

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 Any other code of conduct for Board Members which is in existence on the effective date of this chapter is repealed.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, provided that a release of confidential information is not required. 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.

5-10-30 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 Conduct adopted by the state legislature. 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 the designee of the CEO, 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. Board members and their staff may also communicate with the Ethics Officer for advice on compliance with this section. 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. 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.
- E. 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.

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) A former board member or employee of MTA shall not accept compensation from an MTA contractor as an employee, officer, director, or consultant of the contractor within 12 months after the former board member or employee served in any of the following capacities:

- (1) As a member of the procurement evaluation team for a contract that was awarded to that contractor.
- (2) As the procuring contract officer for a contract that was awarded to that contractor.
- (3) As the project manager or deputy project manager for a contract that was awarded to that contractor.
- (4) As an agency executive with oversight responsibilities for a contract awarded to that contractor if the executive participated in the contract development, proposal review, or approval, or provided agency signatory authority related to the contract or project.
- (5) As a substantial participant in an MTA decision to do any of the following:

- (A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order to that contractor.
- (B) Develop a contract awarded to that contractor, including developing the scope of work.
- (C) Approve issuance of one or more contract payments to that contractor.
- (D) Pay or settle a claim with that contractor.

(b) For purposes of paragraph (1) of subdivision (a), a former board member's or former employee's service ends at the completion of the evaluation period, or the former board member's or former employee's last day of service with MTA, whichever occurs first.

(c) For purposes of paragraphs (2) to (5), inclusive, of subdivision (a), a former board member's or former employee's service ends at the completion of the contract term, or the former board member's or former employee's last day of service with MTA, whichever occurs first.

(d) The inspector general appointed pursuant to Section 130051.28 may enforce this section.

130600. For purposes of this chapter, the following definitions apply:

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

(b) "Board staff" or "staff" has the same meaning as the term "board staff," as defined in MTA's administrative code.

(c) "Gift" has the same meaning as defined in Section 82028 of the Government Code.

(d) "Lobbyist," "lobbyist employer," and "lobbying firm," have the same meanings as defined in Section 130051.18.

(e) "MTA" means the Los Angeles County Metropolitan Transportation Authority.

(f) "MTA contractor" has the same meaning as defined in MTA's administrative code.

(g) "MTA employee" has the same meaning as defined in MTA's administrative code.

(h) "MTA proposer" has the same meaning as defined in MTA's administrative code.

130605. Any reference in this chapter to "chief executive officer," "general counsel," "counsel," "inspector general," "ethics officer," "board secretary," or "secretary" is to the officers of the Los

Angeles County Metropolitan Transportation Authority appointed under Sections 130051.9, 130051.28, and 130610.

130607. (a) This chapter, in addition to rules or codes adopted by the board, shall be the code of conduct for the board of the Los Angeles County Metropolitan Transportation Authority.

(b) In addition to any other ethics laws applicable to other public officials, members of the board are also subject to the rules and codes described in subdivision (a).

130610. (a) The board shall appoint an ethics officer, who shall report to the board and operate in an independent manner.

(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.

(c)(1) The ethics officer shall interpret relevant authorities and provide advice to the board and MTA relating to codes of conduct, lobbying, governmental ethics, campaign finance, fair procurement practices, and conflicts of interest.

(2) Any advice provided by the ethics officer shall be confidential and entitled to all applicable privileges.

(d) The ethics officer shall propose amendments to codes of conduct that apply to the board, MTA employees, and MTA contractors, when appropriate. The proposed amendments are subject to approval by the board.

(e)(1) The inspector general shall receive any allegation of a violation of this chapter, or other ethics-related rules or laws that apply to the board and MTA.

(2) The inspector general may confer with the ethics officer on any potential violations described in paragraph (1) that may be a violation of this chapter, or other ethics-related rules or laws that apply to the board and MTA.

(3) The ethics officer may make recommendations regarding a potential violation described in paragraph (1) for consideration by the inspector general.

(f) The ethics officer shall be removed from office only if either or both of the following occur:

(1) A two-thirds majority of the members of the board votes for removal.

(2) The ethics officer violates a federal or state law or regulation, a local ordinance, or a policy or practice of the authority, relative to ethical practices, including, but not limited to, the acceptance of gifts or contributions.

130615. (a) 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.

(d) A board member or their staff shall not use or threaten to use any official action or authority against, or attempt to interfere with, any person acting in good faith to report or otherwise provide information to MTA regarding any activity that may be a violation of this chapter.

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 or the ethics officer for an opinion regarding the sanctions appropriate to any particular violation, provided that a release of confidential information is not required.

(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, the board member shall be suspended from all board actions for the duration of the criminal proceeding. If the board member is acquitted of the charges, the board member 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. (a) Confidential information, particularly investigative reports for the inspector general and procurement information, shall not be disclosed beyond the authorized recipient of the report or information.

(b) For purposes of this section, “confidential information” means information that is not subject to disclosure under applicable state law or MTA’s administrative code, or that is otherwise identified as confidential by MTA.

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 be governed by the board’s adopted rules and procedures. Board members shall treat MTA employees and colleagues on the board with respect and courtesy.

130640. (a) Board members shall not 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) This section does not limit 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 board members shall be afforded an adequate opportunity to review written motions having financial or policy implications before 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 before 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 a person or entity, including the person's or entity's lobbyists, that has submitted a proposal or bid for an MTA contract award during the period beginning on the date that the proposal or bid is submitted and ending 12 months after the final decision on the contract award.

(b) Board members and their staff shall exercise caution in accepting any gift from a person or entity that is considering submitting a proposal or bid for an MTA contract award.

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

130670. The payment for, and reimbursement of, board travel shall be governed by applicable state law and MTA's administrative code.

130675. (a) Board members shall not direct or request that any MTA employee, contractor, or proposer make a charitable contribution.

(b)(1) This section does not prohibit a board member from making a solicitation or request for a charitable contribution if a payment that is made in response to the solicitation or request by the board member would not be considered a behested payment, pursuant to subdivision (c) of Section 82004.5 of the Government Code and related regulations adopted by the Fair Political Practices Commission, if the payment was made at the behest of an elected officer.

(2) This section does not prohibit a board member from making a solicitation or request for a charitable contribution, including a solicitation or request by the board member that results in a

reportable behested payment, if the solicitation or request is made to a person other than one identified in subdivision (a).

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 unless authorized by this chapter, MTA's administrative code, or MTA procurement policies.

(e) Before the staff recommendation for an award is made public, board members or their staff may communicate with the chief executive officer or the designee of the chief executive officer regarding the procurement, subject to limitations in this chapter, MTA's administrative code, and MTA procurement policies. Board members and their staff may also communicate with the ethics officer for advice on compliance with this section.

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

130685. (a) Commencing with 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 publicly released, recommended selection of the contractor, a person or entity submitting a proposal in response to the RFP, RFIQ, or IFB, or any officer, employee, representative, agent, or consultant representing the proposer or bidder, shall not contact by any means or engage in any discussion concerning the award of the contract with any board member or their staff. Any contact shall be grounds for the disqualification of the proposer or bidder.

(b) A board member who receives any communication from a proposer or bidder in violation of this chapter shall report that communication to the inspector general.

(c) During the period identified in this section, board members shall not communicate with a proposer or bidder or with any officer, employee, representative, or agent of the proposer or bidder regarding a contract award, protest, or any lawsuit or potential lawsuit regarding the contract award.

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 personal gain.

(c) Board members and their staff shall refrain from conduct that is likely to create in the minds of reasonable observers the perception that the board member or staff member used their public position improperly.

(d) Board members or their staff shall not make, participate in, or attempt to influence any decision if they are incapable of providing fair treatment to a matter before the board due to bias, prejudice, or because they have prejudged a matter.

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

(a) Board members or their staff.

(b) Any profit-making firm or business in which a board member or member of their staff is an officer, principal, partner, or shareholder who owns more than 10 percent of the firm or business.

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

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

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) Any amendments to the Statement of Economic Interest 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 30 days of the commencement of the consultant relationship. This

requirement does not apply to a full-time employee of a governmental entity who is already required to file Statements of Economic Interests with their employing agency.

130730. (a) Any person who provides advice, recommendations, or counsel to board members regarding MTA activities and also advises another public or private 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.

(b) This section shall not prohibit an employee of a public agency from providing advice or recommendations to a board member if the item affects their agency generally and does not involve any direct benefit to the public employee.