

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION No. 2023- 04

A Resolution of the Board of Directors of the Bay Area Air Quality Management District Establishing Salary and Fringe Benefits for the Classifications of Deputy Executive Officer and Senior Assistant Counsel and the Classification Specification of the Chief Operating Officer

RECITALS

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District (“Board”) has the authority and the responsibility to adopt and approve class specifications and compensation schedules for District employees, either through approval of collective bargaining agreements and/or through approval of a resolution(s) establishing or modifying compensation ranges for employees not covered by collective bargaining agreements;

WHEREAS, the Executive Officer/Air Pollution Control Officer is responsible for the preparation and recommendation to the Board of updates to the compensation schedule for management, confidential, and executive management employees;

WHEREAS, the Executive Officer/Air Pollution Control Officer is to recommend to the Board for adoption of such measures and resolutions as may be appropriate to support the duties and obligations of the Executive Officer;

WHEREAS, the Executive Officer/Air Pollution Control Officer has recommended the establishment of three new “at will” classifications for Deputy Executive Officer, Senior Assistant Counsel, and Chief Operating Officer and corresponding changes to the District’s Administrative Code;

WHEREAS, employees appointed to the classification for Deputy Executive Officer and Senior Assistant Counsel after revision to the Administrative code will serve at the pleasure of either the Executive Officer/Air Pollution Control Officer or the District Counsel and shall not have any right to appeal any disciplinary action, except as explicitly provided in the Administrative Code;

WHEREAS, due to their “at will” status, these positions will have severance benefit which are not included in the benefits for unrepresented civil servant District employees;

WHEREAS, the Executive Officer/Air Pollution Control Officer has recommended that employees appointed to the newly established Deputy Executive Officer and Senior Assistant Counsel classifications be entitled to receive all employee benefits provided to the District’s unrepresented Executive Management Staff pursuant to the Board’s December 21, 2022 Resolution authorizing Non-Represented Employee Benefits and as those benefits may be modified by the Board in the future;

WHEREAS, the Executive Officer/Air Pollution Control Officer has recommended that employees appointed to the newly-established Deputy Executive Officer and Senior Assistant Counsel classifications also be entitled to a severance benefit equal to the employee's monthly Base Salary, multiplied by the number of months left on the unexpired term of their appointment, up to a maximum of three (3) months for employees who have served less than two (2) years in the position and up to six (6) months for those who have served in the position for two (2) or more years, unless they are terminated for cause or as otherwise limited by this Resolution.

RESOLUTION

NOW THEREFORE, based on the above recitals and all the information presented at the public hearing, the Board of Directors of the Bay Area Air Quality Management District ("Board") hereby resolves as follows:

BE IT RESOLVED that the Board of Directors does hereby create a new Chief Operating Officer classification specification and amend the Deputy Executive Officer and Senior Assistant Counsel classification specifications to replace the existing civil service classifications with at-will classifications. The new at-will classifications will be compensated at the top step salary rate for the existing civil service classifications.

BE IT FURTHER RESOLVED that the Board of Directors does hereby extend to the newly-established Chief Operating Officer, Deputy Executive Officer and Senior Assistant Counsel classifications all employee benefits provided to the District's unrepresented Executive Management Staff pursuant to the Board's December 21, 2022 Resolution authorizing Non-Represented Employee Benefits and as those benefits may be modified by the Board in the future.

BE IT FURTHER RESOLVED that, if an employee appointed to the Deputy Executive Officer or Senior Assistant Counsel classification is terminated from District employment without cause (as defined in subparagraph 2 below), the employee shall be entitled to a severance payment as set for the below:

1. If the employee is terminated by the District without cause while the employee is still willing and able to perform the duties of their position, the District agrees to pay the employee a lump sum severance payment equal to the employee's monthly Base Salary, multiplied by the number of months left on the unexpired term of their appointment, up to the following maximums:
 - a. For employees who have served less than two (2) consecutive years in either the classification of Deputy Executive Officer or the classification of Senior Assistant Counsel at the time of termination: a maximum of three (3) months;
 - b. For employees who have served two (2) or more consecutive years in either the classification of Deputy Executive Officer or the classification of Senior Assistant Counsel at the time of termination: a maximum of six (6) months.
2. Any severance payment made by the District pursuant to this Resolution shall be contingent on Employee executing and delivering to the District a release in a form approved by the District Counsel's Office.

3. Notwithstanding subparagraph 1, above, the District shall not pay any severance amount to the employee if the employee is terminated because of:
 - a. the conviction of felony or misdemeanor or plea of nolo contendere to a crime,
 - b. the conviction of any felony or misdemeanor involving moral turpitude,
 - c. the willful or persistent material breach of duties or inattention to duties,
 - d. a violation of statute or law constituting misconduct in office, or
 - e. willful misconduct.
4. The District shall not be obligated to pay an employee any severance amount under this Resolution if (a) the employee voluntarily retires or resigns in writing prior to termination, (b) the employee is terminated at the expiration of their limited term appointment, or (c) the employee is terminated after being reclassified, or (d) the employee is terminated after reinstating to a previously held classification pursuant to Section III-3.3(d) of the Administrative Code.

BE IT FURTHER RESOLVED that the record documents and other materials supporting this Resolution shall be maintained and made available for public review at the headquarters of the Bay Area Air Quality Management District at 375 Beale Street, Suite 600, San Francisco, CA 94105, and that the custodian for these documents and other materials shall be Marcy Hiratzka, Clerk of the Boards.

The foregoing Resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of DIRECTOR MELGAR, seconded by DIRECTOR GONZALEZ, on the 19th day of APRIL, 2023, by the following vote of the Board:

AYES: MARGARET ABE-KOGA, BRIAN BARNACLE, JOHN J. BAUTERS, KEN CARLSON, NOELIA CORZO, JOELLE GALLAGHER, JOHN GIOIA, JUAN GONZALEZ, ERIN HANNIGAN, LYNDA HOPKINS, DAVINA HURT, SERGIO LOPEZ, MYRNA MELGAR, NATE MILEY, RAY MUELLER, KATIE RICE, VICKI VEENKER, SHAMANN WALTON, STEVE YOUNG.

NOES: NONE.

ABSTAIN: NONE.

ABSENT: DAVID HUDSON, DAVID HAUBERT, TYRONE JUE, OTTO LEE, MARK ROSS.

DocuSigned by:

John Bauters

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John J. Bauters

Chair of the Board of Directors

ATTEST:

DocuSigned by:

Lynda Hopkins

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Lynda Hopkins

Secretary of the Board of Directors