

MINUTES

**Tuesday, February 27, 2024
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California**

Regular Closed Session Meeting

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:03 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors John A. Coleman, Andy Katz, Doug A. Linney, Marguerite Young, William B. Patterson and President Lesa R. McIntosh were present at roll call. Director April Chan was absent (excused).

Staff participants included General Manager Clifford C. Chan and General Counsel Derek T. McDonald.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Joey Smith, President, AFSCME Local 2019 thanked the Board for approving funds to repair damage to the Administration building and commented on discussions the unions have had with management regarding safety, and security and safety at District worksites; 2) Eric Larsen, President, AFSCME Local 444 commented on the security and safety of District employees and an increased need for a security presence; and 3) Ivette Rivera commented on documents she will provide at Regular Board meeting and New York District Attorney Latisha James' Twitter posts, and congratulated Director Coleman on his retirement.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President McIntosh announced the closed session agenda and the Board convened to Administration Building Conference Room 8 for discussion.

Regular Business Meeting

President Lesa R. McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. in the Administration Building Boardroom.

ROLL CALL

Directors John A. Coleman, Andy Katz, Doug A. Linney, Marguerite Young, William B. Patterson and President Lesa R. McIntosh were present at roll call. Director April Chan was absent (excused).

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President McIntosh led the Pledge of Allegiance.

President McIntosh read a proclamation recognizing Director John A. Coleman's 33 years of service on the Board of Directors and presented Director Coleman with a framed copy of the proclamation.

- Addressing the Board was Mark Foley, EBMUD Information Systems Administrator II, who commented on his tenure as president of AFSCME Local 2019 working with Director Coleman and thanked Director Coleman for his service and leadership.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Kelly A. commented on water usage and reevaluating the District's method for forecasting water demand; 2) Tracie King, EBMUD Dispatch Center Representative, expressed continued concerns regarding safety and afterhours security in the Administration Building and said no one reached out to her after her comments at the February 13, 2024 Regular Board meeting; and 3) Ivette Rivera commented on documents she provided to the Board and email communications with Cindy Charan, and congratulated Director Coleman and thanked him for his service.

Director Linney thanked Tracie King for bringing this matter to the Board's attention and asked for suggestions to improve security in the Administration Building. Director Linney asked General Manager Clifford C. Chan to comment on actions taken since the last Board meeting to address Tracie's concerns. Director of Operations and Maintenance David A. Briggs commented on security in the Administration Building, coordinating a meeting with Tracie, and provided clarification regarding a security incident that occurred in the Administration Building parking garage in May 2023. The Board commented on the need to address and resolve Tracie's concerns and asked questions about telecommuting options. General Counsel Derek T. McDonald cautioned the Board to refrain from discussing and deliberating on this issue as it is not on the agenda. The Board asked staff to provide additional information to the unions on security actions being taken by the District, to follow-up with Tracie King, and to provide a security update to the Board.

CONSENT CALENDAR

- Item 10 was pulled from the Consent Calendar for separate discussion.
- Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Items 1-9 on the Consent Calendar carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

1. **Motion No. 037-24** – Approved the Regular Meeting Minutes of February 13, 2024.
2. The following correspondence was filed with the Board: 1) Presentation entitled, "Employees' Retirement System: Actuarial Valuations and Contribution Rates," dated February 27, 2024; 2) Presentation entitled, "EBMUD Campaign Finance Reform Ordinance (CFRO): First Reading of Proposed Amendments" dated February 27, 2024; 3) Presentation entitled, "Options for Filling a Board Vacancy" dated February 27, 2024; 4) Presentation entitled, "Water Supply Update" dated February 27, 2024; 5) Draft Resolution entitled, "Adopting The Actuarial Valuations Of The East Bay Municipal Utility District Employees' Retirement System And Setting The Pension And Health

Benefit Employer Contribution Rates For Fiscal Year 2025”; 6) Speakers’ Bureau and Outreach Record CY24 dated February 27, 2024; 7) Emailed dated February 18, 2024 from Ivette Rivera to Clifford Chan et. al regarding FYI: AFSCME 444 Position (with attachments); 8) Email dated February 19, 2024 from Ivette Rivera to Vladimir Bessarabov et. al regarding Correct Subject Header: Please see attached amended Rivera v. EBMUD Tort Complaints; and 9) Document titled, “Rivera Reply Charan 02_27_24.”

3. **Motion No. 038-24** – Awarded a contract beginning on or after February 27, 2024 to the lowest responsive/responsible bidder, Airgas USA LLC, for supplying liquid oxygen and maintenance and repair services for the Hypolimnetic Oxygenation System at the District’s San Pablo Reservoir for two years, with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$1,666,005 under Request for Quotation No. 2403.
4. **Motion No. 039-24** – Awarded a contract beginning on or after February 27, 2024 to the lowest responsive/responsible bidder, Trace3, Inc., for supplying computer data storage equipment, installation, and maintenance support for the District’s main data center for three years, for a total cost, after the addition of taxes, not to exceed \$403,049.56.
5. **Motion No. 040-24** – Authorized an agreement beginning on or after February 27, 2024 with Comprehensive Construction Services, Inc. in an amount not to exceed \$214,010 for materials and labor for renovations at Pardee Center’s McLean Hall and Garage 115.
6. **Motion No. 041-24** – Authorized an agreement beginning on or after February 28, 2024, with Jacobs Engineering Group, Inc. in an amount not to exceed \$1,488,047 for engineering, condition assessment, and infrastructure planning services for the Interceptor Master Plan.
- 7.1. – **Motion No. 042-24** – Ratified the extension of the agreement with Aquatic Informatics ULC
- 7.2. (AQI) authorized under Board Motion No. 050-18 to February 26, 2024 and the total payment of \$308,010 to AQI for the continuous licensing of Sedaru software facilitating repair and public communication of main break repairs as well as hydrant and valve inspections between April 23, 2023 and February 26, 2024; and authorized an amendment to extend the agreement previously authorized under Board Motion No. 050-18 with AQI from February 27, 2024 through December 31, 2024, and to increase the agreement amount by \$215,705, which incorporates the ratified amount from the action above, for a total amount not to exceed \$2,377,615 for licensing of Sedaru software facilitating main break repairs, as well as hydrant and valve inspections.
8. **Motion No. 043-24** – Approved the January 2024 Monthly Investment Transactions Report.
9. **Resolution No. 35385-24** – Adopting Revised Policy 3.01, Annexations; Revised Policy 7.04, Access To District Property For Tours; And Rescinding Policy 3.08, Advisory Election For Annexations Outside The Contra Costa County Urban Limit Line.
10. **Adopt a resolution to appoint Dr. Ayoka Medlock-Nurse as Standby Officer No. 1 in Ward No. 1 for the East Bay Municipal Utility District Board of Directors.**

President McIntosh read the resolution to appoint Dr. Ayoka Medlock-Nurse as Standby Officer for the Board of Directors and asked Dr. Medlock-Nurse if she would accept the role of Standby Officer. Dr. Medlock-Nurse affirmed she would accept the role.

- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 10 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution. 35386-24 – Appointing Dr. Ayoka Medlock-Nurse As Standby Officer For The Board Of Directors As Standby Officer Number 1 For Ward No. 1 Under The Emergency Succession Plan For The Board Of Directors.

DETERMINATION AND DISCUSSION

11. **Adopt a Resolution to recognize Black History Month and the 30th Anniversary of the Black Employee Network.**

Special Assistant III Derry L. Moten introduced the resolution. Mr. Moten background on Black History Month which was initiated by Carter G. Woodson, PhD also known as a Father of Black History, to address the glaring absence of African American and black contributions in mainstream historical narratives. In 1986 the United States Congress, in a joint resolution of the House and Senate designated the month of February as National Black History Month. In 1994, a group of African American District employees founded the Black History Committee and hosted their first annual Black History Month celebration with the mission to foster the inclusion, visibility, and advancement of District employees, particularly those that identify as Black or of African descent. The group was chartered and became the District's first Affinity Group and is today operating under the name the Black Employee Network. In celebration of its 30th anniversary and service to the District, the Black Employee Network has sponsored a series of educational and experiential events.

- Motion by Director Patterson, seconded by Director Katz to approve the recommended actions for Item 11 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35387-24 – Recognizing Black History Month And The 30th Anniversary Of The Black Employee Network.

12. **Adopt the Actuarial Valuations of the Employees' Retirement System as of June 30, 2023 prepared by the Retirement System's actuary. In addition, set Retirement System Contribution Rates for Fiscal Year 2025 based on the actuarially determined contribution rates in the valuations.**

Treasury Manager Robert L. Hannay provided the presentation. Under Ordinance No. 40 (the Retirement Ordinance), actuarial valuations for the Retirement System are required at least every two years. Based on these actuarial valuations, the District and Retirement System adopt annual contribution rates. The District's practice is to adopt actuarial valuations and set contribution rates

each year. Mr. Hannay reported the FY 2023 valuations led to higher actuarially determined employer contributions for the coming fiscal year. Actuarially determined contributions for FY 2025 are up 0.54 percent to 49.02 percent of covered payroll for 1955/1980 Plan members and up 0.86 percent to 40.07 percent of covered payroll for 2013 Plan members. The employee contribution rates remain unchanged for FY 2025. The Retirement Board recommended adopting these rates at its January 18, 2024 meeting and this information was presented to the Finance/Administration Committee earlier in the day. The Board is being asked to adopt a

resolution to accept the actuarial valuations and to adopt the FY 2025 employer contribution rates. A copy of the resolution had been provided at Board places. Mr. Hannay responded to questions on how the District's pension fund compares to other agencies, the status of the fund ten years ago, the fund's funded ratio, and legislation on unfunded liabilities. Director Young, commenting as a Retirement Board member, commented the Retirement Board's recommendation is to consistently pay the recommended employer contribution for the pension.

- Motion by Director Young, seconded by Director Katz to approve the recommended actions for Item 12 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35388-24 – Adopting The Actuarial Valuations Of The East Bay Municipal Utility District Employees' Retirement System And Setting The Pension And Health Benefit Employer Contribution Rates For Fiscal Year 2025.

13. Introduction and first reading of An Ordinance to amend the East Bay Municipal Utility District Campaign Finance Reform Ordinance No. 316.

General Counsel Derek T. McDonald presented an overview of the proposed amendments to the Campaign Finance Reform Ordinance (CFRO) No. 316. The District's CFRO was enacted in 1992 and has been amended several times since to reflect changes in federal and state law. The CFRO was last updated in January 2010. Since that time, there have been several changes in the Political Reform Act (PRA) and its implementing regulations that are recommended for incorporation into the CFRO. All recommended changes have been drafted or reviewed in coordination with the District's outside legal counsel who has expertise in campaign finance and elections laws. Mr. McDonald discussed the CFRO legal review process and the initial recommended amendments that were presented to the Legislative/Human Resources Committee on January 9 and February 13, 2024. At the January 9 meeting, staff recommended increasing the contribution limit for persons from \$600 to \$900 to reflect CPI adjustments since 2010; the Committee requested the contribution limit be increased to \$1,000. Staff also recommended increasing the contribution limit for Small Contributor Committees from \$1,200 to \$1,800 and adjusting the limit biennially based on CPI; the Committee requested the contribution limit be increased to \$2,000. Mr. McDonald reviewed contribution limits in other jurisdictions, noting the PRA default limit for cities and counties is \$5,500; however, that default limit does not apply to special districts. He reviewed the proposed revisions to Paragraph IV.4 regarding prohibitions on contractor donations that were discussed with the Committee on January 9 which would prohibit donations from any District contractor, not just for Board-approved contracts and prohibit a contractor who violates the CFRO's donation prohibitions from being awarded any contract for one year following the violation, even if the contract is a low-bid contract. At its meeting on February 13, the Committee requested revisions to eliminate the prohibition on contracting with contractors that have contributed in violation of the CFRO, and to allow Board members to recuse themselves from participating in the consideration of a contract from a contractor that has donated to their campaign. Other proposed revisions include incorporating the Levine Act into the CFRO; updating definitions (e.g., contribution, qualified campaign expenditure, Small Contributor Committee); reorganization of the document information; mandating website publishing of contribution limits as a best practice; correcting and updating the reference to the CPI to "San Francisco-Oakland-Hayward Consumer Price Index for Urban Consumers"; using non-binary terms when referencing persons; updating references to the PRA and other common terms for consistency; updating the voluntary expenditure limit from \$0.53 to \$0.80 per ward resident to reflect CPI adjustments since the CFRO was last updated in 2010; and updating advertisement disclaimer requirements. The second reading and consideration for the Board to vote

to adopt the amendments is scheduled for the Regular meeting on March 12, 2024. Adoption of the amendments would take effect 30 days after the vote to adopt, or April 11, 2024. There was considerable discussion by the Board regarding the proposed revisions and on increasing the amount a candidate can loan (e.g., self-fund) their campaign to an amount that reflects CPI adjustments; additional increases to the contribution limits for persons and Small Contributor Committees; and further revisions to Paragraph IV.4 regarding prohibitions on contractor donations. Director Linney commented on the current and proposed contribution limits for persons and Small Contributor Committees and recommended the limits be increased to \$2,500 and \$5,000, respectively. There was additional discussion on the language regarding prohibitions on contractor donations and Mr. McDonald clarified the current CFRO language and the intent in the proposed amended language. President McIntosh asked if adopting the amendments to the CFRO is time sensitive as Board members needed more time for discussion and to ask questions. Mr. McDonald commented candidate statements will be filed in the upcoming months, and while the Board could conduct reviews and readings of the proposed amendments as many times as they'd like, the revised CFRO (including any new contribution limits) would not take effect until 30 days after it is adopted. President McIntosh asked Board members to submit their questions to Mr. McDonald prior to the second reading of the CFRO on March 12.

- Addressing the Board was Kelly A. who commented on political contributions received from contributors that may reside inside or outside of the District's service area.

Ordinance No. 375-24 – An Ordinance To Amend The East Bay Municipal Utility District Campaign Finance Reform Ordinance No. 316. (*Introduction and 1st Reading Only*)

14. **Approve the following actions related to filling the anticipated vacant Board seat in East Bay Municipal Utility District Ward 2 as recommended by the Board of Directors' Ad Hoc Committee: Notice of Vacancy and distribution plan; candidate information packet; and candidate application process.**

General Manager Clifford Chan provided the presentation. At the January 23, 2024 Board meeting, Director John A. Coleman announced his resignation as Director of EBMUD Ward 2 effective March 8, 2024. At its February 13, 2024 meeting, the Board approved an appointment process for filling the vacant Board seat in Ward 2 and appointed an Ad Hoc Committee comprised of Directors April Chan, Andy Katz, and Marguerite Young to develop the process. The Ad Hoc Committee met on February 15, 2024 and developed the proposed actions to fill the vacant Board seat. In accordance with Municipal Utility District (MUD) Act section 11865 et seq., the Board must appoint someone within 60 days of the effective date of Director Coleman's resignation or by May 7, 2024. The appointee would serve as Director for Ward 2 until the general election on November 5, 2024. The person elected on November 5 would serve the remainder of Director Coleman's term – through December 31, 2026. Mr. Chan reviewed requirements for noticing the vacancy; the proposed distribution plan and locations for the Notice of Vacancy; items to be included in a candidate information packet; the application process; the application evaluation process; and the appointment process. He said the Board is being asked to provide feedback on the proposed appointment process and to consider approving the Notice of Vacancy and distribution plan; candidate information packet; candidate application process; candidate evaluation process; and appointment process which includes conducting candidate interviews at the Regular Board meeting on April 9, 2024 starting at 4 p.m. or at a Special Board meeting on April 16 or April 17, 2024 with a start time of 4 p.m. Director Coleman asked if staff or the Ad Hoc Committee would be seeking his input on who would be a good candidate as mentioned by Director Katz at the Board's February 13 meeting. Director Katz clarified his comments at the February 13 meeting was to seek

feedback from Director Coleman on where to distribute the Notice of Vacancy. There was additional comments and President McIntosh asked Director Coleman to provide information regarding this matter to the General Manager.

- Motion by Director Young, seconded by Director Patterson to approve the recommended actions for Item 14 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 042-24 – Approved the following actions related to filling the anticipated vacant Board seat in East Bay Municipal Utility District Ward 2 as recommended by the Board of Directors' Ad Hoc Committee: Notice of Vacancy and distribution plan; candidate information packet; candidate application process; candidate evaluation process; and appointment process which includes conducting candidate interviews at the Regular Board meeting on April 9, 2024 starting at 4 p.m. or at a Special Board meeting on April 16 or April 17, 2024 with a start time of 4 p.m.

15. **General Manager's Report.**

Water Supply Update – water production; precipitation to date; reservoir storage; and forecasted supply conditions for the remainder of water year 2024

Director of Operations and Maintenance David A. Briggs provided an update on the District's current water supply, the State's water supply, and water supply projections. He highlighted the following data as of February 22: gross water production; precipitation in the East Bay (14.52 inches) and in the Mokelumne (28.24 inches); and the snow depth (81 inches) and snow water content (21.51 inches) at Caples Lake. He reviewed 30-day precipitation outlook data from the Climate Prediction Center issued on February 15 and snowpack levels and snow water equivalent in the Sierras as of February 22. The District's total system storage was 651,000 acre-feet as of February 22 and is still projected to be approximately 630,000 acre-feet by September 30.

General Manager's Report

General Manager Clifford C. Chan announced the Speakers' Bureau and Outreach Record CY24 had been provided at Board places.

REPORTS AND DIRECTOR COMMENTS

16. **Committee Reports.**

- Filed with the Board were the Minutes for the February 13, 2024 Planning and Legislative/Human Resources Committee.
- Chair Andy Katz reported the Finance/Administration Committee met earlier in the day and received updates and reports on the Monthly Investment Transactions Report; Fiscal Year 2024 Semi-Annual Budget Performance Report; Employees' Retirement System Annual Financial Update; Employees' Retirement System Fiscal Year 2023 Actuarial Valuations and Fiscal Year 2025 Employer Contribution Rates; Revisions to District Policies; Semi-Annual Internal Audit Report; and Camanche Mobilehome Park Rent.

17. **Other Items for Future Consideration.**

None.

18. **Director Comments.**

- Director Patterson thanked the District and the Black Employee Network for honoring him during Black History Month and commented on participating in an NAACP event at the Chapel of the Chimes in Oakland on February 19, security concerns, dedicating his time to working with young people, and his vision for Oakland.
- President McIntosh thanked Director Coleman for his service to the District and said he will be missed.
- Directors Chan, Coleman, Katz, Linney, and Young had no reports.

ADJOURNMENT

President McIntosh adjourned the meeting at 2:59 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: March 12, 2024



William B. Patterson, Vice-President of the Board