a violation of other state law or of local or federal law may also be prosecuted by the appropriate authority.

(c) Upon notice of a possible violation of this chapter, the board shall refer the matter to the inspector general for investigation. Upon completion of the investigation, if the matter has been determined not to be criminal in nature and to be of such a nature that it may be disclosed, the inspector general shall report the findings to the board. If the matter is determined to be criminal in nature, the inspector general shall refer the matter to the appropriate enforcement authorities for prosecution.

130620. (a) Sanctions for violations of this chapter shall be determined by the board. The sanctions imposed shall depend upon the severity of the infraction and may be progressive unless the violation is determined to be so egregious as to warrant more severe action initially.

(b) The board may consult with the inspector general for an opinion regarding the sanctions appropriate to any particular violation.

(c) Sanctions imposed under this section may include, but are not limited to, any of the following:

(1) Private reprimand by the board.

(2) Public censure by the board at a regularly scheduled meeting.

(3) Disqualification from participating in any discussion or vote on any matter related to the violation.

(4) Removal of the board member from one or more committees for a period of time.

(5) Permanent removal of the board member from one or more committees.

(6) Suspension from all board actions for a period of time.

(7) A monetary fine in an amount determined by the board.

(d) If a board member is criminally indicted, he or she shall be suspended from all board actions for the duration of the criminal proceeding. If the board member is acquitted of the charges, he or she shall return to the board as a full, participating member.

(e) For violations of this chapter that result in findings of criminal or civil liability, the board may recommend additional sanctions to the inspector general after the civil or criminal proceedings are completed.

130625. Confidential information, particularly investigative reports for the inspector general, shall not be disseminated beyond the authorized recipient of the report.

130630. The role of the board as it relates to the MTA is as follows:

(a) The board provides counsel and direction to management and shall not be involved in the day-to-day affairs of the MTA.

(b) Board members do not have individual power or authority over the MTA. That power and decisionmaking authority lie with the full board.

130635. The rules of conduct at board meetings shall apply to all matters under consideration by the board except for ceremonial matters and are as follows:

(a) Board members shall treat MTA staff members and each other with respect and courtesy.

(b) Disagreements shall not result in personal comments or attacks against an MTA staff member or another board member.

(c) When any member is recognized to speak at a board meeting, the board member shall address the chair.

(d) When two or more members address the chair at the same time, the chair shall name the member who is to be the first to speak.

(e) When speaking, a member shall confine his or her remarks to the topic under debate or discussion.

(f) Each member, in the order recognized by the chair, shall have not more than five minutes to speak.

(g) Answers to questions asked by a member shall be counted against the member's five minutes.

(h) Once having recognized a member to speak, the chair shall not recognize that member to be heard again, except to answer questions, until all other board members have had an opportunity to speak.

(i) All members shall have an opportunity to speak before the chair may enter the discussion.

(j) After all members desiring to speak have had an opportunity to be heard once, the time for each member desiring to speak again, or for the first time, shall be limited to a maximum of three minutes.

(k) There shall be no limit to the number of times a member is allowed to speak.

(l) The secretary shall time the members when discussion of an issue begins and notify the chair when a member's time has expired.

130640. (a) Members shall not publicly engage in personal attacks on MTA employees or attempt to discipline any employee.

(b) Any concerns regarding an employee's performance shall be communicated to the chief executive officer.

(c) Any concerns regarding the performance of an officer of the board shall be communicated to that officer.

(d) Nothing in this section limits the right of the board to evaluate board officers.

130650. Committee chairs shall present items from their committee meetings and the recommendation of their committee.

130655. (a) All members shall be afforded an adequate opportunity to review written motions having financial or policy implications prior to the board meeting.

(b) A written motion having financial or policy implications shall be referred to the appropriate committee for recommendation to the full board, unless the motion is distributed to all board members not later than 48 hours prior to the board meeting or this requirement is waived by the vote of nine board members.

130660. (a) Board members or their staff are prohibited from soliciting or accepting any gift from MTA contractors or from persons or entities that have submitted a proposal or bid for an MTA contract.

(b) Board members or their staff shall not accept gifts aggregating two hundred eighty-nine dollars (\$289) or more, as specified in Section 89502 or 89503 of the Government Code, from a single source in any calendar year.

(c) Board members shall disqualify themselves from participating in a decision that may have a financial effect upon a source of income aggregating two hundred fifty dollars (\$250) or more or a donor of gifts aggregating two hundred eighty-nine dollars (\$289) or more, if those gifts were received within 12 months preceding the time of the decision.

(d) Board members shall not accept gifts aggregating more than ten dollars (\$10) in a calendar month from an MTA registered lobbyist, lobbying firm, or lobbyist employer.

(e) Board members shall report on their annual Statement of Economic Interest gifts aggregating fifty dollars (\$50) or more and income of two hundred fifty dollars (\$250) or more received from a single source in a calendar year.

130665. (a) Board members or their staff shall not accept any payment made for a speech given, an article published, participation in a program, or any other appearance at a public or private conference, convention, meeting, social event, meal, or similar gathering.

(b) This section does not prohibit payments for actual personal services rendered in connection with a member's practice of a bona fide business, trade, or profession.

130670. Reimbursement for travel or lodging may be exempt from the provisions prohibiting gifts if the travel is related to MTA business. That reimbursement, however, shall be reported in the annual Statement of Economic Interest. The general counsel may be consulted prior to accepting payment or reimbursement to determine whether that reimbursement should be disqualified as a gift.

130675. Board members shall not direct any MTA employee, contractor or potential contractor to make a charitable contribution to a specified agency.

130680. (a) The chief executive officer shall be responsible for ensuring the MTA has an independent professional procurement staff. The chief executive officer and designated procurement staff shall be responsible for conducting an independent, autonomous procurement process in accordance with state and federal law.

(b) Board members shall use objective judgment in voting on a procurement award and base their decision on the criteria established in the procurement documents.

(c) Board members or their staff shall not attempt to influence contract awards.

(d) During any procurement process, board members or their staff shall not communicate with MTA staff regarding the procurement.

(e) Before the staff recommendation for an award is made public, board members or their staff shall communicate only with the chief executive officer or his or her designee regarding the procurement. The chief executive officer shall keep a log of those communications and shall report those communications and responses in writing at the board meeting where action on the procurement is scheduled.

(f) Board members or their staff shall not attempt to obtain information about the recommendation of the award of a contract until the recommendation is made public.

(g) Board members shall not release information about the procurement to the public until the award recommendation is made public.

(h) If a board member attempts to communicate with MTA staff to influence the recommended award, this communication shall be reported by staff to the inspector general.

130685. (a) Prior to the issuance of a request for proposal (RFP), request for interest in qualification (RFIQ), or invitation for bid (IFB), and ending on the date of the selection of the contractor, no person or entity submitting a proposal in response to the RFP, RFIQ, or IFB, nor any officer, employee, representative, agent, or consultant representing the proposer shall contact by any means or engage in any discussion concerning the award of the contract with

any board member or his or her staff. Any contact shall be grounds for the disqualification of the proposer.

(b) A board member who receives any communication from a proposer in violation of this chapter shall report that communication to the inspector general. The inspector general shall forward this information to the director of contracts and responsible procurement staff.

(c) Board members shall not meet with a person or entity who submitted a proposal in response to the RFP, RFIQ, or IFB, nor any officer, employee, representative, agent, or consultant representing the proposer regarding a protest submitted regarding the recommended contract award or any lawsuit or potential lawsuit regarding the recommended contract award.

130690. Board members and their staff shall refrain from conduct that they know or reasonably should know is likely to create in the minds of reasonable observers the perception that the board member or staff member used his or her public position improperly.

130700. (a) Board members or their staff shall not participate in an MTA decision in which they know or have reason to know that they have a financial interest.

(b) Board members shall not be purchasers at any sale, or vendors at any purchase, that is made personally by that member.

(c) An individual is deemed to have a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on that individual or the individual's immediate family, distinguishable from its effect on the public generally, or on any of the following:

(1) Any business entity in which the board member or staff member has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(2) Any real property in which the board member or staff member has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(3) Any source of income, other than gifts and other than loans by a commercial lending institution made in the regular course of business in terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the board member or staff member within 12 months prior to the time when the decision is made.

(4) Any business entity in which the board member or a member of his or her staff is a director, officer, partner, trustee, or employee, or holds any position of management.

(5) Any donor or, or any intermediary of, agent for a donor of a gift or gifts aggregating two hundred eighty-nine dollars (\$289) or more in value provided to, received by, or promised to, the board member or staff member within 12 months prior to the time the decision is made.

(d) This section does not prohibit a board member from participating in a decision if that participation is legally required in order for the decision to be made. In that case the individual shall disclose the nature of his or her interest before he or she participates in the decision. For the purposes of this subdivision, the fact that a board member's vote is necessary to break a tie does not make his or her participation legally required.

130705. (a) Board members or their staff shall not engage in any employment, activity, or enterprise that is inconsistent, incompatible, or in conflict with the duties of an MTA officer.

(b) Board members or their staff shall not use the MTA's facilities, equipment, supplies, badge, prestige, or influence for private gain.

130710. The MTA shall not contract with any of the following:

(a) MTA board members or their staff.

(b) Any profit-making firm or business in which a former board member or member of his or her staff is an officer, principal, partner, or major shareholder.

130715. (a) Former board members or their staff shall not participate in any contract with the agency for a period of 12 months after leaving the board.

(b) MTA shall not contract with any profit-making firm or business in which a former board member or member of his or her staff is an officer, principal, or partner, or is a shareholder who holds more than 10 percent of the stock in the company, for a period of 12 months after the board member has left the board.

130720. (a) Board members shall file Statements of Economic Interest with the ethics officer pursuant to state law, within 30 days of assuming office, annually, and within 30 days of leaving office.

(b) Board members shall file an addendum to the statement required under subdivision (a), disclosing all financial interests both within and outside Los Angeles County, including those financial interests received during the reporting period by all entities in which the member is an officer, principal, partner, or major shareholder.

(c) Any amendments to the Statement of Economic Interest or addendum shall be filed within 30 days of the occurrence of the change.

130725. Any person who receives compensation to regularly provide advice, recommendations, or counsel to board members regarding MTA activities shall file a Statement of Economic Interest with the MTA within 10 days of the commencement of the consultant relationship and shall update that statement within 30 days of the end of each calendar quarter. This requirement does not apply to a full time employee of a governmental entity who is already required to file a statement.

130730. Any person who regularly provides advice, recommendations, or counsel to board members regarding MTA activities and also advises another agency or entity that has a financial interest in an item before the board shall be prohibited from giving advice to board members and MTA staff regarding that item.