

MINUTES

**Tuesday, May 14, 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 11:01 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors April Chan, Luz Gómez, Doug A. Linney, William B. Patterson, Marguerite Young and President Lesa R. McIntosh were present at roll call. Director Andy Katz arrived in Conference Room 8 at 11:15 a.m.

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

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera commented on correcting the title for Closed Session Agenda Item 2a and on the Pierce/Bland case; and 2) Eric Larsen, President, AFSCME Local 444, commented on Closed Session Agenda Item 1, previous union negotiations, and being encouraged by early engagement with management on upcoming negotiations.

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 1:21 p.m. in the Administration Building Boardroom.

ROLL CALL

Directors April Chan, Luz Gómez, Andy Katz, Doug A. Linney, William B. Patterson, Marguerite Young, and President Lesa R. McIntosh were present at roll call.

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.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PRESENTATION

Director Gómez announced for the past eleven years, EBMUD has co-sponsored the “Excellence in Water and Wastewater Research Awards” in Alameda and Contra Costa Counties to recognize outstanding student science and engineering projects. Sakina Ahmad and Sophie Jackman, 8th graders in EBMUD Ward No. 2 won the Contra Costa County Engineering and Science Fair Award of Excellence for their project “Hydrated Heroes,” which tested different types of water and how they might naturally speed up the growth of plants, specifically crops, to help people that are suffering from food shortages around the world. Sakina and Sophie responded to questions about their project and Director Gómez presented each student with a check and certificate of accomplishment on behalf of EBMUD and the sponsors of the Contra Costa County Engineering and Science Fair. The Board congratulated and thanked the students for their work.

Next, General Manager Clifford C. Chan announced the District received awards for its Fiscal Years (FY) 2024 and FY 2025 budget documents from the Government Finance Officers Association (GFOA) and the California Society of Municipal Finance Officers (CSMFO). For the past 18 consecutive budget cycles in the last 30 years, the GFOA of the United States and Canada has presented a Distinguished Budget Presentation Award to the District for its published budget document. To receive this award, the District’s FY 2024 and FY 2025 budget document had to meet rigorous guidelines and program criteria as a policy document, operations guide, financial plan, and communication device. For the seventh time, the CSMFO awarded the District with the Operating Excellence Award in Budgeting. This is the highest level of award offered by CSMFO. The program is designed to recognize those agencies that have prepared a budget document that meets the highest standards. Mr. Chan acknowledged the team that developed the budget documents including Management Analyst II Bernadette de Leon; Manager of Budget Sam Feldman; Principal Management Analyst Nathan Hood; Management Analyst II Stacey Johnson; Director of Finance Sophia Skoda, Management Analyst II Jenny Tam, and Management Analyst II Theresa Won. He also acknowledged retired Rates Administrator Richard Lou for his many years of dedicated service and support on the District budget. Finance/Administration Chair Andy Katz presented the awards to the team members in attendance and thanked them for their work.

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera who commented on correcting the title for Closed Session Agenda Item 2a, documents she provided to the Planning Committee earlier, and the Pierce/Bland case.

CONSENT CALENDAR

- Item 8 was removed from the Consent Calendar for separate discussion.
- Motion by Director Linney, seconded by Director Young to approve the recommended actions for Items 1-7, and 9-10 on the Consent Calendar carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

1. **Motion No. 079-24** – Approved the Regular Meeting and Special Meeting Minutes of April 23, 2024.
2. The following correspondence was filed with the Board: 1) Presentation entitled, “Amending the Retirement Ordinance Pertaining to Board Members’ Pension Benefits,” dated May 14, 2024; 2) Presentation entitled, “Fiscal Year 2025 Proposed Non-Proposition 218 Rates, Charges, and Regulations,” dated May 14, 2024; 3) Handout entitled, “Amendments to Retirement Ordinance No. 40 Pertaining to Pension Benefits of Future Board Members (First Reading),” dated May 14, 2024; 4) Speakers’ Bureau and Outreach Record CY24, dated May 14, 2024; 5) Email dated April 27, 2024 from Ivette Rivera to Rischa Cole et. al regarding EBMUD & AFSCME 444/Council 57, RE: April 5, 2024 (bad-faith) “finalized” Grounds Foreman classification description (with attachment); and 6) Document titled Case 3:24-cv-02491-AGT Document 1, filed April 25, 2024.
3. **Motion No. 080-24** – Awarded a contract beginning on or after May 14, 2024 to the lowest responsive/responsible bidder, Airgas USA LLC, for supplying liquid oxygen and maintenance and repair services for the District’s Sobrante and Upper San Leandro water treatment plants 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 \$1,578,615 under Request for Quotation No. 2408.
- 4a - **Motion No. 081-24** – Awarded contracts beginning on or after May 14, 2024 to American Portables; Lance Soares Inc. dba Clean Site Service; Foothill Portable Toilets, Inc.; Northwest Cascade, Inc. dba Honey Bucket; SOS Portable Toilets; and United Site Services of California, Inc. to provide rental and servicing of portable chemical toilets, hand washing stations, and maintenance services for District-owned portable toilets and vault restrooms as required at various District locations for two years with three options to renew for additional one-year periods in an aggregate amount, after the addition of taxes, including option years, not to exceed \$7,876,075 under Request for Quotation No. 2404; and authorized the award of additional contracts for rental and servicing of portable chemical toilets, hand washing stations, and maintenance services for District-owned portable toilets and vault restrooms as required at various District locations, on an as-needed basis and subject to the total aggregate amount awarded by the Board for such services on May 14, 2024, with vendors that meet District standards and offer pricing at or below the range described in the current proposed contracts with vendors above to increase flexibility and ensure vendor availability. The Board of Directors will be notified of additional qualified vendors by means of the General Manager's monthly report.
- 4b.
5. **Motion No. 082-24** – Authorized an agreement beginning on or after May 14, 2024 with Diede Construction, Inc. in an amount not to exceed \$576,000 for materials and labor for landscaping and site improvements at Pardee Center.
6. **Motion No. 083-24** – Authorized an agreement beginning on or after May 14, 2024, with Simpson Gumpertz & Heger Inc. in an amount not to exceed \$2,988,873 for specialized engineering design services for seismic and heating, ventilation, and air conditioning systems improvements for the Main Wastewater Treatment Plant Administration and Laboratory Building.

- 7.1. **Motion No. 084-24** – Authorized an agreement beginning on or after May 14, 2024 with Accela, Inc. for \$257,829.45 for five years, with five options to renew for additional one-year periods for a total amount, including option years, not to exceed \$562,825.61 for Accela Software subscriptions and support to replace the software used to schedule, manage, and track compliance with the District’s Private Sewer Lateral Program.
- 7.2. **Motion No. 085-24** – Authorized an agreement beginning on or after May 14, 2024 with RedMark Technologies, LLC in an amount not to exceed \$697,600 to configure Accela Software to meet District business processes, implement interfaces with other systems, and migrate existing Private Sewer Lateral program data.
- 8a.-
8b. **Authorize agreements beginning on or after May 14, 2024 with Crash Champions; Walnut Creek Ford; Got Power Inc. dba CD & Power; Doc Bailey Construction Equipment, Inc.; FH Dailey Chevrolet; Fleetworks, Inc.; Golden Gate Truck Center; Grand Collision Center, Inc.; Kelly’s Truck Repair; Maz Glass; Nixon Egli Equipment Co., Inc.; Oakland Chevrolet; Owen Equipment Sales; Pape Machinery, Inc.; Peterson Power Systems, Inc.; Stewarts Body Shop Inc.; Unlimited Tool Repair & Fabrication, Inc.; and Uptown Ford of Oakland for one year in an aggregate amount not to exceed \$830,000 for vehicle/equipment repair and other related services; and authorize additional agreements for vehicle/equipment repair and other related services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on May 14, 2024, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager’s monthly report.**
- Addressing the Board was Eric Larsen, President, AFSCME Local 444, who commented on this expense being consolidated under one agreement for better tracking and cost control and noted while there is special work in the agreement, some of the tasks are normally performed by District forces. Local 444 does not object to the agreement but would like to see vacancies filled to reduce contracting out.
 - Motion by Director Gómez, seconded by Director Linney to approve the recommended actions for Items 8a-8b carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 087-24 – Authorized agreements beginning on or after May 14, 2024 with Crash Champions; Walnut Creek Ford; Got Power Inc. dba CD & Power; Doc Bailey Construction Equipment, Inc.; FH Dailey Chevrolet; Fleetworks, Inc.; Golden Gate Truck Center; Grand Collision Center, Inc.; Kelly’s Truck Repair; Maz Glass; Nixon Egli Equipment Co., Inc.; Oakland Chevrolet; Owen Equipment Sales; Pape Machinery, Inc.; Peterson Power Systems, Inc.; Stewarts Body Shop Inc.; Unlimited Tool Repair & Fabrication, Inc.; and Uptown Ford of Oakland for one year in an aggregate amount not to exceed \$830,000 for vehicle/equipment repair and other related services; and authorized additional agreements for vehicle/equipment repair and other related services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on May 14, 2024, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager’s monthly report.

9. **Motion No. 086-24** – Authorized the purchase of wireless telephone and broadband Internet services beginning on or after July 1, 2024 from AT&T Mobility National Accounts LLC and Cellco Partnership dba Verizon Wireless, for District devices for five years for a total aggregate amount not to exceed \$5,855,048. This purchase will be made through the National Association of State Procurement Officials contracts.
10. **Resolution No. 35397-24** – Designating The East Bay Municipal Utility District Ward Of Which Newly-Annexed Territory Will Be A Part In Anticipation Of Electing Directors.

DETERMINATION AND DISCUSSION

11. **Legislative Update.**

General Manager Clifford C. Chan stated the Legislative/Human Resources Committee met earlier and supported the staff recommendations for the bills in Legislative Report No. 03-24. Manager of Legislative Affairs Kathy Viatella asked if the Board had questions about the list of committee memberships for the District's state delegation that was included in their agenda materials and hearing none, provided a brief overview of Assembly member Diane Papan's background. Next, she reviewed the following bills in Legislative Report No. 03-24: AB 1798 (Papan) Department of Transportation: contaminated stormwater runoff: salmon and steelhead trout bearing surface waters; AB 1827 (Papan) Local government: fees and charges: water: higher consumptive water parcels; AB 2257 (Wilson) Local government: property-related water and sewer fees and assessments: remedies; AB 3023 (Papan) Wildfire and Forest Resilience Task Force: interagency funding strategy: state watershed restoration plans: forest resilience plans: grant program guidelines; and SB 1515, SB 1516, and SB 1517 (Committee on Local Government) Validations. She responded to questions on a potential climate bond and discussed the status of the State budget; the legislative calendar; water rights legislation specifically AB 1337 (Wicks) and AB 460 (Khan); AB 2614 (Ramos) which seeks to define tribal beneficial uses; and the Taxpayer Protection Act initiative. The California Supreme Court is expected to reach a decision in June on Governor Newsom's motion to remove the initiative from the November ballot. SB 1255 (Durazo) proposes a low-income rate assistance program that would add a charge to combined water and wastewater bills. Customers could opt-out of this charge, like community choice aggregation programs. Staff has been providing technical input to ensure the proposed program does not negatively impact the District's existing Customer Assistance Program (CAP). There was considerable Board discussion on the proposed low-income rate assistance program, the potential for local government implementation without state legislation, ensuring District CAP customers are not charged, programming and data-sharing requirements, and considering the bill's logistics, such as opt-out procedures. The Board asked staff to track the climate bond and identify projects in the bond that would benefit the District; explore if local governments can implement an opt-out program to fund their customer assistance programs absent any additional legislation; and information on the cost to customers for an opt-out program to fund the District's CAP if the program is expanded by auto-enrolling new customers.

- Director Chan left the meeting at 2:25 p.m. and returned at 2:28 p.m.
- Motion by Director Gómez, seconded by Director Chan to approve the recommended actions for Item 11 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 088-24 – Received Legislative Report No. 03-24 and approved positions on the following bills: 1) SUPPORT AB 1798 (Papan) Department of Transportation: contaminated stormwater runoff: salmon and steelhead trout bearing surface waters; 2) SUPPORT AB 1827 (Papan) Local government: fees and charges: water: higher consumptive water parcels; 3) SUPPORT AB 2257 (Wilson) Local government: property-related water and sewer fees and assessments: remedies; 4) SUPPORT AB 3023 (Papan) Wildfire and Forest Resilience Task Force: interagency funding strategy: state watershed restoration plans: forest resilience plans: grant program guidelines; and 5) SUPPORT SB 1515, SB 1516, and SB 1517 (Committee on Local Government) Validations; and received information on connection fee and capacity charge legislation.

12.1. **Vote on an option to amend the Retirement Ordinance as to pension benefits conferred on future Board members.**

Assistant General Counsel Lourdes M. Matthew provided the presentation. At the April 9, 2024 Regular Board meeting, staff presented two options for amending the Retirement Ordinance with respect to the pension benefits conferred on Board members. These options included either excluding all future Board members from participation in the Retirement System or prorating the accrual of service by future Board members. The Board directed staff to explore a third alternative, which would model existing provisions for members of the California Public Employees' Retirement System (CalPERS) who are appointed or elected officials, with respect to the final compensation that may be considered for purposes of calculating the pension for service as an elected or appointed member of a governing body. Ms. Matthew reviewed the proposed amendments' purpose and policy and explained how a Board member's retirement allowance is currently calculated and how a Board member with reciprocity could receive a windfall in their retirement allowance. She then discussed the third option requested by the Board to prevent a windfall - limit terminal compensation for future Board members to the highest average compensation received from the District as a Board member. She reviewed the proposed amendment language for the third option, noting it would apply to Board members elected or appointed on or after July 1, 2024. There was considerable discussion by the Board on the information presented and how option three would apply to an employee who leaves the District without retiring and is later elected or appointed to the Board; adding language to the Retirement Ordinance to ensure the Health Insurance Benefit is not impacted by the proposed amendments; ensuring benefits for an employee who separated but did not retire from the District are calculated separately from those earned as a director; and on the need to consult with the unions about potential impacts to employees who may return to serve on the Board. Next, Ms. Matthew highlighted the second policy arising from California Public Employees' Pension Reform Act (PEPRA) considerations for District retirees who may be elected or appointed to the EBMUD Board. If a District retiree is elected or appointed to serve on the Board, the retiree would be required to be reinstated to the Retirement System and the Retirement System would be required to stop payment of retirement benefits for the time the retiree serves on the Board. Reciprocal benefits of a District retiree could also be affected if a retiree reinstates from retirement to serve on the Board. The California Public Employees' Retirement System (CalPERS) considers reinstatement from retirement as breaking concurrent retirement. Retirement benefits after reinstatement would be based only on the final compensation from each agency where the retiree worked, rather than on the highest compensation across all agencies. The loss of reciprocity specifically affects District retirees who return to serve on the Board. However, this does not affect Directors who are not retirees of the District. To address these issues, the EBMUD Board could amend the Retirement Ordinance to exclude District retirees from being members of the

Retirement System if they are elected or appointed to serve on the Board. This would allow a retiree to continue receiving their pension, retain reciprocity, and receive compensation as Board members. She reviewed the proposed language to amend the Retirement Ordinance. The Board discussed the proposed amendment.

- Addressing the Board was Eric Larsen, President AFSCME Local 444, who commented on protecting the pensions being accrued by District employees, and asked for clarification on whether the options presented impact the pension and benefits of an employee that separates from the District before retirement age and is later elected to a position.

There was considerable discussion on bifurcating the service of a future Board member from service earned as a District employee to calculate terminal compensation and benefits; developing separate formulas to calculate terminal compensation for elected service and pension benefits for career service; and the potential effects bifurcating the periods of service would have on any Health Insurance Benefit provided under the Retirement System.

- Addressing the Board was Tim McGowan, EBMUD Retirement Board Employee representative who expressed support for option three and bifurcating the periods of service in relationship to compensation. He asked the Board to consider both periods of service together when considering Health Insurance Benefit vesting.

There was additional discussion and Director Young put forth a motion to consider amending the Retirement Ordinance as to pension benefits conferred on future Board members to limit the terminal compensation for future Board members to the highest average compensation received from the District as a Director; clarify how years of service in various capacities is used to calculate compensation to prevent windfall pensions; and exclude District retirees from the Retirement System if they are elected or appointed to serve on the Board. Staff will prepare revisions to the Retirement Ordinance based on the Board's feedback and present an ordinance to amend the Retirement Ordinance for a first reading at the May 28 Regular Board meeting.

- Motion by Director Young, seconded by Director Katz to approve the recommended actions for Item 12.1 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 089-24 – Voted to amend the Retirement Ordinance as to pension benefits conferred on future Board members.

- 12.2. The Board did not conduct a first reading of an ordinance to amend East Bay Municipal Utility District Retirement Ordinance No. 40.

- 13.1. – **File the Report and Recommendation of the General Manager for Revisions to the Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject to Proposition 218, and Regulations; and Set a Public Hearing for Tuesday, June 11, 2024, during the Board’s regular meeting, to consider the Report and Recommendation.**

Principal Management Analyst Phoebe A. Grow presented an overview of prior actions taken by the Board regarding the Fiscal Year (FY) 2024/2025 rates and charges. As part of the District’s biennial budget process, the General Manager files a report and recommendation on proposed revisions to the Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject to Proposition 218, and Regulations for FY 2025 in May. Ms. Grow highlighted the proposed revisions to non-Proposition 218 water and wastewater rates and charges and water service regulations which will be reviewed as part of the Mid-Cycle Budget workshop scheduled for May 28, 2024. The Board will conduct a public hearing to consider the General Manager’s report and recommendation at its June 11, 2024 meeting.

- Motion by Director Chan, seconded by Director Patterson to approve the recommended actions for Item 13.1 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
- Motion by Director Chan, seconded by Director Gómez to approve the recommended actions for Item 13.2 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 090 – Filed the Report and Recommendation of the General Manager for Revisions to the Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject to Proposition 218, and Regulations; and set a public hearing for Tuesday, June 11, 2024, during the Board’s regular meeting, to consider the Report and Recommendation of the General Manager.

14. **General Manager’s Report.**

General Manager Clifford C. Chan announced the Speakers’ Bureau and Outreach Record CY24 had been provided at Board places. He noted one correction to page 7 in the Monthly Report. The report stated the District announced the appointment of Ward 2 Director Luz Gómez at the Contra Costa Mayors conference in Danville on April 4. The report should have stated the District announced there were five applicants for the vacant Ward 2 position and that the Board would be making an appointment to fill the vacancy.

REPORTS AND DIRECTOR COMMENTS

15. **Committee Reports.**

- Filed with the Board were the Minutes for the April 23, 2024 Finance/Administration Committee.
- Chair Marguerite Young reported the Planning Committee met earlier and received reports on the New Central Area Service Center Project and Board of Directors Standby Officers.

- Chair William B. Patterson reported the Legislative/Human Resources Committee met earlier and received updates on the Diversity, Equity, and Inclusion Strategic Plan and the Legislative Update.
- Director April Chan reported the DERWA Board met on April 22 and approved the meeting minutes; Treasurer's reports; investment reports; a proclamation for John Coleman's service on the DERWA Board; the FY 2024-2025 operating capital budget; and the first amendment for the consulting agreement with the DERWA Interim Authority Manager.
- Director William B. Patterson reported the UMRWA Board met on April 26 and selected the Board Chair and Vice Chair and approved a proclamation for John Coleman's service to UMRWA; Board meeting minutes of January 26, 2024; Treasurer's report; FPP – Phase 1 Implementation Report; FPP – Phase 2 Planning Report; Little Indian Valley Meadow Restoration Project; Proposed FY 2025 Budget and FY 2024 Amendment; and re-setting the Regular Board meeting schedule. The Board also accepted the audited Financials for FY 2023 and FY 2022 and received updates on legislative issues and the Biomass JPA Initiative.
- Director Chan left the meeting at 3:36 p.m. and returned at 3:37 p.m.

16. Other Items for Future Consideration.

None.

17. Director Comments.

- Director Chan reported participating in the EBMUD Water Walk at Lake Chabot on May 11 where General Manager Clifford C. Chan spoke on the history of AAPI contributions to Lake Chabot. Mr. Chan thanked Public Information Office staff for their support during the event.
- Director Gómez reported attending the ACWA Spring Conference in Sacramento on May 8 and participating in a session on the importance of policies on artificial intelligence. General Manager Clifford C. Chan stated an internal workgroup is reviewing artificial intelligence at the District and is developing a policy.
- Director Linney reported attending the NorCAL ZERO dedication event and hydrogen station tour at the Main Wastewater Treatment Plant along with Directors Katz and Young on May 2.
- Director Patterson reported attending the California African American Water Education Foundation meeting at the ACWA Spring Conference in Sacramento on May 7 and a presentation at Acts Full Gospel Church for their 40th anniversary in Oakland on May 9.
- Directors Katz, Young and President McIntosh had no reports.

ADJOURNMENT

President McIntosh announced today's meeting will be closed in honor of Reverend Cecil Williams of Glide Memorial Church who passed away on April 22. She recounted Reverend Williams' life history, and contributions to the community as a fierce advocate for social justice and civil rights. In addition to his many accomplishments, Reverend Williams worked with elected officials and community leaders to combat issues such as racism, nuclear weapons, and apartheid. She announced a letter of condolence would be sent to the Williams family.

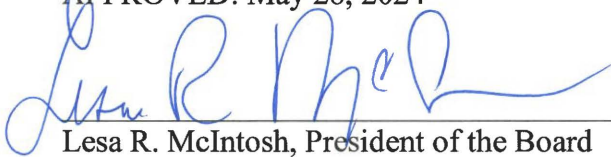
President McIntosh adjourned the meeting in honor of Reverend Cecil Williams at 3:52 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: May 28, 2024



Lesla R. McIntosh, President of the Board