



BOARD OF DIRECTORS
FINANCE AND ADMINISTRATION COMMITTEE

COMMITTEE MEMBERS

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

JOHN J. BAUTERS – CHAIR
MARGARET ABE-KOGA
DAVID HAUBERT
DAVID HUDSON
SERGIO LOPEZ
MARK ROSS

DAVINA HURT - VICE CHAIR
BRIAN BARNACLE
LYNDA HOPKINS
TYRONE JUE
KATIE RICE

**MEETING LOCATION(S) FOR IN-PERSON ATTENDANCE BY
COMMITTEE MEMBERS AND MEMBERS OF THE PUBLIC**

**Bay Area Metro Center
1st Floor Board Room
375 Beale Street
San Francisco, CA 94105**

**Bay Area Air Quality Management District
Headquarters East
103 Granada Conference Room
4114 Lakeside Drive
Richmond, CA 94806**

**Santa Rosa Junior College Campus
Doyle Library, Room 148
1501 Mendocino Ave.
Santa Rosa, CA, 95401**

**Office of Contra Costa County
Supervisor John Gioia
Conference Room
11780 San Pablo Ave., Suite D
El Cerrito, CA 94530**

**Office of Alameda County
Supervisor David Haubert
4501 Pleasanton Avenue
Pleasanton, CA 94566**

THE FOLLOWING STREAMING OPTIONS WILL ALSO BE PROVIDED

These streaming options are provided for convenience only. In the event that streaming connections malfunction for any reason, the Finance and Administration Committee reserves the right to conduct the meeting without remote webcast and/or Zoom access.

The public may observe this meeting through the webcast by clicking the link available on the air district's agenda webpage at www.baaqmd.gov/bodagendas.

Members of the public may participate remotely via Zoom at <https://bayareametro.zoom.us/j/87494443211>, or may join Zoom by phone by dialing (669) 900-6833 or (408) 638-0968. The Webinar ID for this meeting is: 874 9444 3211

Public Comment on Agenda Items: The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on a matter on the agenda will have two minutes each to address the Committee on that agenda item, unless a different time limit is established by the Chair. No speaker who has already spoken on an item will be entitled to speak to that item again.

FINANCE AND ADMINISTRATION COMMITTEE MEETING AGENDA

WEDNESDAY, JULY 5, 2023

1:00 PM

1. **Call to Order - Roll Call**

The Committee Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Committee members.

2. **Pledge of Allegiance**

CONSENT CALENDAR (Items 3 - 4)

3. Approval of the Draft Minutes of the Finance and Administration Committee Meeting of June 7, 2023

The Committee will consider approving the draft minutes of the Finance and Administration Committee meeting of June 7, 2023.

4. Proposed Amendments to Administrative Code Regarding Probationary Periods and Return Rights for Current Employees Promoted to Deputy Executive Officer or Senior Assistant Counsel

The Committee will consider recommending the Board of Directors approve amendments to Section 3.3(d) of Division III of the Air District's Administrative Code regarding probationary periods and return rights for current employees who are promoted to Deputy Executive Officer or Senior Assistant Counsel during 2023.

ACTION ITEM(S)

5. Bay Area Air District Remote Meeting Locations

This is an action item for the Committee to provide guidance to staff regarding developing a clear policy for remote meetings.

INFORMATIONAL ITEM(S)

6. Status Update Regarding the Human Resources Corrective Action Plan

The Committee will receive a status update regarding the implementation of the Human Resources Corrective Action Plan that was authorized by the Board of Directors on January 25, 2023. This is an informational item only and will be presented by John Chiladakis, Acting Deputy Executive Officer of Finance and Administration.

OTHER BUSINESS

7. Public Comment on Non-Agenda Matters

Pursuant to Government Code Section 54954.3, members of the public who wish to speak on matters not on the agenda will be given an opportunity to address the Committee. Members of the public will have two minutes each to address the Committee, unless a different time limit is established by the Chair.

8. Committee Member Comments

Any member of the Committee, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

9. Time and Place of Next Meeting

Wednesday, September 6, 2023, at 1:00 p.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Committee members and members of the public will be able to either join in-person or via webcast.

10. Adjournment

The Committee meeting shall be adjourned by the Chair.

CONTACT:

MANAGER, EXECUTIVE OPERATIONS
375 BEALE STREET, SAN FRANCISCO, CA 94105
vjohnson@baaqmd.gov

(415) 749-4941
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

Accessibility and Non-Discrimination Policy

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at www.baaqmd.gov/accessibility to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at speesapati@baaqmd.gov.

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT
375 BEALE STREET, SAN FRANCISCO, CA 94105
FOR QUESTIONS PLEASE CALL (415) 749-4941**

**EXECUTIVE OFFICE:
MONTHLY CALENDAR OF AIR DISTRICT MEETINGS**

JULY 2023

| <u>TYPE OF MEETING</u> | <u>DAY</u> | <u>DATE</u> | <u>TIME</u> | <u>ROOM</u> |
|--|------------|-------------|-------------|---|
| Board of Directors Meeting | Wednesday | 5 | 9:00 a.m. | 1 st Floor Board Room |
| Board of Directors Finance & Administration Committee | Wednesday | 5 | 1:00 p.m. | 1 st Floor Board Room |
| Board of Directors Stationary Source and Climate Impacts Committee | Wednesday | 12 | 10:00 a.m. | 1 st Floor, Yerba Buena Room |
| Board of Directors Mobile Source and Climate Impacts Committee - Cancelled | Wednesday | 12 | 1:00 p.m. | 1 st Floor, Yerba Buena Room |
| Board of Directors Meeting | Wednesday | 19 | 9:00 a.m. | 1 st Floor Board Room |
| Board of Directors Community Equity, Health and Justice Committee - Cancelled | Wednesday | 19 | 1:00 p.m. | 1 st Floor Board Room |
| Board of Directors Community Advisory Council | Thursday | 20 | 6:00 p.m. | 1 st Floor, Yerba Buena Room |

AUGUST 2023

NO MEETINGS SCHEDULED

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Finance and Administration Committee

From: Philip M. Fine
Executive Officer/APCO

Date: July 5, 2023

Re: Approval of the Draft Minutes of the Finance and Administration Committee
Meeting of June 7, 2023

RECOMMENDED ACTION

Approve the draft minutes of the Finance and Administration Committee meeting of June 7, 2023.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the draft minutes of the Finance and Administration Committee meeting of June 7, 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Finance and Administration Committee Meeting of June 7, 2023

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
(415) 749-5073

Finance and Administration Committee
Wednesday, June 7, 2023

DRAFT MINUTES

This meeting was webcast, and a video recording is available on the website of the Bay Area Air Quality Management District at www.baaqmd.gov/bodagendas

CALL TO ORDER

1. **Opening Comments:** Finance and Administration Committee (Committee) Chairperson, John J. Bauters, called the meeting to order at 1:02 p.m.

Roll Call:

Present, In-Person (375 Beale Street, Board Room, San Francisco, California, 94105): Chairperson John J. Bauters; Vice Chairperson Davina Hurt; and Directors Margaret Abe-Koga, Tyrone Jue, Sergio Lopez.

Present, In-Person Satellite Location (Office of Alameda County Supervisor David Haubert, 4501 Pleasanton Ave., Pleasanton, CA 94566): Director David Haubert.

Present, In-Person Satellite Location (Sonoma County Administrator's Office, 575 Administration Drive, Sunroom, Suite# 110A, Santa Rosa, CA 95403): Director Lynda Hopkins.

Absent: Directors Brian Barnacle, David Hudson, Katie Rice, and Mark Ross.

2. **PLEDGE OF ALLEGIANCE**

CONSENT CALENDAR

3. **APPROVAL OF THE DRAFT MINUTES OF THE FINANCE AND ADMINISTRATION COMMITTEE MEETING OF MAY 3, 2023**
4. **HEARING BOARD QUARTERLY REPORT: JANUARY – MARCH 2023**

Public Comments

No requests received.

Committee Comments

None.

Committee Action

Director Lopez made a motion, seconded by Vice Chair Hurt, to **approve** the Consent Calendar, Items 3 and 4; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, Bauters, Haubert, Hopkins, Hurt, Jue, Lopez.
NOES: None.
ABSTAIN: None.
ABSENT: Barnacle, Hudson, Rice, Ross.

ACTION ITEM

5. CONDUCT INTERVIEWS AND CONSIDER RECOMMENDING BOARD OF DIRECTORS APPROVAL OF CANDIDATES FOR APPOINTMENT TO THE AIR DISTRICT’S HEARING BOARD

The Committee conducted interviews of three candidates who were applying for various vacant seats on the Air District’s Hearing Board. During the meeting, it was discovered that one of the three candidates was not eligible for the vacant positions Professional Engineer Category that he applied for, lacking a California Professional Engineer License. He was instead considered with the other two candidates for the position of Alternate member in the Public Category. The candidates were asked the following questions by the Committee: how their experience and perspectives might assist the Hearing Board in reviewing and deciding cases; their knowledge and experience regarding air quality matters; their experience serving on other boards or commissions; why they became interested in this opportunity; whether things from their personal or professional backgrounds may conflict with serving on the Hearing Board; and their availability to serve on the Hearing Board.

Public Comments

No requests received.

Committee Comments

The Committee and staff discussed the fact that the two vacancies within the Professional Engineer Category will continue to be vacant until the next recruitment; why the fourth candidate that was supposed to be interviewed withdrew at the last minute; and what constitutes a “conflict” and whether Hearing Board members recuse themselves from certain matters brought before the Hearing Board.

Committee Action

Chair Bauters made a motion, seconded by Director Lopez, to recommend the Board **approve** the appointment of Dr. Fung Lam, as Alternate Member in the Public category of the Hearing Board; and the motion **carried** by the following vote of the Committee:

AYES: Abe-Koga, Bauters, Haubert, Hopkins, Hurt, Jue, Lopez.
NOES: None.
ABSTAIN: None.
ABSENT: Barnacle, Hudson, Rice, Ross.

OTHER BUSINESS

6. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

7. COMMITTEE MEMBER COMMENTS

None.

8. TIME AND PLACE OF NEXT MEETING

Wednesday, July 5, 2023, at 1:00 p.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Committee members and members of the public will be able to either join in-person or via webcast.

9. ADJOURNMENT

The meeting was adjourned at 2:14 p.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Finance and Administration Committee

From: Philip M. Fine
Executive Officer/APCO

Date: July 5, 2023

Re: Proposed Amendments to Administrative Code Regarding Probationary Periods and
Return Rights for Current Employees Promoted to Deputy Executive Officer or
Senior Assistant Counsel

RECOMMENDED ACTION

Recommend to the Board of Directors that the Board adopt revisions to Section 3.3(d) of Division III of the Administrative Code to specify that if a current employee who has not completed their probationary period is promoted to Deputy Executive Officer or Senior Assistant Counsel during 2023, their remaining probationary period for their old position will continue to run during their tenure in their new position.

BACKGROUND

On May 3, 2023, the Board of Directors adopted a number of measures to support organizational restructuring, following recommendations made by the Finance and Administration Committee on April 5, 2023. These measures included changes to the Administrative Code to convert senior management positions, including Deputy Executive Officer and Senior Assistant Counsel, to "at-will" positions.

The creation of these new at-will positions included a provision applicable to current Air District employees specifying that any such employees who are promoted to Deputy Executive Officer or Senior Assistant Counsel during 2023 will have a right to return to their prior classification (or a similar position) if they leave the Deputy Executive Officer or Senior Assistant Counsel position. This provision is in Section 3.3(d) of Division III of the Administrative Code.

This return right provision included a requirement that any current employee who had not completed probation at their time of promotion to Deputy Executive Officer or Senior Assistant Counsel would have to complete their probationary period if they returned to their prior position. That is, if a current employee was still on probation at the time they were promoted, if they were ever reinstated in their prior position at any point in the future, they would be back on probation and would need to serve out their remaining probationary period before enjoying full employee rights in their reinstated position.

The intent behind this requirement was to ensure that current employees could not circumvent the probationary period requirements through promotion to Deputy Executive Officer or Senior Assistant Counsel. The purpose of the probationary period is to require newly hired employees to prove themselves for a year (or more) before they accede to full employee rights. If an employee was promoted to Deputy Executive Officer or Senior Assistant Counsel while they were still on probation, and then were returned to their prior position soon thereafter, there was a concern that they would immediately accede to full employee rights, without proving themselves through a full probationary period.

Since adoption of this provision, it has become clear that there is an unintended consequence of the way the provision was written. The concern behind this provision was focused on employees who are promoted and then returned to their prior position soon thereafter. But as written, the provision would also apply to a current employee who is promoted in 2023 and serves for many years of satisfactory service, but subsequently is returned to their prior position. Requiring an employee to complete further probation at that point would not be appropriate for two reasons. First, at that point, there is no need for the employee to prove themselves, if they have been performing well for a significant period of time. Second, it would undermine the purpose of the return rights provision if the employee were put back on probation after years of service, because they could be terminated without cause at that point, making the return rights largely meaningless. For these reasons, the current Administrative Code provision raises concerns regarding how it would apply to a long-serving Deputy Executive Officer or Senior Assistant Counsel who was promoted to that position during their probationary period and then is reinstated to their prior position years later.

DISCUSSION

To address this concern, staff recommend a minor revision to Section 3.3(d)(3) regarding return rights of current employees who are promoted to Deputy Executive Officer or Senior Assistant Counsel during 2023. This revision would specify that if an employee is promoted to one of those positions while they are still on probation, their probationary period will continue to run while they serve in their new position. That is, they will continue to be on probation with respect to their former position after promotion, and if they are reinstated in their former position while that probationary period is still ongoing, they would continue to be on probation in their reinstated position and would not enjoy full employee rights until completion of probation. However, if they complete that probationary period while in their new position, they would not be subject to probation if they are subsequently reinstated in their prior position. In that case, they would be returned to their prior position with full employee rights, and would not need to complete any further probation.

This revision would best accomplish the original intent of this provision by preventing circumvention of the probation requirements for current employees who are promoted while still on probation and reinstated shortly thereafter, without creating the unintended consequence of undermining the return rights of employees who serve for many years.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Alexander Crockett

Reviewed by: John Chiladakis

ATTACHMENTS:

1. Draft Administrative Code Revisions re Probationary Periods and Return Rights for At-Will Employees - Redline Version
2. Draft Administrative Code Revisions re Probationary Periods and Return Rights for At-Will Employees - Clean Version

Proposed Amendments to Section 3.3 of Division III of the Administrative Code

Staff propose the following amendments to Section 3.3(d)(3) of Division III of the Administrative Code regarding “return rights” of current employees who are promoted to Deputy Executive Officer or Senior Assistant Counsel during 2023. These revisions would specify that if a current employee has not completed their probationary period in their current position at the time they are promoted, that probationary period will continue to run during their tenure as Deputy Executive Officer or Senior Assistant Counsel. If they return to their previous classification before the end of that probationary period, they will be required to complete any remaining probation upon return to that classification. If they complete their probationary period before they return to their previous classification, they will not be required to complete any further probation after their return and will not be limited to the rights accorded probationary employees.

The proposed amendments are set forth below in underline/~~strikeout~~ format.

SECTION 3 RIGHTS AND OBLIGATIONS

3.3 DISCIPLINARY ACTION AND RIGHT OF APPEAL.

- (a) Except for individuals in classifications which serve at the pleasure of the Board of Directors or the District Counsel (see Section III-3.3(c), below), the APCO shall have the right, for due cause, to demote, dismiss, reduce in pay, or suspend without pay any employee. Notice of such action must be in writing and served on such employee by personal service~~ly~~, by e-mail at the address on file with the District, or by first class U.S. mail (or equivalent). Except for individuals serving in the classifications listed in subsection (c), below, the~~notice~~ will state the action to be taken and contain the reasons for such action.
- (b) Except as provided herein, employees, as defined in Section I, Definitions, shall have the right to appeal the disciplinary action, through the grievance procedure defined in Section III-4.
- (c) The following individuals shall serve at the will of the appointing authority and shall not have any right to appeal any disciplinary action through the grievance procedure defined in Section III-4, regardless of whether they held a prior position in the District. Individuals appointed to the classifications identified below may also be subject to a fixed term of employment and the incumbent will be separated at the expiration of that term (unless said term is extended by the identified appointing authority). Individuals appointed to the classifications identified below are not subject to a probationary period pursuant to Section III -7.3. Likewise, individuals appointed to the classifications identified below are not subject to the Layoff and Recall provisions of Section III-9.3

- (1) Any individual appointed by the Board of Directors and employed under an employment contract, including the Executive Officer/APCO and District Counsel;
 - (2) Any individual appointed by the Executive Officer to the classification of Chief Operating Officer, who shall serve at the pleasure of the Executive Officer/APCO
 - (3) Any individual appointed by the Executive Officer to the classification of Deputy Executive Officer after January 1, 2023, shall serve at the pleasure of the Executive Officer/APCO;
 - (4) Any individual appointed by the District Counsel to the classification of Senior Assistant Counsel, who shall serve at the pleasure of the District Counsel; and
 - (5) Limited Term employees.
- (d) Notwithstanding Section 3.3(c), any existing District employee who is appointed to the Deputy Executive Officer or Senior Assistant Counsel classification after January 1, 2023, but prior to January 1, 2024, shall be entitled to return to a vacant position in the last classification they held prior to their appointment to the Deputy Executive Officer or Senior Assistant Counsel classification, and at the same salary step they held prior to their appointment to their appointment to the Deputy Executive Officer or Senior Assistant Counsel classification. Reinstatement to the vacant position shall occur upon the termination of their appointment to the Deputy Executive Officer or Senior Assistant Counsel classification, whether that occurs (1) at the end of a specified term, (2) due to their voluntary request to vacate the classification, or (3) at the discretion of the District Counsel or Executive Officer/APCO.
- (1) For a Deputy Executive Officer, if no vacant position exists in the employee's previously-held classification, the employee shall be offered alternate employment by the District. The form of alternate employment shall be at the discretion of the Executive Officer but may include a vacant position in any classification for which they meet the minimum qualifications as determined by the Executive Officer, reclassification of an existing position, or creation of a new position. Alternatively, the Executive Officer/APCO may reclassify a Deputy Executive Officer position to a lower classification. Employees under this provision will be placed at the salary step closest to the current pay for the salary prior to their appointment to the Deputy Executive Officer classification. If the top step of the salary range for the employee's new position is lower than the current pay for the salary the current pay for the prior to their appointment to the Deputy

Executive Officer classification, the employee's salary will be Y-rated at the current pay for the salary step they held prior to their appointment to the Deputy Executive Officer classification, without the need for additional Board approval under Section III-6.5.

- (2) For a Senior Assistant Counsel, if no vacant Assistant Counsel position exists, the District Counsel shall reclassify the Senior Assistant Counsel position to Assistant Counsel, and reclassify an existing Assistant Counsel position to Senior Assistant Counsel. In the event of reclassification of a Senior Assistant Counsel under this paragraph, the reclassified Senior Assistant Counsel will be placed at the Assistant Counsel salary step they occupied prior to appointment to the Senior Assistant Counsel classification.
- (3) ~~For~~ Employees who have not completed probation prior to being appointed to the Deputy Executive Officer or Senior Assistant Counsel classification, their probationary period for their previous position will continue to run after appointment to their new position. If such an employee returns to their previous classification prior to the end of that probationary period, the employee will be required to complete any remaining probation in their reinstated position after reinstatement and will have only those rights accorded probationary employees by these rules until the end of the probationary period. If such an employee returns to their previous classification after the end of the probationary period for their previous position, they will not be required to complete any further probation and will not be limited to the rights accorded probationary employees.
- (4) Employees appointed pursuant to this Section III-3.3(d) are subject to discipline up to and including suspension while in the classification of Deputy Executive Officer or Senior Assistant Counsel without appeal. However, if the District seeks to terminate an individual who had already passed probation in a District classification with appeal rights, the individual will first be removed from the Deputy Executive Officer or Senior Assistant Counsel classification and reinstated to another classification as provided in Section III-3.3(d)(1) or III-3.3(d)(2), above. The District may then initiate disciplinary proceedings up to and including termination and the employee may appeal that termination pursuant to the grievance procedure defined in Section III-4. The discipline may be based in whole or in part on conduct which occurred in the Deputy Executive Officer or Senior Assistant Counsel classification. However, any reinstatement would be to the employee's current (civil service) classification. Discipline imposed on an employee in a Deputy Executive Officer or Senior Assistant Counsel classification may be used for purposes of progressive discipline.

Proposed Amendments to Section 3.3 of Division III of the Administrative Code

A clean version of the proposed amendments to Section 3.3 of Division III of the Administrative Code, showing the proposed revisions to Section 3.3(d)(3), is set forth below:

SECTION 3 RIGHTS AND OBLIGATIONS

3.3 DISCIPLINARY ACTION AND RIGHT OF APPEAL.

- (a) Except for individuals in classifications which serve at the pleasure of the Board of Directors or the District Counsel (see Section III-3.3(c), below), the APCO shall have the right, for due cause, to demote, dismiss, reduce in pay, or suspend without pay any employee. Notice of such action must be in writing and served on such employee by personal service~~ly~~, by e-mail at the address on file with the District, or by first class U.S. mail (or equivalent). Except for individuals serving in the classifications listed in subsection (c), below, the notice will state the action to be taken and contain the reasons for such action.
- (b) Except as provided herein, employees, as defined in Section I, Definitions, shall have the right to appeal the disciplinary action, through the grievance procedure defined in Section III-4.
- (c) The following individuals shall serve at the will of the appointing authority and shall not have any right to appeal any disciplinary action through the grievance procedure defined in Section III-4, regardless of whether they held a prior position in the District. Individuals appointed to the classifications identified below may also be subject to a fixed term of employment and the incumbent will be separated at the expiration of that term (unless said term is extended by the identified appointing authority). Individuals appointed to the classifications identified below are not subject to a probationary period pursuant to Section III -7.3. Likewise, individuals appointed to the classifications identified below are not subject to the Layoff and Recall provisions of Section III-9.3
 - (1) Any individual appointed by the Board of Directors and employed under an employment contract, including the Executive Officer/APCO and District Counsel;
 - (2) Any individual appointed by the Executive Officer to the classification of Chief Operating Officer, who shall serve at the pleasure of the Executive Officer/APCO
 - (3) Any individual appointed by the Executive Officer to the classification of Deputy Executive Officer after January 1, 2023, shall serve at the pleasure of the Executive Officer/APCO;

(4) Any individual appointed by the District Council to the classification of Senior Assistant Counsel, who shall serve at the pleasure of the District Council; and

(5) Limited Term employees.

(d) Notwithstanding Section 3.3(c), any existing District employee who is appointed to the Deputy Executive Officer or Senior Assistant Counsel classification after January 1, 2023, but prior to January 1, 2024, shall be entitled to return to a vacant position in the last classification they held prior to their appointment to the Deputy Executive Officer or Senior Assistant Counsel classification, and at the same salary step they held prior to their appointment to their appointment to the Deputy Executive Officer or Senior Assistant Counsel classification. Reinstatement to the vacant position shall occur upon the termination of their appointment to the Deputy Executive Officer or Senior Assistant Counsel classification, whether that occurs (1) at the end of a specified term, (2) due to their voluntary request to vacate the classification, or (3) at the discretion of the District Council or Executive Officer/APCO.

(1) For a Deputy Executive Officer, if no vacant position exists in the employee's previously-held classification, the employee shall be offered alternate employment by the District. The form of alternate employment shall be at the discretion of the Executive Officer but may include a vacant position in any classification for which they meet the minimum qualifications as determined by the Executive Officer, reclassification of an existing position, or creation of a new position. Alternatively, the Executive Officer/APCO may reclassify a Deputy Executive Officer position to a lower classification. Employees under this provision will be placed at the salary step closest to the current pay for the salary prior to their appointment to the Deputy Executive Officer classification. If the top step of the salary range for the employee's new position is lower than the current pay for the salary the current pay for the prior to their appointment to the Deputy Executive Officer classification, the employee's salary will be Y-rated at the current pay for the salary step they held prior to their appointment to the Deputy Executive Officer classification, without the need for additional Board approval under Section III-6.5.

(2) For a Senior Assistant Counsel, if no vacant Assistant Counsel position exists, the District Council shall reclassify the Senior Assistant Counsel position to Assistant Counsel, and reclassify an existing Assistant Counsel position to Senior Assistant Counsel. In the event of reclassification of a Senior Assistant Counsel under this paragraph, the reclassified Senior Assistant Counsel will be placed at the Assistant Counsel salary step they occupied prior to appointment to the Senior Assistant Counsel classification.

- (3) For employees who have not completed probation prior to being appointed to the Deputy Executive Officer or Senior Assistant Counsel classification, their probationary period for their previous position will continue to run after appointment to their new position. If such an employee returns to their previous classification prior to the end of that probationary period, the employee will be required to complete any remaining probation in their reinstated position after reinstatement and will have only those rights accorded probationary employees by these rules until the end of the probationary period. If such an employee returns to their previous classification after the end of the probationary period for their previous position, they will not be required to complete any further probation and will not be limited to the rights accorded probationary employees.
- (4) Employees appointed pursuant to this Section III-3.3(d) are subject to discipline up to and including suspension while in the classification of Deputy Executive Officer or Senior Assistant Counsel without appeal. However, if the District seeks to terminate an individual who had already passed probation in a District classification with appeal rights, the individual will first be removed from the Deputy Executive Officer or Senior Assistant Counsel classification and reinstated to another classification as provided in Section III-3.3(d)(1) or III-3.3(d)(2), above. The District may then initiate disciplinary proceedings up to and including termination and the employee may appeal that termination pursuant to the grievance procedure defined in Section III-4. The discipline may be based in whole or in part on conduct which occurred in the Deputy Executive Officer or Senior Assistant Counsel classification. However, any reinstatement would be to the employee's current (civil service) classification. Discipline imposed on an employee in a Deputy Executive Officer or Senior Assistant Counsel classification may be used for purposes of progressive discipline.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Finance and Administration Committee

From: Philip M. Fine
Executive Officer/APCO

Date: July 5, 2023

Re: Bay Area Air District Remote Meeting Locations

RECOMMENDED ACTION

Provide staff with policy direction regarding the use of remote locations for Air District Board and Committee meetings that reduce travel time for Board members and the public while also reducing risk related to non-compliance with Brown Act requirements.

BACKGROUND

The Air District encompasses a nine-county region including, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, San Francisco, western Solano and southern Sonoma counties and is represented by Board members whose offices are as far away as Santa Rosa in the North Bay, Campbell in the South Bay and Benicia and Concord in the East Bay. Travel time from the furthest offices to the Air District headquarters at 375 Beale Street in San Francisco for meetings, over congested highways, can take as long as two or more hours in each direction.

The Air District Board of Director’s meetings are governed by the Brown Act. For three years during the pandemic, while the Governor’s COVID emergency order was in place, Brown Act amendments allowed legislative bodies, like the Air District, to convene using communication platforms such as Zoom to continue meetings. During that period, Board members were able to better utilize the time that, before COVID, was needed to travel the long distances to the San Francisco Office. With the COVID emergency order having ended on February 28, 2023, legislative bodies including the Air District’s Board have been required to resume in-person meetings. However, the Brown Act allows remote meeting participation or teleconferencing by legislative bodies, provided the body meets certain requirements.

The Brown Act teleconferencing or remote meeting requirements include the following:

- All votes taken during a teleconferenced meeting shall be by roll call.
- Teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Air District.
- The Air District shall give notice of the meeting and post agendas 72 hours prior to the meeting.

- The agenda shall provide an opportunity for members of the public to address the Board of Directors directly.
- Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each location shall be accessible to the public.
- During the meeting, at least a quorum of the members of the Air District shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except in the case of an emergency.
- Electronic connectivity through either speaker or video, or both, and a two-way audiovisual platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

After the sunseting of the Governor’s COVID emergency order, the Air District has worked with Board members to enable remote meeting participation in compliance with the Brown Act. Some Board members have been making their conference spaces available for remote meetings when their spaces are equipped with high-speed Wi-Fi, the ability to join via the Zoom platform, and a camera to display remote meeting participants. The Air District’s Executive Team has worked with these Board members and their staff to coordinate Board and Committee meetings at more than eight different locations.

DISCUSSION

Due to the large geographical region and the large number of cities and counties within the Air District’s jurisdiction, providing remote meeting opportunities closer to Board Member city and county offices has substantially reduced travel times for members and increased opportunities for members to attend meetings and participate in the business of the Air District.

Although to date we have successfully managed to conduct Board meetings utilizing multiple remote meeting locations, it is important for the Board to be aware of the continuing and significant risks involved, particularly as the number of remote meeting locations has increased.

RISKS OF MULTIPLE REMOTE MEETING LOCATIONS

- Failure to meet the 72-hour pre-meeting posting.
- Closure of a location due to broadcasting disruption or service outage.
- Through circumstances beyond the District’s control, remote personnel become unavailable at a remote location to open it for the public.

POTENTIAL CONSEQUENCES

- A disruption or service outage at any location could prevent the public from making comments using the call-in or internet options.
- A disruption or service outage at any location could cause the Board to lose its quorum.
- If any of the Brown Act requirements are not met, action items or key votes could be invalidated.
- The need to postpone or repeat a meeting with invalidated actions could result in failure to meet statutory timelines for items including budget, fees, and Air District rules.

The Committee is requested to direct staff to develop a policy that balances convenience for Board members and the public to participate in Board and Committee meetings, while also reducing the risks and potential serious consequences of failing to meet the Brown Act requirements, which may jeopardize the business of the Air District.

The Committee will hear several potential risk mitigation strategies during the discussion today. One potential strategy would be to limit the number of remote meeting locations to one location in the North, South and East Bay. Currently, the Air District has a contract for the Santa Rosa Junior College in the North Bay. The Air District has worked to ready the Richmond Headquarters East building in the East Bay for public meetings beginning in July 2023. Since March 1, 2023, Board members have offered their offices to serve as remote meeting locations in El Cerrito, Oakland, Palo Alto, Pleasanton, San Ramon, San Jose, and Sonoma.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The current remote meeting agreement at Santa Rosa Junior College is funded by the 2022/23 and the 2023/24 budget. Additional Air District leased or owned locations and staffing are not currently budgeted in the 2023/24 budget.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Lisa Fasano
Reviewed by: Philip M. Fine

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Finance and Administration Committee

From: Philip M. Fine
Executive Officer/APCO

Date: July 5, 2023

Re: Status Update Regarding the Human Resources Corrective Action Plan

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

On June 16, 2021, the Board of Directors approved a workplan to initiate a management performance audit and authorized the creation of a vendor selection panel that included Board Members Carole Groom and Margaret Abe-Koga, one community member appointed by the Community Equity, Health, and Justice Committee, another appointed by the Stationary Source and Climate Impacts Committee, and a subject matter expert in management audits. The Air District issued Request for Qualifications (RFQ) No. 2021-011 which closed on July 21, 2021. The RFQ requested bids from auditors for ongoing management audit services that span the Air District's business functions, on an as-needed basis, in response to requests from the Air District's Board of Directors. During the open period, the Air District received six proposals. The panel ranked the proposals and interviewed the top two ranked vendors: Tap International and Sjoberg Evashenk. Sjoberg Evashenk received the highest average combined score.

On December 1, 2021, the Board of Directors approved the selection and execution of a three-year contract with Sjoberg Evashenk for management audit services, and funded the initial scope of services, which was estimated to be \$250,000. During the first year of engagement, Sjoberg Evashenk delivered reports on time and to expectation as scoped by the Board of Directors. Those reports included a recommendation on staffing levels and staffing allocation, a recommendation on Air District organizational structure, a management performance audit of the Human Resources functions, and an agency wide risk assessment which reported business/operational risk by functional division.

On November 2, 2022, the Administration Committee heard the Report on the Management Performance Audit Report on Air District Human Resources Functions. The report called for 22 recommendations to address multiple findings. On January 23, 2023, the Board of Directors approved a proposed Human Resources Corrective Action Plan to implement the twenty-two recommendations.

DISCUSSION

Overview

The Committee will receive an update on the implementation status of the Human Resources Corrective Action Plan, which was approved by the Board on January 23, 2023. The plan addresses the findings identified in the Human Resources Management Performance Audit report completed on November 2, 2022. The implementation of the plan involves the execution of twenty-two recommendations detailed in the audit. The purpose of this update is to present the progress made thus far and outline the remaining tasks. Figure 1 illustrates the timeline to date and summarizes the status of the twenty-two corrective actions. Figure 1 shows that of the 22 corrective actions, 12 have been completed in the five months between the approval by the Board in January and this status update. Further, it is significant to note that during that period the Board took 4 separate actions to implement the 12 corrections including:

- The Board reviewed and approved a comprehensive compensation plan for all staff members, aligning with the commitment to fair and competitive compensation practices.
- The Board took necessary actions to initiate the recovery process for overpayments made during acting assignments.
- The Board considered authorization of a new retention schedule for confidential personnel records, ensuring compliance with regulatory requirements and the safeguarding of sensitive employee information.
- The Board considered authorization of resolution to ensure continuity of executive leadership that would provide for a smooth transition in leadership for the positions of Executive Officer and District Counsel.

**Figure 1
Implementation Progress**



| Status | Count |
|---|-----------|
| Completed – including 4 Board actions | 12 ✓ |
| On schedule – estimated delivery dates in 2023 and 2024 | 9 ● |
| In Process – need more time than originally estimated | 1 ● |
| TOTAL | 22 |

Corrective Action Categories

Table 1 provides an overview of the three categories of recommendations provided in the audit and a count showing the number of recommendations and corresponding planned corrective actions in each category. Compensation plan recommendations cover items related to the compensation of Air District employees and involve corrections to practices as well as requirements for future work to align the Air District with best practices. Position Management covers needed controls over the Air District's ongoing budgeting and allocation of the Air District's funded employee positions, and Processes and Controls includes the actions necessary to bring Human Resources (HR) processes and controls in alignment with regulations and best practices.

Table 1
Corrective Action Categories

| Category | Count |
|------------------------------------|-----------|
| Compensation Plan (1.1 – 1.9) | 9 |
| Position Management (2.1 – 2.5) | 5 |
| Processes and Controls (3.1 – 3.8) | 8 |
| TOTAL | 22 |

Compensation Plan

Each of the nine audit recommendation items for corrective actions related to the Air District's Compensation Plan are listed in Table 2 with their corresponding status, planned corrective action and the approximate schedule that was initially estimated to implement the listed corrective action. As shown in Table 2, five of these nine corrective actions have been completed, and the remaining four are on track to be completed in alignment with the initial schedule.

It is important to note that each of the remaining corrective actions requires engagement with various outside services to complete. In each case vendors are either already under contract, or under final selection for engagement. As each of these corrective actions become more fully scoped additional information may come to light that requires extension of the completion timelines. Staff are committed to briefing the Board regularly regarding any changes to the current schedule.

Table 2

Compensation Plan Corrective Actions

| Status | Audit Item No. | Planned Action | Q4 2022 | Q1 2023 | Q2 2023 | Q3 2023 | Q4 2023 | Q1 2024 |
|--------|----------------|---|---------|---------|---------|---------|---------|---------|
| ✓ | 1.8 | EO sent memo to all staff on 12/16 and established new policy with default ratings for not completing evaluations when probation or salary increases are due | | | | | | |
| ✓ | 1.3 | Staff will consult with Counsel regarding the potential for recovering acting pay provided to non-represented employees in conflict with the Administrative Code | | | | | | |
| ✓ | 1.9 | Develop Board direct reports succession resolution for Board authorization | | | | | | |
| ✓ | 1.1 | Establish policy and procedures and implement controls that require board action and the Chair of the Board to authorize by signature the salary for individuals acting in Board appointed positions | | | | | | |
| ✓ | 1.4 | Initiate RFQ for outside services to conduct an independent review and documentation of FLSA status for every position. | | | | | | |
| ● | 1.2 | Present compensation plan to the Board and removal of benefits from the administrative code. RFQ to engage services for Administrative Code update | | | | | | |
| ● | 1.5 | Short Term – Staff will develop management policy that requires completion of timely and accurate performance evaluations Long Term Staff will engage with Employees association to develop RFP for services to overhaul the performance evaluation system | | | | | | |
| ● | 1.6 | In consultation with the Board of Directors, Initiate RFP for service to facilitate strategic planning for the agency, strategic planning for HR and setting of compensation philosophy as part of the HR strategic plan | | | | | | |
| ● | 1.7 | In consultation with the Board of Directors, develop compensation plan and maintenance protocols consistent with the overall strategic plan | | | | | | |

✓ Completed ● In Process Schedule Extended ● On Schedule

Position Management

Each of the five audit recommendation items for corrective actions related to the Air District’s Position Management practices are listed in Table 3 with their corresponding status, planned corrective action and the approximate schedule that was initially estimated to implement the listed corrective action. As shown in Table 3, three of these nine corrective actions have been completed, and the remaining two are on track to be completed in alignment with the initial schedule.

It is important to note that each of the remaining corrective actions requires engagement with various outside services to complete. In each case, vendors are either already under contract, or under final selection for engagement. As each of these corrective actions becomes more fully scoped, additional information may come to light that requires extension of the completion timelines. Staff are committed to briefing the Board regularly regarding any changes to the current schedule.

Table 3

Position Management Corrective Actions

| Status | Audit Item No. | Planned Action | Q4 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 |
|--------|----------------|---|------|------|------|------|------|------|------|
| | | | 2022 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 |
| ✓ | 2.1.a, b | Staff will develop governing policy and Administrative Operating Procedures (AOP) to assure proper controls listed in recommendations 2.1a and 2.1b for recruitment authorizations of funded vacancies. | | | | | | | |
| ✓ | 2.2 | Staff will include the steps recommended in 2.2 into the annual budget process. Create an AOP for mid-year personnel budget adjustments | | | | | | | |
| ✓ | 2.3 | Staff will include the steps recommended in 2.2 into an AOP for position status changes | | | | | | | |
| ● | 2.4 | Staff will initiate a procurement for outside services to conduct an independent classification study that includes the scope listed under recommendation 2.4 | | | | | | | |
| ● | 2.5 | Develop internal Policy and AOP that requires updates of position descriptions and classifications at key milestones | | | | | | | |

✓ Completed ● In Process Schedule Extended ● On Schedule

Processes and Controls

Each of the eight audit recommendation items for corrective actions related to the Air District’s human resources processes and controls are listed in Table 3 with their corresponding status, planned corrective action and the approximate schedule that was initially estimated to implement the listed corrective action. As shown in Table 4, three of these nine corrective actions have been completed, and the remaining two are on track to be completed in alignment with the initial schedule.

Table 4 shows that Corrective Action 3.1 is underway but has not been completed in alignment with the original schedule. This Action required the development of records retention protocols that achieve three goals: 3.1a unify records from individual employees so that they can be produced on request, 3.1b restrict access to records so that they can only be accessed by authorized personnel following the guidelines of least privilege, and 3.1c adhere to records retention schedules and destruction protocols for all human resources records. To date, Staff have developed these protocols, organized existing records by employee so that they can be more easily retrieved for any individual, and developed destruction protocols for records that are past retention. However, the initial timeline for completion has been revised due to the identification of an over 50-year backlog of records, and the need to maintain meticulous attention to confidentiality requirements and required retention schedules as the backlogged files are either destroyed or properly retained in a trusted electronic system. The increased workload necessitates additional time, and therefore, the revised completion date is now approximately four to five months later than originally anticipated. This additional time is shown in a yellow shade on Table 4.

It is important to note that remaining Corrective Actions 3.4 and 3.5 require engagement with various outside services to complete. In each case, vendors are either already under contract, or under final selection for engagement. As each of these corrective actions becomes more fully scoped additional information may come to light that requires extension of the completion timelines. Staff are committed to briefing the Board regularly regarding any changes to the current schedule.

**Table 4
Processes and Controls Corrective Actions**

| Status | Audit Item No. | Planned Action | Q4 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 |
|--------|----------------|---|------|------|------|------|------|------|------|
| | | | 2022 | 2023 | 2023 | 2023 | 2023 | 2024 | 2024 |
| ✓ | 3.6 | Staff will develop and implement policy and Administrative Operating Procedure (AOP) to for the governance of background checks to include the recommendations in section 3.6 of the HR Audit Report. | | | | | | | |
| ✓ | 3.3 | Staff will obtain a list of currently authorized personnel for the Human Resources file room from building security, assure that list conforms to need to know, and create Policy and AOP for maintaining that list. | | | | | | | |
| ✓ | 3.7 | Staff will migrate resources and tasks from Human Resources Division to Financial Resources Division in consultation with the employees responsible for the activities. | | | | | | | |
| ✓ | 3.8 | Staff will migrate resources and tasks from Human Resources Division to Information Services Division in consultation with the employees responsible for the activities. | | | | | | | |
| ● | 3.1a,b,c | Staff will develop and implement policy and Administrative Operating Procedure (AOP) to for the governance of paper and electronic HR records in accordance with audit recommendations 3.1. | | | | | | | |
| ✓ | 3.2 | Legal staff will review records retention schedule and draft updates for board approval. | | | | | | | |
| ● | 3.4 | In consultation with the Board of Directors, Initiate RFQ for service to facilitate strategic planning for the agency, strategic planning for HR and setting of compensation philosophy as part of the HR strategic plan. | | | | | | | |
| ● | 3.5 | Staff will initiate a procurement for services to conduct an independent review and recommendations for all HR policy and AOP updates. | | | | | | | |

✓ Completed
 ● In Process Schedule Extended
 ● On Schedule

Next Steps

The implementation of the Human Resources Corrective Action Plan has demonstrated significant progress during the five months since its approval by the Board. The completion of twelve out of twenty-two recommendations, along with the necessary Board actions, reflects the Air District’s commitment to addressing the findings of the audit report promptly. While work is still underway to complete the remaining recommendations, efforts are being made to meet the designated timeframes.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for the Human Resources Corrective Action Plan has been included in the Fiscal Year Ending 2024 budget. Certain long term initiatives under the Corrective Action Plan requiring outside services are currently under bid and will be brought before the Board for authorization after vendor selection is completed.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: John Chiladakis

ATTACHMENTS:

None