



# BOARD OF DIRECTORS REGULAR MEETING

**DATE :**  
SEPTEMBER 4, 2024

**TIME:**  
8:00 A.M.

-  1021 E. Miramar Avenue | Claremont, CA 91711
-  [www.threevalleys.com](http://www.threevalleys.com)
-  909.621.5568

The mission of Three Valleys Municipal Water District is to supplement and enhance local water supplies to meet our region's needs in a reliable and cost-effective manner.



# THREE VALLEYS MUNICIPAL WATER DISTRICT REGULAR BOARD MEETING AGENDA

1021 E. Miramar Avenue, Claremont, CA 91711  
September 4, 2024 – 8:00 AM

[Pursuant to Government Code Section 54953(b), Director De Jesus will attend the meeting via teleconference, location at Alandale Insurance Agency, 337 W. Foothill Blvd., Glendora, CA 91740]

*The mission of Three Valleys Municipal Water District is to supplement and enhance local water supplies to meet our region's needs in a reliable and cost-effective manner.*

## NOTICE OF VIDEOCONFERENCE/TELECONFERENCE ACCESSIBILITY

Three Valleys MWD will hold this meeting of its Board of Directors on the date and time, and at the location set forth above. The public may participate in the meeting by physical attendance at the meeting or by videoconference or teleconference utilizing the following links:

**Link to join webinar:** <https://tvmwd.zoom.us/j/88216011939>

OR

**Dial in:** (669) 900-9128, Webinar ID: 882 1601 1939

Any member of the public wishing to participate in public comment may do so in any of the following manners: (1) by using the "Raise Hand" feature on the Zoom platform and when prompted by the Board President during the public comment period, (2) by filling out the electronic speaker's card at the following link <https://arcg.is/0z5GqO> prior to the close of public comment, (3) by sending an email to [PublicComment@tvmwd.com](mailto:PublicComment@tvmwd.com) prior to the close of public comment, or (4) those attending the meeting in person may complete a speaker's card and provide it to the Executive Assistant prior to the close of public comment.

1. CALL TO ORDER ROBERTO

2. ROLL CALL AGUIRRE

Jody Roberto, President  
Mike Ti, Vice President  
Carlos Goytia, Secretary/Treasurer  
David De Jesus, Director  
Jeff Hanlon, Director  
Bob Kuhn, Director  
Danielle Soto, Director

3. FLAG SALUTE ROBERTO

4. DIRECTOR REMOTE PARTICIPATION PURSUANT TO AB 2449 [Government Code Section 54953(f)] ROBERTO

4.A NOTIFICATION DUE TO JUST CAUSE

4.B REQUEST DUE TO EMERGENCY CIRCUMSTANCES

**BOARD ACTION REQUIRED ITEM 4.B**

Staff Recommendation: None

5. AGENDA REORDER/ADDITIONS [Government Code Section 54954.2(b)(2)] ROBERTO

Additions to the agenda may be considered when two-thirds of the board members present determine a need for immediate action, and the need to act came to the attention of TVMWD after the agenda was posted; this exception requires a degree of urgency. If fewer than two-thirds of the board members are present, all must affirm the action to add an item to the agenda. The Board shall call for public comment prior to voting to add any item to the agenda after posting.

6. PUBLIC COMMENT (Government Code Section 54954.3) ROBERTO

Opportunity for members of the public to directly address the Board on items of public interest within its jurisdiction. The public may also address the Board on items being considered on this agenda. TVMWD requests that all public speakers complete a speaker's card and provide it to the Executive Assistant.

We request that remarks be limited to three minutes or less. Pursuant to Government Code Section 54954.3, if speaker is utilizing a translator, the total allotted time will be doubled.

7. GENERAL MANAGER'S REPORT LITCHFIELD

The Executive Leadership Team will provide brief updates on existing matters under their purview.

7.A REMOTE ATTENDANCE BY DIRECTORS AT BOARD MEETINGS KENNEDY

Legal Counsel will provide an update on the Attorney General's opinion.

7.B ORGANIZATIONAL CHART AND SALARY SCHEDULE MODIFICATIONS ROBLES

The Board will review the updated organizational chart and salary schedule.

- |   |                   |
|---|-------------------|
| <b>7.C EMPLOYEE HEALTH CARE COSTS CY 2025</b>   | <b>ROBLES</b>     |
| The Board will review CY 2025 employee health care costs.   |                   |
| <b>7.D ALTERNATIVE EMPLOYEE HEALTH CARE COSTS CY 2025</b>   | <b>ROBLES</b>     |
| The Board will review alternative options for employee health care costs CY 2025.   |                   |
| <b>7.E CONFLICT OF INTEREST CODE BIENNIAL UPDATE</b>  | <b>LITCHFIELD</b> |
| The Board will review an amendment to the Conflict of Interest Code.  |                   |
| <b>7.F EMERGENCY EVACUATION PROCEDURES</b>  | <b>HOWIE</b>      |
| The District’s emergency evacuation procedures will be discussed.   |                   |
| <b>7.G WATER RESOURCES UPDATE</b>   | <b>LEE</b>        |
| An oral update of water resources planning efforts will be provided.  |                   |
| <b>8. DIRECTORS’/GENERAL MANAGER’S ORAL REPORTS</b>   | <b>ROBERTO</b>    |
| Directors may report on activities for meetings to which they are assigned to serve as the representative or alternate of TVMWD and on other areas of interest. |                   |
| <b>8.A METROPOLITAN WATER DISTRICT</b>  | <b>DE JESUS</b>   |
| <b>8.B CHINO BASIN WATERMASTER</b>  | <b>KUHN</b>       |
| <b>8.C SAN GABRIEL BASIN WATER QUALITY AUTHORITY</b>  | <b>KUHN</b>       |
| <b>8.D MAIN SAN GABRIEL BASIN WATERMASTER</b>   | <b>TI</b>         |
| <b>8.E SIX BASINS WATERMASTER</b>   | <b>HANLON</b>     |
| <b>8.F ADDITIONAL BOARD MEMBER REPORTS</b>  | <b>ALL</b>        |
| <b>8.G GENERAL MANAGER’S COMMENTS</b>   | <b>LITCHFIELD</b> |

**9. CLOSED SESSION**

**ROBERTO**

**9.A CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
[Government Code Section 54956.9(d)(1)]**

Name of Case: Chino Basin Municipal Water District v. City of Chino, et al., San Bernardino County Superior Court Case No. RCV RS 51010

**9.B CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
[Government Code Section 54956.9(d)(1)]**

Name of Case: San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case No. CPF-14-514004 (Consolidated with Case Nos. CPF-16-515282 and CPF-18-516389)

**9.C CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
[Government Code Section 54956.9(d)(1)]**

Name of Case: Victor Asemota et al. v. City of Claremont, et al., Los Angeles County Superior Court Case No. 24STCV08598

**9.D CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
[Government Code Section 54956.9(d)(1)]**

Name of Case: In re: Aqueous Film-Forming Foams Product Liability Litigation, United States District Court South Carolina Charleston Division, MDL No. 2:18-mm-2873-RMG [In re: City of Camden, et al. v. Tyco Fire Products LP, et al., 2:24-cv-02321-RMG; In re: City of Camden, et al. v. BASF Corporation, Case No. 2:24-cv-03174-RMG]

**10. FUTURE AGENDA ITEMS**

**ROBERTO**

**11. ADJOURNMENT AND NEXT MEETING**

**ROBERTO**

The Board will adjourn to a regular Board meeting on September 18, 2024.

In compliance with the Americans with Disabilities Act Government Code Section 54954.2(a), if special assistance is needed to participate in this public meeting, please contact the Executive Assistant at (909) 621-5568 at least 24 hours prior to the meeting.

Pursuant to Government Code Section 54957.5, materials related to an item on this agenda submitted after distribution of the agenda packet will be posted on the TVMWD website at [www.threevalleys.com](http://www.threevalleys.com).

Three Valleys MWD Board meeting packets and agendas are available for review at [www.threevalleys.com](http://www.threevalleys.com)



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SAN BERNARDINO, CALIFORNIA 92423-3130

August 28, 2024

TO: Board of Directors  
THREE VALLEYS MUNICIPAL WATER DISTRICT

FROM: Steven M. Kennedy, General Counsel

RE: Remote Attendance by Directors at Board Meetings

The purpose of this memorandum is to update the Board on a recent Opinion issued by the California Attorney General with respect to the above-referenced matter.

**Brown Act**

The Ralph M. Brown Act, Government Code Sections 54950-54963 (“Brown Act”), is a California “sunshine” law that sets forth the requirements for public access to meetings of local governmental agencies. Under the Brown Act, legislative bodies of local agencies may conduct meetings via teleconference subject to the following “classic” conditions set forth in Government Code Section 54953(b):

- (i) A quorum of the body must participate from location with the local agency’s jurisdiction, but other members may participate from outside the jurisdiction;
- (ii) The remote location(s) must be connected to the main meeting location by telephone, video, or both;
- (iii) The notice and agenda for the meeting must identify the remote location(s);
- (iv) The remote location(s) must be posted and accessible to the public;
- (v) All votes must be by roll call; and
- (vi) The meeting must otherwise comply with the Brown Act, which includes allowing participation by members of the public present in remote location(s).

Beginning October 1, 2021, Assembly Bill (“AB”) 361 amended the Brown Act by adding Government Code Section 54953(e) to allow local agencies to meeting virtually without complying with the above requirements under the following rules:

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(1) Declared State of Emergency. The Governor has declared a state of emergency, regarding which either (a) State or local officials have imposed or recommended measures to promote social distancing or (b) the legislative body determines, by majority vote, that meeting in person would present imminent risks to the health or safety of attendees due to the emergency.

(2) Public Comment Opportunities in Real Time. A legislative body that meets virtually pursuant to AB 361 must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time. A legislative body cannot require public comments to be submitted in advance of the meeting.

(3) No Action During Disruptions. In the event of a disruption that prevents the local agency from broadcasting the virtual meeting, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based option, the legislative body is prohibited from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based option is restored.

(4) Periodic Findings. Every 30 days, starting when it first meets virtually under AB 361, the legislative body must find, by majority vote, that it has reconsidered the circumstances of the state of emergency, and either (a) the state of emergency continues to directly impact the ability of the members to meet safely in person or (b) State or local officials continue to impose or recommend measures to promote social distancing.

Pursuant to its express statutory terms, AB 361 was set to automatically expire on January 1, 2024. As a result, various bills were introduced in the State Legislature to extend teleconferencing options beyond the sunset date of AB 361 and/or independent of a proclamation from the Governor of a statewide state of emergency and the need for an ongoing 30-day local recertification that such emergency restricts the ability of agencies to safely meet in person. One such bill – District-sponsored AB 2449 – was successfully enacted into law on September 13, 2022, following near-unanimous passage out of the State Senate and State Assembly.

The provisions of AB 2449, which added Government Code Section 54953(f) to the Brown Act until January 1, 2026, can be somewhat tricky in practice. Therefore, to assist the Board in implementing its remote-meeting options under the Brown Act, the attached Director Remote Participation Worksheet has been prepared which schematically reflects the relative distinctions for teleconference/remote meetings under traditional Brown Act provisions and under AB 2449.

Please also note that, with AB 361 expiring at the end of 2023, Governor Newsom signed AB 557 into the Brown Act on October 8, 2023. AB 557, which took effect on January 1, 2024, essentially re-enacts AB 361 with the following revisions:



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(1) Declared State of Emergency. It is no longer required that the Board find that State or local officials have imposed or recommended measures to promote social distancing as part of the Governor's declared a state of emergency.

(2) Resolution. It is no longer required that the Board adopt its findings in support of teleconference meetings under the requirements of AB 557 by formal Resolution.

(3) Periodic Findings. The Board may now renew its findings in support of continued teleconference meetings under AB 557 every 45 days (rather than every 30 days).

(4) No Sunset. The AB 557 requirements for teleconference meetings are not subject to automatic expiration.

Therefore, in the event of a State-declared emergency which results in the Board determining by a majority vote that meeting in-person would present imminent risks to the health or safety of attendees due to the emergency, directors would have additional grounds under the Brown Act to attend meetings remotely beyond those outlined in the enclosed worksheet.

#### **Attorney General Opinion**

On July 24, 2024, California Attorney General Rob Bonta issued Opinion No. 23-1002 (a copy of which is attached hereto) which concluded that the federal Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12132 ("ADA"), requires a local agency's legislative body to allow a member's remote participation from a non-public location as a reasonable accommodation for a qualifying director whose disability precludes his or her in-person attendance, subject to the requirements of the ADA. In addition, the Attorney General determined that any member of a legislative body participating remotely as a "reasonable accommodation" is required to comply with the following two requirements: (1) use two-way video and audio streaming in real time and (2) disclose the identity of any adults who are present with the member at the remote location.

This Opinion is a reversal of an earlier 2001 decision that reached a different conclusion. In support of this recent Opinion, the Attorney General analyzed the text and requirements of the ADA, the dramatic changes to the Brown Act following the COVID-19 pandemic (e.g., "state of emergency" teleconferencing, "just cause" teleconferencing for individual board members), as well as specific new provisions in the Brown Act that support remote participation under AB 2449 and AB 557.

Thus, the Attorney General's Opinion seems to be somewhat of an expansion of the disability prong of the "just cause" grounds set forth in the Brown Act [Government Code Section 54953(i)(2)(C)] such that the numerical limitations thereof may not apply if a director's reason for remote participation at a Board meeting is due to "just cause" grounds that relate to a physical or mental disability which qualifies for reasonable accommodation pursuant to the ADA.

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Please feel free to address with me any questions or comments that a director may have regarding this matter.

Enclosures

cc: Matthew H. Litchfield, General Manager

**DIRECTOR REMOTE PARTICIPATION WORKSHEET**

Type of Meeting	Board Attendance	Public Attendance	Findings/Limitations	Standard Brown Act Requirements G.C. Section 54950 et seq. ("General")
Classic Teleconference meeting [G.C. Sec. 54953(b)]	In person except for teleconferencing director(s)	In person at physical location and teleconference location	None	General requirements plus: <ul style="list-style-type: none"> <li>* Roll call votes;</li> <li>* Teleconference location identified on agenda;</li> <li>* Teleconference location accessible to the public;</li> <li>* Agenda posted at teleconference location;</li> <li>* Public participation from teleconference location; and</li> <li>* Quorum attending within District boundaries.</li> </ul>
AB 2449 meeting [G.C. Sec. 54953(f) until 1/1/26]	In person except for remote director(s)	In person and remote	<ul style="list-style-type: none"> <li>* Remote director either (1) <i>notifies</i> Board at earliest opportunity possible (but no more than two meetings per calendar year) of just cause (defined as childcare or caregiving of close relatives, contagious illness, physical or mental disability<sup>1</sup>, or official business travel) or (2) <i>requests</i> remote participation as soon as possible, and Board takes action to approve such request at earliest opportunity, due to emergency circumstances (defined as physical or family medical emergency); and</li> <li>* No director may participate solely from remote locations for more than three consecutive months or 20% of regular Board meetings within a calendar year, or more than two meetings if the Board regularly meets less than ten times per calendar year.</li> </ul>	General requirements plus: <ul style="list-style-type: none"> <li>* Quorum attending at physical location of meeting within District boundaries;</li> <li>* District must provide means by which public may remotely hear and visually observe meeting by either two-way audiovisual platform, two-way telephonic service and live webcasting, or both;</li> <li>* Agenda must provide information on remote access and participation;</li> <li>* Agenda must include opportunity for public to directly address Board via call-in option, internet-based service option, and in-person option;</li> <li>* If technical difficulties occur, Board must not take any action on agenda items until restoration of service;</li> <li>* Board cannot require public comments be submitted in advance of meeting and must provide opportunity for public to address Board in real time;</li> <li>* Public commenters may be required to register if deemed necessary by third-party remote platform;</li> <li>* Remotely-participating director publicly discloses before any action is taken (1) whether any other individuals 18 years of age or older are present at remote location and (2) general nature of director's relationship with any such individuals; and</li> <li>* Remote director participates through both audio and visual technology.</li> </ul>

<sup>1</sup> See Attorney General Opinion No. 23-1002 dated July 24, 2024

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

ROB BONTA  
Attorney General

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OPINION	:	
	:	
of	:	No. 23-1002
	:	
	:	July 24, 2024
ROB BONTA	:	
Attorney General	:	
	:	
CATHERINE BIDART	:	
Deputy Attorney General	:	

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The HONORABLE ELENI KOUNALAKIS, LIEUTENANT GOVERNOR, has requested an opinion on a question relating to the federal Americans with Disabilities Act and the California open meetings law known as the Ralph M. Brown Act.

**QUESTION PRESENTED AND CONCLUSION**

Under the Ralph M. Brown Act, a local agency’s legislative body must generally conduct its meetings in person at locations open to the public. Does the Americans with Disabilities Act (ADA) nonetheless require that a local agency’s legislative body allow remote participation for a member with a qualifying disability that precludes their in-person attendance at meetings of the body?

Yes. The ADA generally requires a local agency’s legislative body to allow remote participation as a reasonable accommodation for a member with a qualifying disability that precludes their in-person attendance at meetings of the body. This duty to reasonably accommodate is subject, however, to the Brown Act’s requirement that the remote participation must be conducted in a manner that simulates in-person attendance at meetings held in person at a location open to the public. To accomplish this, the Act requires that individual members who participate remotely (1) use two-way video and audio streaming in real time and (2) disclose the identity of any adults who are present

with the member at the remote location. These two requirements should be applied to members who attend meetings remotely due to a qualifying disability.

## BACKGROUND

The question before us involves the ADA, a federal law, and the Brown Act, a state law.<sup>1</sup> “Congress enacted the ADA in 1990 to remedy widespread discrimination against” people with disabilities.<sup>2</sup> Congress enacted amendments to the ADA in 2008 that reasserted that purpose.<sup>3</sup> In furtherance of its purpose, the ADA generally requires “reasonable accommodation” be made in employment, government services, and public accommodations for individuals with disabilities.<sup>4</sup> In the employment context, for example, a reasonable accommodation could be a modified work schedule.<sup>5</sup> Determining what constitutes a reasonable accommodation in any given scenario is a fact-intensive, individualized, case-by-case inquiry.<sup>6</sup>

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<sup>1</sup> This question is implicated in a pending case in the United States District Court for the Northern District of California, *Fischer v. City of Berkeley*, 3:23-cv-04280-TSH. It appears that no decision will be issued soon, if at all, in that case: the district court postponed the deadline for responding to the complaint multiple times in anticipation of possible settlement and referred the case to mediation, which has been completed. As of the date of publication of this opinion, the case docket reflects that the case settled in mediation, and a dismissal or status report is due September 20, 2024.

<sup>2</sup> *PGA Tour, Inc. v. Martin* (2001) 532 U.S. 661, 674; see Pub.L. 101-336, § 2 (July 26, 1990), 104 Stat. 327; 42 U.S.C. § 12101.

<sup>3</sup> Pub.L. 110-325, §§ 1-2 (Sept. 25, 2008), 122 Stat. 3553.

<sup>4</sup> See, e.g., 42 U.S.C. §§ 12112(b)(5) (employment), 12182(b)(2)(A)(ii) (public accommodations); 28 C.F.R. § 35.130(b)(7)(i) (government services); see also *Where Do We Go Berkeley v. Cal. Dept. of Transportation* (9th Cir. 2022) 32 F.4th 852, 860 fn. 4 (stating that “reasonable accommodation” in Title I of ADA and “reasonable modification” in Title II of ADA “create identical standards and may be used interchangeably,” quoting *Payan v. L.A. Cmty. Coll. Dist.* (9th Cir. 2021) 11 F.4th 729, 738 fn. 4).

<sup>5</sup> See generally 42 U.S.C. § 12111(9) (referring to job restructuring and modifying facilities, schedules, and equipment, as examples); 29 C.F.R. § 1630.2(o)(2)(ii) (same).

<sup>6</sup> *McGary v. City of Portland* (9th Cir. 2004) 386 F.3d 1259, 1270; *Crowder v. Kitagawa* (9th Cir. 1996) 81 F.3d 1480, 1486; see also *Zivkovic v. Southern Cal. Edison Co.* (9th Cir. 2002) 302 F.3d 1080, 1089 (“[E]mployer is not obligated to provide” employee’s preferred accommodation but “need only provide some reasonable accommodation,” quoting *E.E.O.C. v. Yellow Freight Sys. Inc.* (7th Cir. 2001) 253 F.3d 943, 951); see, e.g.,

(continued...)

The Legislature enacted the Ralph M. Brown Act in 1953 “to ensure the public’s right to attend the meetings of public agencies.”<sup>7</sup> In furtherance of that purpose, the Act generally requires legislative bodies of local agencies to hold their meetings in person at locations open to the public.<sup>8</sup>

As to the interplay of these laws, the ADA plainly preempts contrary state law.<sup>9</sup> But state law can be relevant to determining what the ADA requires.<sup>10</sup> That means that

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*Pruett v. Ariz.* (D. Ariz. 2009) 606 F.Supp.2d 1065, 1068, 1079 (rejecting plaintiff’s accommodation claim for chimpanzee as service animal because plaintiff had not shown it “more adequately meets her disability-related needs than several alternatives,” and had conceded “even this mild-mannered, affable Chimpanzee could become aggressive” and is likely to grow too big to be a service animal).

<sup>7</sup> *Freedom Newsp. Inc. v. Orange Co. Employees Ret. Sys.* (1993) 6 Cal.4th 821, 825; Stats. 1953, ch. 1558, § 1 (initial enactment of statutory scheme); Stats. 1961, ch. 115, § 1 (naming statutory scheme “Ralph M. Brown Act”).

<sup>8</sup> See, e.g., Gov. Code, § 54953, subd. (a) (“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter”); *id.*, subd. (b)(3) (requiring teleconferencing locations be accessible to public); see also *id.*, § 54950 (reciting that “agencies in this State exist to aid in the conduct of the people’s business” and proclaiming “[i]t is the intent of the law that their actions be taken openly and that their deliberations be conducted openly”). The requirement for agency meetings to be open to public scrutiny is also enshrined in the California Constitution. (Cal. Const., art. I, § 3, subd. (b)(1) (“meetings of public bodies . . . shall be open to public scrutiny”).)

<sup>9</sup> *Shavelson v. Bonta* (N.D. Cal. 2022) 608 F.Supp.3d 919, 926 (stating that ADA “requires preemption of inconsistent state law” when necessary to comply with its command—including the ADA’s command that state and local governments provide ‘reasonable modification[s]’ to their programs in certain circumstances,” quoting *Mary Jo C. v. New York State & Local Retirement System* (2d Cir. 2013) 707 F.3d 144, 163; *Crowder v. Kitagawa, supra*, 81 F.3d 1480, 1485 (“When a state’s policies, practices or procedures discriminate against [people with disabilities] in violation of the ADA, Department of Justice regulations require reasonable modifications in such policies, practices or procedures”).

<sup>10</sup> See *Cripe v. City of San Jose* (9th Cir. 2001) 261 F.3d 877, 884 (“If a disabled person cannot perform a job’s ‘essential functions’ (even with a reasonable accommodation), then the ADA’s employment protections do not apply”); 42 U.S.C. §§ 12111 (“[C]onsideration shall be given to the employer’s judgment as to what functions of a job are essential”), 12131-12132 (prohibiting discrimination against individuals who meet

(continued...)

the details of the Brown Act’s provisions regarding in-person meeting attendance at public locations are relevant to a reasonable accommodation analysis under the ADA. For purposes of the question presented here, the relevant inquiry is whether the Brown Act considers in-person meeting attendance at public locations to be an “essential function” or “essential eligibility requirement.”

In 2001, we considered the same substantive question. We concluded that remote participation could *not* be a reasonable accommodation under the ADA.<sup>11</sup> Among other considerations, we discerned from the Brown Act that in-person meeting attendance by a member of a Brown Act body at a public location was an “essential function” and “essential eligibility requirement.” At that time, the Brown Act did not allow a member to participate in a meeting remotely from a nonpublic location in any circumstance whatsoever.<sup>12</sup> Although the Act did authorize members to participate in meetings by “teleconferencing” (by audio or visual means), that option was available only if the teleconferencing location itself was also open to the public.<sup>13</sup>

Since then, the Legislature has modified the Brown Act. Intervening amendments allow remote participation in meetings by members from nonpublic locations in certain circumstances.<sup>14</sup> As we will explain, those amendments reveal that remote participation no longer falls outside the realm of what can be a “reasonable accommodation” for purposes of the ADA.

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public entity’s “essential eligibility requirements”); see, e.g., *Peden v. City of Detroit* (2004) 470 Mich. 195, 209 (review of state law governing police officers to identify “essential functions” enabling such officers to perform duties).

<sup>11</sup> 84 Ops.Cal.Atty.Gen. 181, 185-188 (2001).

<sup>12</sup> See *ibid.*

<sup>13</sup> See Stats. 1998, ch. 260, § 1 (providing that “each teleconference location shall be accessible to the public,” “at least a quorum of the members of the legislative body shall participate from locations within” the agency’s jurisdiction, and that “agenda shall provide an opportunity for members of the public to address the legislative body directly . . . at each teleconference location” (Gov. Code, § 54953, subd. (b)(3)), and defining “teleconference” to mean a meeting of members “in different locations, connected by electronic means, through either audio or video, or both” (*id.*, § 54953, subd. (b)(4)).)

<sup>14</sup> See, e.g., Stats. 2023, ch. 534, § 1 (Gov. Code, § 54953, subds. (e), (f), (j)(4)); Stats. 2022, ch. 285, § 1 (same); Stats. 2021, ch. 165, § 3 (Gov. Code, § 54953, subd. (e)).

## ANALYSIS

### **Reasonable Accommodation for a “Qualified Individual” with a Disability Under the ADA**

Under the ADA, a person with a disability is someone who has “a physical or mental impairment that substantially limits one or more” of the person’s “major life activities.”<sup>15</sup> Before a requirement for a reasonable accommodation applies, it must be established that the person is a “qualified individual” with a disability. The meaning of a “qualified individual,” and the factors informing whether an accommodation for such an individual is “reasonable,” turn on which portion of the ADA applies.<sup>16</sup>

The ADA is divided into titles, and the first two are implicated here.<sup>17</sup> Title I applies to employment by “covered entities” (including local governments), which are defined in part by whether the entity employs more than a threshold number of employees in a specified period.<sup>18</sup> Title II applies to participation in state and local government services, programs, and activities.<sup>19</sup>

Whether serving as a member on a board of a local agency governed by the Brown Act constitutes employment under Title I, or instead participation in a program or activity under Title II, can depend on the particular board, commission, or body.<sup>20</sup> Thousands of

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<sup>15</sup> 42 U.S.C. § 12102(1)(A); see 29 C.F.R. § 1630.2(i) (defining major life activities to include various tasks, such as working and “operation of a major bodily function”).

<sup>16</sup> See, e.g., 42 U.S.C. §§ 12111(8) (defining “qualified individual” under Title I), 12131(2) (defining “qualified individual with a disability” under Title II).

<sup>17</sup> See Pub.L. 101-336 (July 26, 1990), 104 Stat. 327 (enacting five titles).

<sup>18</sup> 42 U.S.C. § 12111(2) (“covered entity” includes “employer”); *id.*, § (5)(A) (defining “employer” as one “engaged in an industry affecting commerce” with “15 or more employees” for “20 or more calendar weeks in the current or preceding calendar year,” and includes “any agent of such” employer); see *Zimmerman v. Oregon Dept. of Justice* (9th Cir. 1999) 170 F.3d 1169, 1177 (“Congress consciously and expressly chose to include the employment practices of state and local governments in Title I”).

<sup>19</sup> 42 U.S.C. §§ 12132, 12131(1)(A); see, e.g., *Willits v. City of Los Angeles* (C.D. Cal. 2013) 925 F.Supp.2d 1089, 1093 (stating that City of Los Angeles is covered by Title II).

<sup>20</sup> Compare *Zimmerman v. Oregon Dept. of Justice*, *supra*, 170 F.3d at pp. 1174, 1176, 1178-1179 (Title II applies to public agency “outputs,” not “inputs” like employment which is covered by Title I) with *Where Do We Go Berkeley v. California Dept. of Transportation*, *supra*, 32 F.4th at p. 861 (Title II “bring[s] within its scope anything a public entity does,” and “whether it is a normal function of a governmental entity,” quoting *Barden v. City of Sacramento* (9th Cir. 2002) 292 F.3d 1073, 1076); see, e.g.,

(continued...)



bodies governed by the Brown Act exist.<sup>21</sup> Given the myriad ways in which these bodies may be formed and operate, it would appear infeasible and imprudent to make a universal pronouncement about whether board membership falls under Title I versus Title II. But we need not embark on such an endeavor; in either case, our answer to the question presented here is the same. To explain why, we must return to the concepts of a “qualified individual” and a “reasonable accommodation.” Those terms have multiple meanings under the ADA, but we focus only on those that are relevant to our purposes.<sup>22</sup>

Under Title I, a qualified individual with a disability is someone who “can perform the essential functions” of the job in question—that is, the “fundamental job duties of the employment position”—with or without reasonable accommodation.<sup>23</sup> A job function may be essential, for example, “because the reason the position exists is to perform that function.”<sup>24</sup> Factors that help to identify essential functions may include (among others) the employer’s judgment on what functions are essential, the employer’s written job descriptions, how much time is spent performing the function, consequences of not requiring the function to be performed, work by past employees in the job, and work of current employees in similar jobs.<sup>25</sup>

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*Mirka v. Langley, City of* (9th Cir. 2001) 16 Fed.Appx. 665, 666 (rejecting city hall volunteer’s Title II claim because her services were “‘input’ rather than ‘output’ functions”); *Holmes v. City of Aurora* (N.D. Ill., Jan. 18, 1995, No. 93 C 0835) 1995 WL 21606, at \*3-4 (stating that city’s pension board of mayoral appointees, current city employees, and former city employee would be covered by Title I if board “is considered to be plaintiff’s employer or an agent of the City,” but “should be considered a ‘public entity’” covered by Title II because of nature and extent of its relationship with city); see also fns. 60-73, *post*, and corresponding text in the body discussing members’ reasonable accommodation claims all brought under Title II.

<sup>21</sup> See, e.g., Letter from David Chiu, City Attorney for the City and County of San Francisco to Deputy Attorney General Catherine Bidart, February 9, 2024, p. 2 (stating that San Francisco has “well over 100 Brown Act bodies”); see also Gov. Code, § 54952 (broadly defining “legislative body”).

<sup>22</sup> See, e.g., 42 U.S.C. §§ 12102(1)(C) (defining “disability” to include individual “regarded” as having qualifying impairment), 12201(h) (no reasonable accommodation is required for such individual).

<sup>23</sup> 42 U.S.C. § 12111(8) (defining “qualified individual” with disability); 29 C.F.R. § 1630.2(n)(1) (defining “essential functions” to include “fundamental job duties of the employment position” and to exclude “marginal functions”).

<sup>24</sup> 29 C.F.R. § 1630.2(n)(2) (listing examples of reasons why function could be essential).

<sup>25</sup> 29 C.F.R. § 1630.2(n)(3).

A covered employer is responsible for providing a reasonable accommodation to a qualified individual with a disability unless it would cause the employer “undue hardship.”<sup>26</sup> But no failure to accommodate occurs if an otherwise qualified individual cannot, even *with* a reasonable accommodation, meet the employer’s “qualification standards” that are both “job-related and consistent with business necessity.”<sup>27</sup> The distinction between “qualification standards” and “essential functions” is that the latter are basic duties while the former are “personal and professional attributes,” which may include “skill, experience, education, physical, medical, safety and other requirements.”<sup>28</sup>

Under Title II, a qualified individual with a disability is an individual who “meets the essential eligibility requirements” to “participat[e] in programs or activities provided by a public entity,” with or without reasonable modification.<sup>29</sup> An accommodation to a qualified individual is not reasonable under Title II if it would fundamentally alter the government program or activity or cause an undue financial or administrative burden.<sup>30</sup> An accommodation would fundamentally alter a program if it would compromise the “essential nature” of the program.<sup>31</sup>

For its part, the United States Department of Justice has issued informal guidance that expresses its view on the availability of remote participation by members at city council meetings as a reasonable accommodation under the ADA in appropriate circumstances.<sup>32</sup> The guidance states that:

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<sup>26</sup> 42 U.S.C. § 12112(b)(5)(A); see 42 U.S.C. § 12111(10) (defining “undue hardship” as “action requiring significant difficulty or expense” in light of certain factors including cost of the accommodation and entity’s resources).

<sup>27</sup> 42 U.S.C. § 12113(a).

<sup>28</sup> *Bates v. United Parcel Service, Inc.* (9th Cir. 2007) 511 F.3d 974, 989-990; 29 C.F.R. § 1630.2(n)(1) (essential functions) & *id.* (q) (qualification standards).

<sup>29</sup> 42 U.S.C. § 12131(2).

<sup>30</sup> *Tennessee v. Lane* (2004) 541 U.S. 509, 532; 28 C.F.R. §§ 35.130(b)(7)(i), 35.150(a)(3).

<sup>31</sup> *Alexander v. Choate* (1985) 469 U.S. 287, 300. For example, “moving a beach volleyball program into a gymnasium, so a player who uses a wheelchair can participate on a flat surface without sand, would ‘fundamentally alter’ the nature of the game.” (U.S. Dept. of Justice Civil Rights Division, “ADA Update: A Primer for State and Local Governments,” originally issued Jun. 1, 2015, and last updated Feb. 28, 2020, available at <https://www.ada.gov/resources/title-ii-primer/> (as of July 24, 2024), (hereafter, “US DOJ ADA Primer”).)

<sup>32</sup> See 42 U.S.C. § 12206; see also *id.*, §§ 12134 (“Attorney General shall promulgate  
(continued...)”)

[I]f an elected city council member has a disability that prevents her from attending council meetings in person, delivering papers to her home and allowing her to participate by telephone or videoconferencing would enable her to carry out her duties.<sup>[33]</sup>

Our independent analysis below reaches a similar conclusion with respect to local officials subject to the Brown Act. We first explain our conclusion from 2001.

## 2001 Opinion

Our 2001 opinion concluded that remote participation in a meeting subject to the Brown Act could not be a reasonable accommodation under either Title I or Title II.<sup>34</sup> As to Title I, the opinion determined that the Brown Act’s requirement for in-person attendance at meetings at locations open to the public was an essential function of holding office on a local agency board.<sup>35</sup> It observed that “[p]ublic attendance facilitates the people’s right to participate in all phases of local government decision-making and serves to prevent misuse of the democratic process by secret legislative action at the local government level.”<sup>36</sup> The opinion also determined that, under the Brown Act, “the ability to attend scheduled meetings that are accessible to the public is both ‘job-related and consistent with business necessity,’” and “related to the requisite qualifications” to hold office at the local level.<sup>37</sup> It explained:

[N]othing other than the presence of such person [that is, a member] at a publicly accessible site would serve the state’s legitimate interest in public attendance and participation in the decision-making process. While teleconferencing may consist of electronic connection through either audio, video, or both (Gov. Code, § 54953, subd. (b)(4)), no camera focused upon a member in a remote location closed to the public may detect the presence of other influences, including persons, within that location, and thus cannot

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regulations in an accessible format that implement this part [Title II]”); *Fortyune v. City of Lomita* (9th Cir. 2014) 766 F.3d 1098, 1104 (giving manual comprising “DOJ’s interpretation of its ADA implementing regulations” controlling weight unless plainly erroneous or inconsistent).

<sup>33</sup> US DOJ ADA Primer, *ante* fn. 31.

<sup>34</sup> 84 Ops.Cal.Atty.Gen., *supra*, pp. 185-188.

<sup>35</sup> *Id.*, p. 185.

<sup>36</sup> *Ibid.*

<sup>37</sup> 84 Ops.Cal.Atty.Gen., *supra*, pp. 185-186.

with similar effectiveness serve the public’s interest in “curb[ing] misuse of the democratic process.”<sup>38]</sup>

The opinion further determined that even if Title II instead applied, remote participation could not be a reasonable accommodation, for the same reasons set forth in the Title I analysis. It concluded that “the ability to attend a meeting of the board at a location accessible to members of the public, including individuals with disabilities, would constitute an essential eligibility requirement.”<sup>39</sup> As discussed earlier, Title II does not require that a reasonable accommodation be made for an individual who does not meet an “essential eligibility requirement.”<sup>40</sup> The 2001 opinion resolved the Title II analysis based on that factor alone.<sup>41</sup>

### **Subsequent Amendments to the Brown Act Illustrate That Remote Participation Can Be a Reasonable Accommodation**

Subsequent changes to the Brown Act lead us to a different conclusion from the one described in the 2001 opinion. As the 2001 opinion observed, the Brown Act at that time authorized members to participate in meetings by audio or video “teleconferencing” only if, among other requirements, the teleconferencing location was open to the public.<sup>42</sup> But the Legislature has since amended the Brown Act multiple times to authorize remote participation by members from nonpublic locations in certain circumstances, using two-way, real-time video and audio streaming—technology which was not nearly as developed and widely used in 2001 as it is today.<sup>43</sup> The across-the-board prohibition on remote participation by members in nonpublic locations has been removed from the Act.

In 2021, during the COVID-19 pandemic, the Legislature amended the Brown Act to allow remote participation from nonpublic locations by *all* members (regardless of any disability), using two-way, real-time video and audio streaming.<sup>44</sup> The authorization

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<sup>38</sup> *Id.*, p. 186, quoting *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.

<sup>39</sup> *Id.*, p. 188.

<sup>40</sup> See *ante* fn. 29 and corresponding text in the body.

<sup>41</sup> 84 Ops.Cal.Atty.Gen., *supra*, p. 188. As discussed above, if the essential eligibility requirements are met, a particular accommodation would still not be owed if the accommodation would fundamentally alter the nature of the government activity at issue or would be an undue burden. (See *ante* fns. 30-31 and corresponding text in the body.)

<sup>42</sup> Gov. Code, § 54953, subd. (b), as amended by Stats. 1998, ch. 260, § 1; see *ante* fn. 13.

<sup>43</sup> Stats. 2021, ch. 165, § 3, eff. Sept. 16, 2021; Stats. 2022, ch. 285, § 1, eff. Jan. 1, 2023; Stats. 2023, ch. 534, § 1, eff. Jan. 1, 2024.

<sup>44</sup> Stats. 2021, ch. 165, § 3, eff. Sept. 16, 2021 (adding Gov. Code, § 54953, subd. (e) to  
(continued...)

was predicated on a declared state of emergency and the presence of health- or safety-related circumstances.<sup>45</sup> In 2022, as those circumstances began to wane, California started planning for COVID-19 to become an endemic disease. The Governor announced that the declared state of emergency—one of the prerequisites for members to meet remotely under the 2021 amendment—would end in February 2023, setting the stage for in-person meetings to resume.<sup>46</sup>

Against this backdrop, the Legislature amended the Act in 2022 to temporarily authorize (until 2024) an *individual* member to occasionally participate from a nonpublic location in certain exceptional circumstances. That authorization was subject to various requirements, including two-way streaming and a requirement that a quorum of members participate from a single physical location open to the public.<sup>47</sup> In 2023, the Legislature extended that limited authorization until 2026.<sup>48</sup> Subject to various requirements, the

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allow remote meetings with conditions, such as allowing public to directly address members, and prohibiting action on agenda when disruption prevents broadcast or comment). This exception was originally set to expire in 2024 (*id.*, adding Gov. Code, § 54953, subd. (f); later the exception was amended, including an amendment for the exception to last indefinitely (Stats. 2023, ch. 534, § 2, eff. Jan. 1, 2024, operative Jan. 1, 2026).

<sup>45</sup> Stats. 2021, ch. 165, § 3, eff. Sept. 16, 2021 (amending Gov. Code, § 54953, subd. (e) to allow remote meetings during declared state of emergency when social distancing is officially imposed or recommended, or if meeting’s purpose is to determine whether in-person meeting would imminently risk attendee health or safety, with periodic related findings).

<sup>46</sup> See Press Release, “Governor Newsom to End the COVID-19 State of Emergency,” Oct. 17, 2022 (announcing declared state of emergency from COVID-19 to end February 28, 2023), available at <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>, as of July 24, 2024; Press Release, “Governor Newsom Marks End of California’s COVID-19 State of Emergency,” Feb. 28, 2023, available at <https://www.gov.ca.gov/2023/02/28/governor-newsom-marks-end-of-californias-covid-19-state-of-emergency/>, as of July 24, 2024; see also Associated Press, “California Changes Its COVID Strategy and Announces a Plan to Live with the Virus,” updated Feb. 18, 2022, available at <https://www.npr.org/2022/02/18/1081655623/california-adopts-nations-first-endemic-virus-policy>, as of July 24, 2024 (covering announced preparations for endemic stage).

<sup>47</sup> Stats. 2022, ch. 285, § 1, eff. Jan. 1, 2023 (adding Gov. Code, § 54953, subds. (f), (j), (k)).

<sup>48</sup> Stats. 2023, ch. 534, § 1, eff. Jan. 1, 2024 (amending Gov. Code, § 54953, subd. (k)). A bill is pending to amend this legislation; as of the date of this opinion, the bill would

(continued...)

new authorization allows a member to participate in a meeting remotely for a limited number of times, if there is either “just cause” or “emergency circumstances.”<sup>49</sup>

The first of those exceptions—the one for “just cause”—explicitly refers to ADA accommodations. Specifically, “just cause” can be established based on a need related to a disability that has not been “otherwise accommodated” under the ADA.<sup>50</sup> In other words, the exception authorizes a member to participate at meetings remotely because of a need related to a disability, but excludes from its ambit a disability *already* accommodated under the ADA. The most logical explanation for that exclusion is that the Legislature presupposed that a member may already participate remotely for an unlimited number of sessions as an ADA accommodation.<sup>51</sup>

Returning to our chronology, in 2023 the Legislature extended indefinitely the authorization for *all* members to meet remotely from nonpublic locations during a declared state of emergency as specified.<sup>52</sup> We refer to these as “pandemic-like”

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provide a more detailed specification for calculating the number of times a member may participate remotely. (Assem. Bill No. 2302 (2023-2024 Reg. Sess.), § 1, as introduced Feb. 12, 2024.)

<sup>49</sup> Gov. Code, § 54953, subd. (f)(2).

<sup>50</sup> “[J]ust cause” includes “[a] need related to a physical or mental disability . . . not otherwise accommodated by subdivision (g),” and subdivision (g) refers to the ADA. (Gov. Code, § 54953, subd. (j)(2)(C); see *id.*, subd. (g) (reciting requirement for legislative body to have procedure for swiftly resolving requests for ADA reasonable accommodations).) A disability that has not been “otherwise accommodated” could be, for example, in the midst of an interactive process to identify a reasonable accommodation. (See *Anthony v. Trax Internat. Corp.* (9th Cir. 2020) 955 F.3d 1123, 1134 (recounting employer obligation to engage in interactive process with employees to find reasonable accommodation).)

<sup>51</sup> The exception allowing remote participation for “just cause” may also be met by caregiving needs, a contagious illness, or official travel. (Gov. Code, § 54953, subd. (j)(2)(A), (B) & (D).) The other exception for an individual member to participate remotely—in “emergency circumstances”—defines such circumstances as “a physical or family medical emergency that prevents a member from attending in person.” (Gov. Code, § 54953, subd. (j)(1).)

<sup>52</sup> Stats. 2023, ch. 534, § 2, eff. Jan. 1, 2024 (amending Government Code section 54953 subdivisions (e) and (j), operative January 1, 2026, to amend and preserve authorization with no sunset date for entire body to meet remotely during declared state of emergency, if legislative body makes related findings, as specified).

circumstances.<sup>53</sup> In such circumstances, if a majority of members makes certain health- or safety-related findings during a declared state of emergency, all members may participate remotely for an unlimited number of meetings at nonpublic locations.<sup>54</sup> So even after the limited authorization for individual members to participate remotely for “just cause” or in “emergency circumstances” expires in 2026, the Act will continue to allow remote participation by all members in “pandemic-like” circumstances.

These recent changes to the Brown Act point to a conclusion that is different from the one we reached in 2001. Perhaps most telling is the new “just cause” exception, allowing remote participation for a need related to a disability—but not a disability that has been “otherwise accommodated” under the ADA.<sup>55</sup> While this exclusion is currently set to expire in 2026, it nevertheless reveals a legislative belief upon its enactment that remote participation was already available for a qualifying individual as an accommodation under the ADA.<sup>56</sup> We therefore conclude that, in light of the recent legislative amendments, in-person attendance is no longer an “essential job function” nor “an essential eligibility requirement” under Title I or Title II, as the Legislature has determined that remote participation is compatible with membership on a Brown Act body.

### **Conditions on Remote Participation**

Although the Brown Act now allows remote participation in certain circumstances, in-person attendance at physical locations open to the public remains the default under the Act. The Act therefore places multiple conditions on remote participation. One requires virtual access by the member so the public can address members directly by video and audio streaming (which again, was not nearly as developed and used in 2001 as it is today); if such access is disrupted, the body (through its members) cannot take action on any agenda item until the streaming connection is

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<sup>53</sup> We do not foreclose the possibility that a declared state of emergency unrelated to a pandemic could entail circumstances and related findings that would satisfy the exception allowing all members to participate remotely. (See *ibid.*)

<sup>54</sup> Gov. Code, § 54953, subd. (e); Stats. 2023, ch. 534, § 2 (amending Gov. Code, § 54953, subd. (e), operative Jan. 1, 2026).

<sup>55</sup> See *ante* fn. 50.

<sup>56</sup> Remote participation on an individual case-by-case basis as a reasonable accommodation under the ADA is also consistent as a policy matter with the Brown Act provision allowing all members to participate remotely in pandemic-like circumstances. In such circumstances, the Act makes remote participation available for the safety of everyone. Safety concerns also support allowing an individual member to participate remotely if their particular disability puts them at heightened risk of serious illness or death due to COVID-19 (or other maladies or conditions).

restored.<sup>57</sup> Another condition requires the member who is participating remotely in a non-public location to disclose the identity of any adults who are present in the room with the member and the nature of their relationship.<sup>58</sup>

We do not purport to prescribe here all of the conditions that could or should be placed on remote meeting attendance as part of a reasonable accommodation. Nor do we attempt to prescribe all of the ways in which technology can be employed to simulate in-person meetings to best promote the Act’s purpose of public participation—which will likely evolve over time. But mindful of the Act’s strong preference for in-person meetings, we conclude that remote participation as a reasonable accommodation must be done in a manner that simulates in-person attendance, as the Act requires where it allows remote participation for other reasons. This would include the Act’s requirements that remote participants (1) use two-way, real-time video and audio streaming and (2) disclose the presence of other adults at the remote location.<sup>59</sup>

### **Authority from Other Jurisdictions Supports Our Conclusion**

Our answer to the question presented generally accords with cases in other jurisdictions that have considered whether remote participation could be a reasonable accommodation despite state open-meeting laws that generally require in-person attendance. We are aware of three such cases, all decided by district courts. In the first two cases, the courts upheld remote participation as a reasonable accommodation. In the third case, the court found a lack of factual support for remote participation as a reasonable accommodation—but did not rule out the possibility of remote participation in other, more appropriate factual circumstances.

In *Silver v. City of Alexandria*, a federal district court in Louisiana granted a 98-year old city council member a preliminary injunction allowing him to participate remotely in city council meetings as a reasonable accommodation under Title II of the ADA because his cardiovascular-related disability and age made him “particularly

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<sup>57</sup> See Gov. Code, §§ 54953, subds. (e)(2)(A) (public access), (e)(2)(B) (disruption), (f)(1)(D) (same), subds. (f)(1)(A) (video and audio) & (f)(2)(C) (same).

<sup>58</sup> Gov. Code, § 54953, subd. (f)(2)(B); cf. 84 Ops.Cal.Atty.Gen., *supra*, p. 186.

<sup>59</sup> Many commenters pointed to advances in technology—and our collective experience with that technology during the pandemic—as a basis for concluding that remote participation is a reasonable accommodation. While we acknowledge that technology has advanced in this area, we stress that our analysis is not driven by those advances. Our analysis instead turns on legal changes to the Brown Act, which reveal that a member may, in appropriate circumstances, attend a meeting remotely from a nonpublic location as a reasonable accommodation under the ADA.



susceptible” to succumbing to COVID-19.<sup>60</sup> The court observed that the state’s open meetings law for many years contained no exception allowing remote participation, but that a recent amendment allowed such participation (on voting and debating) during public health emergencies such as the pandemic.<sup>61</sup> The court also noted the prevalence of video-streaming technology, which was used for the hearing on the injunction.<sup>62</sup> While “[i]t is true that virtual participation by an individual council member is not exactly the same as participation by physical presence,” the court ultimately determined there would be “no substantial negative impact on the operation of city government by the granting of injunctive relief,” and that the accommodation “would not alter the nature” of the meetings.<sup>63</sup>

Next, in *Palmer v. Michigan*, a federal district court in Michigan granted a preliminary injunction allowing a board member of a multi-county mental health agency to participate in meetings remotely as a Title II ADA reasonable accommodation.<sup>64</sup> An exception to the Michigan open meetings law had allowed remote participation for medical conditions. But it expired at the end of 2021, after which the health agency denied plaintiff’s request to continue to participate remotely.<sup>65</sup> While the agency mandated social-distancing and mask-wearing protective measures, plaintiff’s cerebral palsy made him at high risk of illness if exposed to COVID-19, and his disability interfered with his ability to communicate while wearing a mask.<sup>66</sup> The court observed that the open meetings law continued to authorize remote participation for a member who was absent for military duty.<sup>67</sup> The court therefore rejected the agency’s claim that any decision taken while plaintiff participated remotely could be rendered void for non-compliance with the law because “military members can already participate remotely.”<sup>68</sup> The court concluded that the plaintiff’s remote participation would cause little or no

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<sup>60</sup> *Silver v. City of Alexandria* (W.D. La. 2020) 470 F.Supp.3d 616, 618, 620, 625.

<sup>61</sup> *Id.*, at pp. 623-624.

<sup>62</sup> *Id.*, at p. 623.

<sup>63</sup> *Id.*, at pp. 623-624.

<sup>64</sup> *Palmer v. Michigan* (W.D. Mich., Mar. 29, 2022, No. 1:22-CV-90) 2022 WL 908966, at \*\*1, 7 (hereafter, *Palmer*). This case mentions and reaches the same conclusion of opinions by the Attorney General of Michigan. (See *id.* at \*\*2, 4, citing Atty. Gen. Op. 7, Atty. Gen. Op. 15-16, ECF No. 11-1.)

<sup>65</sup> *Palmer, supra*, at \*\*1-2.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Palmer, supra*, at \*6.

<sup>68</sup> *Ibid.*

harm, and that it “would not impose an undue burden” on the health agency nor “fundamentally alter its programs or services.”<sup>69</sup>

The last case is *Chew v. Legislature of Idaho*.<sup>70</sup> Although the Idaho district court in that case denied a request for a temporary restraining order sought by members with disabilities seeking a Title II accommodation to participate remotely in sessions of the Idaho Legislature, that denial casts no doubt on our conclusion.<sup>71</sup> The case instead illustrates that not every disability is one that necessitates remote participation. In rejecting the request, the court drew upon Ninth Circuit cases prescribing an individualized, case-by-case inquiry to determine the reasonableness of a requested accommodation.<sup>72</sup> The court found nothing to rule out other types of accommodations such as masks, plexiglass barriers, and choice of seat.<sup>73</sup>

For the reasons discussed above, we conclude that the ADA requires a local agency’s legislative body to allow remote participation from a nonpublic location as a reasonable accommodation for a qualifying individual whose disability precludes their in-person attendance, subject to the requirements of the ADA.<sup>74</sup> Under the Brown Act, the

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<sup>69</sup> *Ibid.*

<sup>70</sup> *Chew v. Legislature of Idaho* (D. Idaho 2021) 512 F.Supp.3d 1124 (hereafter, *Chew*).

<sup>71</sup> See *id.*, at pp. 1126-1128; see also *id.*, at p. 1127 (explaining that temporary restraining order, like preliminary injunction, is to preserve status quo, but typically lasts 28 days while preliminary injunction may extend until lawsuit ends).

<sup>72</sup> *Id.*, at p. 1129, citing *Wong v. Regents of Univ. of Cal.* (9th Cir. 1999) 192 F.3d 807, 818; *Crowder v. Kitagawa, supra*, 81 F.3d at p. 1486.

<sup>73</sup> *Chew, supra*, at pp. 1130-1131.

<sup>74</sup> We acknowledge that the ADA excuses a covered entity from providing an otherwise required accommodation to an employee where it “can demonstrate that the accommodation would impose an undue hardship” on its operations, defined as “an action requiring significant difficulty or expense” when considered in light of certain factors including cost of the accommodation and the entity’s resources. (See 42 U.S.C. §§ 12112(b)(5)(A) & 12111 (defining “undue hardship”); see also 28 C.F.R. § 35.164 (public entity not required to make modification for accessible communication “that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens”). While the accommodation at issue here—remote attendance by a member of a local agency legislative body—does not appear to be the type of accommodation that would typically present such financial or technical burdens, we cannot conclude that this would never be the case. We do not address these hypothetical concerns here. Such concerns, if they were to arise, would be determined based on the particular facts and circumstances, under controlling provisions and interpretations of the ADA.


remote participation must be conducted in a manner that simulates in-person attendance at meetings held in-person and open to the public. To accomplish this, the Act provides conditions on how an individual member may participate remotely—namely, by the member using two-way live video and audio streaming and disclosing the identity of any adults who are present in the room with them at the remote location.



## BOARD INFORMATION

BOARD OF DIRECTORS  
STAFF REPORT

To: TVMWD Board of Directors

From: Matthew H. Litchfield, General Manager 

Date: September 4, 2024

Subject: Organizational Chart and Salary Schedule Modifications

Funds Budgeted: \$ 75,000

Fiscal Impact: \$

## Staff Recommendation

No Action Necessary – Information Only

## Background

Pursuant to CalPERS and California Code of Regulations Section 570.5, salary schedule changes must be approved and adopted by the employer's governing body according to the requirements of applicable public meeting laws.

## Discussion

Proposed changes to the organization chart effective September 18, 2024:

- Addition of New Position:
  - A full-time Information Technology Analyst
- Reporting Structure Adjustments:
  - The Human Resources/Risk Manager will now report to the General Manager
  - The Water Resources Intern will now report to the Engineer
  - Restructure of the Operations Department
- Title Change:
  - Accounting Technician to Finance Analyst
  - Executive Assistant to Executive Board Secretary

The Board of Directors approved the FY 24/25 budget for the Information Technology Analyst position, effective January 1, 2025. At the time of budget approval, the salary range for this classification had not been determined. Following a compensation study of similar positions, we are recommending a salary range of \$69,738 - \$111,580. The recruitment process for the position is anticipated to be completed by January 2025.

The Finance Analyst title has been updated to better align with departmental needs and industry standards. The title change aims to enhance the applicant pool, particularly following the retirement of the incumbent. Changes to the salary range is not recommended at this time.

The majority of the recommended changes were addressed in the Strategic Plan that was approved by the Board of Directors during its April 17, 2024, meeting.

**Environmental Impact**

None

**Strategic Plan Objective(s)**

- 3.1 – Diversity
- 3.2 – Workforce Excellence
- 3.3 – Emerging Technology

**Attachment(s)**

- Exhibit A – Salary Schedule Effective January 1, 2025
- Exhibit B – Current Organizational Chart
- Exhibit C – Proposed Organizational Chart
- Exhibit D – Information Technology Analyst - Job classification
- Exhibit E – Finance Analyst - Job classification

**Meeting History**

None

NA/VR



**THREE VALLEYS MUNICIPAL WATER DISTRICT  
ANNUAL SALARY RANGE BY CLASSIFICATION  
Effective: January 1, 2025**

CLASSIFICATION	JOB CODE	ANNUAL SALARY RANGE		
		Minimum	Mid	Maximum
ADMINISTRATIVE/COMMUNICATIONS ASSISTANT	102	\$ 63,257	\$ 82,235	\$ 101,212
ASSISTANT ENGINEER	103	\$ 74,046	\$ 96,260	\$ 118,474
CHIEF ADMINISTRATIVE OFFICER	104	\$ 193,876	\$ 252,039	\$ 310,202
CHIEF FINANCE OFFICER	105	\$ 192,653	\$ 250,449	\$ 308,246
CHIEF OPERATIONS OFFICER	106	\$ 164,186	\$ 213,442	\$ 262,697
CHIEF WATER RESOURCES OFFICER	107	\$ 175,128	\$ 227,667	\$ 280,205
COMPLIANCE SPECIALIST	108	\$ 95,581	\$ 124,256	\$ 152,930
ENGINEER	109	\$ 111,882	\$ 145,446	\$ 179,011
ENGINEERING ASSISTANT	110	\$ 69,779	\$ 90,713	\$ 111,647
EXECUTIVE BOARD SECRETARY	111	\$ 87,744	\$ 114,067	\$ 140,390
FINANCE ANALYST	101	\$ 63,843	\$ 82,996	\$ 102,148
FINANCE MANAGER	119	\$ 104,569	\$ 135,939	\$ 167,310
GENERAL MANAGER	112	\$ 224,744	\$ 292,168	\$ 359,591
HUMAN RESOURCES/RISK MANAGER	113	\$ 114,329	\$ 148,628	\$ 182,927
INFORMATION TECHNOLOGY ANALYST	127	\$ 69,738	\$ 90,659	\$ 111,580
INFORMATION TECHNOLOGY MANAGER	114	\$ 131,106	\$ 170,437	\$ 209,769
INSTRUMENTATION/ELECTRICAL SYSTEM OPERATOR	115	\$ 109,271	\$ 142,053	\$ 174,834
OPERATIONS SUPERVISOR	116	\$ 110,458	\$ 143,595	\$ 176,733
OPERATIONS SUPERVISOR (T5)	117	\$ 132,549	\$ 172,314	\$ 212,079
PLANT ASSISTANT	118	\$ 50,902	\$ 66,173	\$ 81,443
SHIFT OPERATOR II	120	\$ 62,649	\$ 81,444	\$ 100,239
SHIFT OPERATOR III	121	\$ 77,107	\$ 100,239	\$ 123,371
SHIFT OPERATOR IV	122	\$ 86,873	\$ 112,935	\$ 138,997
SHIFT OPERATOR V	123	\$ 90,260	\$ 117,338	\$ 144,416
WATER RESOURCES ANALYST I	124	\$ 66,664	\$ 86,663	\$ 106,662
WATER RESOURCES ANALYST II	125	\$ 81,086	\$ 105,412	\$ 129,738
WATER RESOURCES ANALYST III	126	\$ 95,509	\$ 124,162	\$ 152,815
		<b>HOURLY</b>		
WATER RESOURCES INTERN (PT)	127	\$ 17.00		\$ 22.00

Based on Board approval, an adjustment to each salary range classification will be considered for July 1 of each year. Range adjustments are tied to changes in the Consumer Price Index - Urban Wage Earners and Clerical Workers for Los Angeles-Long Beach-Anaheim as prepared by the Bureau of Labor Statistics, from current year annual to the prior year annual. The adjustment to each salary range is intended to keep TVMWD's salary ranges at the market level and may not necessarily impact individual salaries. The opportunity for individual salary increases will continue under the merit-based system employed by TVMWD. An important note is that an employee's annual salary may be below the minimum salary range if: (1) their annual evaluation has not yet occurred in the current fiscal year or (2) their performance documented in prior annual evaluations has not merited an increase that has kept up with index adjustments to the salary ranges.

**Shift Differential Pay**

- Operators and plant assistants who work on Friday, Saturday or Sunday will be compensated with 10% additional pay for those hours.
- Shift differential pay is considered special compensation and will be reported to CalPERS as such.

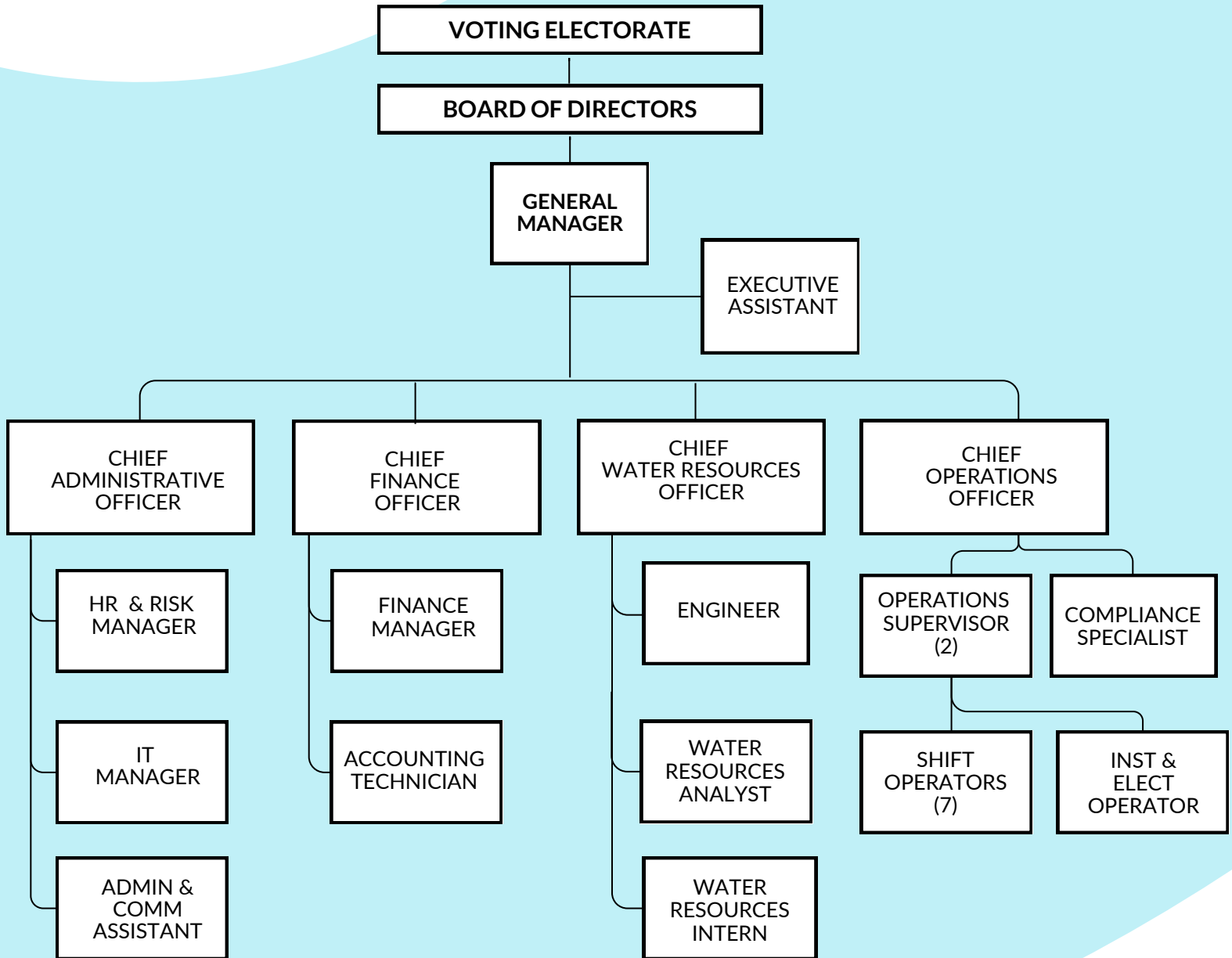
**On-Call Pay**

- Standby operators who serve as the on-call standby operator each evening will be paid \$45 per day (\$90 on holidays).
- Lab operators who serve as the on-call plant operator each evening will be paid \$100 per day (\$200 on holidays).
- In addition to receiving the on-call pay noted above, the on-call operators will be paid for the additional time spent responding to situations.
  - If responding by phone/tablet/laptop only, the on-call operator will be guaranteed at least 15 minutes of additional pay. All time over 15 minutes will be rounded up to the nearest 15 minute increment.
  - If responding in person, the on-call operator will be guaranteed at least two hours of additional pay. All time over two hours (portal to portal) will be rounded up to the nearest 15 minute increment.
  - Operators will be eligible for OT and shift differential pay as applicable for time spent responding.
- On-call pay is not considered special compensation and thus will not be included as a part of final compensation in calculating CalPERS pension.

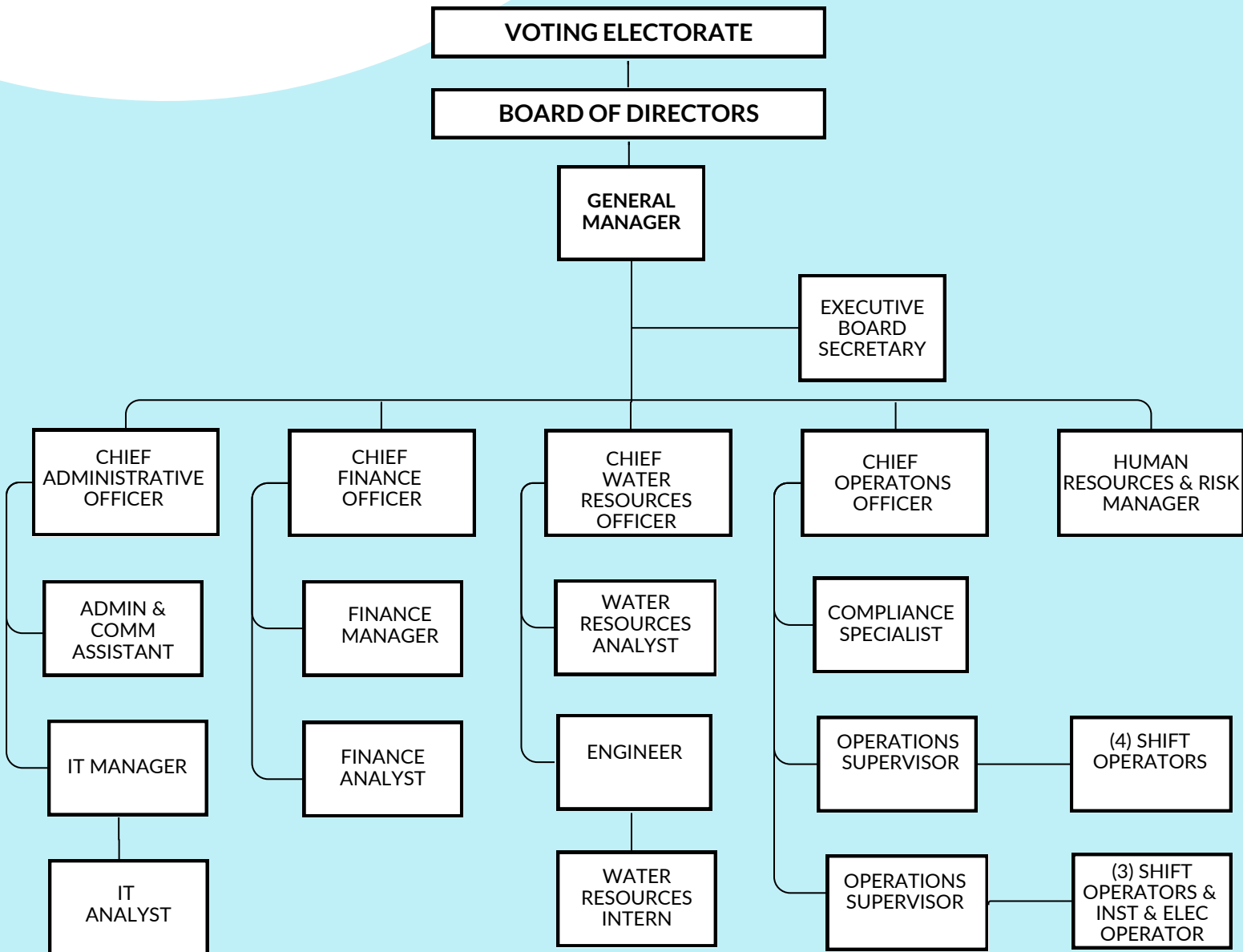
**Holiday Pay**

- Any employee scheduled who works on either the actual holiday or the observed holiday will be paid at one and one-half times the employee's regular rate of pay. Since the employee is working the holiday, the employee will also be paid an additional ten hours at regular pay for that holiday.

# ORGANIZATION STRUCTURE CURRENT



# ORGANIZATION STRUCTURE PROPOSED







## Job Classification

**Title: Information Technology Analyst**  
**FLSA Status: Non-Exempt**  
**Job Code: 127**

### POSITION OVERVIEW

This position will provide professional analytical support to District technology programs in diverse capacities ranging from responses to complex user-support problems to technology system development, implementation, and administration; monitors systems to ensure performance and reliability standards are met; collaborates with team members to integrate systems across multiple operating platforms and technologies; performs specialized duties in support of an assigned technology program area; and performs related duties as assigned.

### OVERSIGHT

**Supervision Received:** From and reports to the Information Technology Manager.

**Supervision Given:** None

### ESSENTIAL FUNCTIONS

- Provides primary on-site technical support for systems, communications, software, and hardware issues.
- Manages and prioritizes IT support requests, with a focus on resolving internal issues promptly and efficiently.
- Answers questions and responds in a timely manner; provides technical support and information, assistance, and training over the phone and in person related to IT issues.
- Provides timely status updates to clients and colleagues on technology problem resolution, identifying the root cause of the problem, recommended solution, workarounds, cost impacts, and anticipated date of resolution.
- Setup, configure, and deploy District hardware replacements including workstations, laptops, and tablets.
- Supports the system backup, restore, and scheduled testing processes.
- Assists in developing and updating system documentation, software catalog, business process diagrams, instructional and procedural manuals.
- Manages and supports telephone and voice communications services.
- Configures telecommunication devices for employees; participates in adds, moves, and changes to telephone equipment.
- Assists the Information Technology Manager with IT software and hardware procurement.
- Coordinates and facilitates IT related training for staff.

## TVMWD- IT Analyst

- Coordinates and manages the e-waste and surplus inventory processes.
- Assists in updating and maintaining the District's website and Intranet, including content development and design.
- Participates in disaster recovery planning and operations.
- Installs new software releases and system upgrades; evaluates and installs patches; maintains data files and monitors system configuration to ensure data integrity.
- Builds and maintains positive working relationships with co-workers, vendors, and the public using principles of good customer service.
- Assists in special projects and coordinating activities with the Information Technology Manager.
- Provides analytical support to District technology programs in diverse capacities ranging from complex user support to technology system development, implementation, and administration.
- Supports the development and implementation of technology-related policies, procedures, and standards.
- Conducts research and stays current on current trends and innovative solutions for technology programs; recommends innovative technologies that would improve the operational effectiveness or services to client departments.
- Observes and complies with all District and mandated safety rules, regulations, protocols and policies.
- Evaluates, recommends, installs, and configures network hardware, cabling, and other wiring equipment; installs communications devices in accordance with established protocols.
- Performs related duties as assigned.

## QUALIFICATION REQUIREMENTS

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the background, knowledge, skill and ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**Knowledge of:** Principles, methods, and techniques in the design and operation of information systems in assigned technology area which may include, but are not limited to, infrastructure, network, communications, database, or system control.

Methods and techniques of troubleshooting systems and devices in assigned technology area.

Principles, practices, and methods of network architecture, design, and administration, including connectivity, protocols, interfaces, and security measures.

Methods of managing and administering server-based operating systems.

Principles, methods, protocols, and techniques in the design, installation, and operation of data, voice, and video communications systems, networks, equipment, devices, and cabling.

TVMWD- IT Analyst

Techniques for providing a high level of customer service by effectively interacting with the public, vendors, contractors, and District staff.

**Ability to:**

- Maintains and troubleshoots computer systems, software applications, hardware, and networks.
- Maintains workstations, laptops, tablets, and servers, as well as related peripheral and communications equipment.
- Identifies information technology solutions; analyzes problems, identifies, recommends, and implements solutions.
- Maintains confidentiality of records and information.
- Effectively learn and apply related policies, procedures, and practices affecting information systems.
- Provide information technology training and support to District staff; communicate clearly and concisely, both orally and in writing.
- Provides professional level support to systems in assigned technology areas.
- Troubleshoots a diverse range of systems hardware and software and makes or recommends modifications.
- Monitors systems performance and recommends changes to optimize system reliability and availability.
- Conducts comprehensive research on a diverse range of technology topics.
- Prepares clear, concise, and accurate documentation, user guides, reports of work performed, and other written materials.
- Independently organize work, set priorities, meet critical deadlines, and follow-up on assignments.
- Communicates orally and in writing clearly and concisely, using appropriate English grammar and syntax.
- Establishes, maintains, and fosters positive and effective working relationships with those contacted in the course of work.

### **EDUCATION AND EXPERIENCE**

IT Analyst will possess a combination of education and experience equivalent to:

- Five (5) years of professional and analytical information technology experience.
- Bachelor's degree in information technology, computer science, or related business field from an accredited college or university.

### **PHYSICAL DEMANDS AND WORKING CONDITIONS**

Requires ability to receive, understand, and act upon verbal and written communication from others, and to communicate to others. Requires ability to use hands and fingers to handle or feel objects, tools, or controls; to reach with hands and arms; to sit and stand; and to talk and hear. Must be able to carry, push, pull, reach, and lift equipment and parts up to 25 lbs. and heavier weights with the use of proper assistance.

Must be able to participate in job-related activities at times other than normal business hours, i.e., evenings and weekends, and at various locations that will require operating a motor vehicle.

**CERTIFICATES, LICENSES, AND REGISTRATIONS****Certificates**

- **Cisco Certified Network Associate (CCNA) is desired.**
- **Certified Information Systems Security Professional (CISSP) is desired.**
- **Information Technology Infrastructure Library (ITIL) is desired.**

**Licenses**

- **Must have and maintain a current Class C California driver's license, acceptable driving record, and proof of auto insurance in compliance with the District's Vehicle Insurance Policy standards.**

**Registrations**

- **None**

TVMWD- IT Analyst

This job description has been revised and approved by all levels of management.

<b>Approved by:</b>	Matthew Litchfield
<b>Date last modified:</b>	8/22/2024
<b>Date adopted:</b>	8/27/2024

I have received, reviewed, and fully understand the job description for [Title]. I further understand that I am responsible for the satisfactory execution of the essential functions described therein, under any and all conditions as described.

Employee Name (print): \_\_\_\_\_ Date: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Supervisors Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Job classifications are intended to cover or contain a comprehensive listing of activities, duties, or responsibilities that are performed by the incumbent. Classifications are not intended to reflect all duties performed within the job.**



## Job Classification

**Title: Finance Analyst**  
**FLSA Status: Non-Exempt**  
**Job Code: 101**

### POSITION OVERVIEW

Under general direction, leads, coordinates, and participates in a variety of complex financial analyses; prepares key financial or technical reports; prepares financial and statistical statements in accordance with generally accepted accounting principles (GAAP) and governmental accounting standards; assists in auditing agency funds and accounts; may lead, train and provide work direction to assigned staff, and performs related duties as required.

### OVERSIGHT

**Supervision Received:** from the Finance Manager and reports to the Chief Financial Officer

**Supervision Given:** None

### ESSENTIAL FUNCTIONS

- Assists the Finance Manager and CFO as needed.
- Prepares payroll, ledgers, registers, journals, and analyses; Federal and State payroll reports and PERS payroll reports; maintains and distributes pension records and reports; reconciles and prepares monthly benefit invoices; prepares employee W-2s for submittal to IRS.
- Coordinates with the HR/Risk Manager on adding, updating, changing and verifying employee statuses, benefits and salaries in the payroll software system; prepares and furnishes payroll information as needed; provides assistance with payroll questions.
- Performs statistical analysis and research in a variety of financial areas as needed; prepares a variety of detailed complex accounting, statistical, and/or narrative financial statements or reports requiring analysis and interpretation of source data; does analysis of fiscal transactions to ensure conformity and compliance with GAAP, District policies, and state and federal requirements.
- Posts, balances and reconciles subsidiary accounts; prepares related journal entries, account reconciliations, related schedules, and reports.
- Prepares and maintains accounts payable records, invoices, voids, mails checks, online and/or

phone payments; prepares disbursement reports for Board approval (warrant list).

- Prepares monthly reports such as, but not limited to, department budget to actual and monthly water sales summary report.
- Prepares annual and quarterly payroll and accounts payable reports as required by federal, state, and local agencies.
- Maintains various accounting files and records, including but not limited to W-9 files and spreadsheets for year-end 1099 preparation; reconciles and prints 1099's at year-end; year-end W2 preparation; reconciles and prints W2's.
- Prepares procure public records request.
- Prepares and maintains Director's monthly travel expenses spreadsheets.
- Manages petty cash disbursement, recording, and reconciliation.
- Assists with preparation of purchase orders (daily and annual open POs), maintains log and assigns PO numbers.
- Performs complex duties related to the District's fixed assets program; maintains and updates asset records; tracks additions, deletions, and transfers to departments of fixed assets for all funds; calculates depreciation expense based on asset type.
- Prepares work papers, financial statements and various reports for audits by Federal, State and other outside agencies as well as for internal accounting; performs comprehensive financial activity studies as assigned.
- Performs related duties as assigned.

## QUALIFICATION REQUIREMENTS

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the background, knowledge, skill and ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**Knowledge of:** Generally accepted accounting principles and governmental bookkeeping practices, including record keeping and budgeting; writing and proper English language rules; common business computer applications such as Microsoft Word, Excel, PowerPoint, Outlook and the Internet. Experience with the Eden Systems accounting software is desirable.

**Ability to:** Maintain and balance a variety of financial records, ledgers and accounts; perform a variety of financial and statistical record keeping support; assist with the preparation of financial reports; organize and manage multiple priorities and projects; communicate clearly and concisely, both orally and in writing; work effectively with a diversity of individuals, personalities, and organizations; demonstrate initiative, task-orientation and follow-through in the approach to and completion of assignments; comply with District policies and safety requirements.

## **EDUCATION AND EXPERIENCE**

Finance The analyst will possess a combination of education and experience equivalent to:

- Four (4) years of technical accounting and bookkeeping experience
- Bachelor's degree in finance, accounting, or related business field from an accredited college or university.

## **PHYSICAL DEMANDS AND WORKING CONDITIONS**

Requires the ability to receive, understand, and act upon verbal and written communication from others, and to communicate with others. Requires ability to use hands and fingers to handle or feel objects, tools, or controls; to reach with hands and arms; to sit and stand; and to talk and hear. Must be able to carry, push, pull, reach, and lift equipment and parts up to 25 lbs. and heavier weights with the use of proper assistance.

Must be able to participate in job-related activities at times other than normal business hours, i.e., evenings and weekends, and at various locations that will require operating a motor vehicle.

## **CERTIFICATES, LICENSES, AND REGISTRATIONS**

### **Certificates**

- None

### **Licenses**

- Must have and maintain a current Class C California driver's license, acceptable driving record, and proof of auto insurance in compliance with the District's Vehicle Insurance Policy standards.

### **Registrations**

- None



This job description has been revised and approved by all levels of management.

<b>Approved by:</b>	Matthew Litchfield
<b>Date last modified:</b>	7/30/2024
<b>Date approved:</b>	8/8/2024

I have received, reviewed, and fully understand the job description for Accounting Analyst. I further understand that I am responsible for the satisfactory execution of the essential functions described therein, under any and all conditions as described.

Employee Name (print): \_\_\_\_\_ Date: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Supervisors Signature: \_\_\_\_\_ Date: \_\_\_\_\_


**Job classifications are intended to cover or contain a comprehensive listing of activities, duties, or responsibilities that are performed by the incumbent. Classifications are not intended to reflect all duties performed within the job.**



## BOARD INFORMATION

### BOARD OF DIRECTORS STAFF REPORT

To: TVMWD Board of Directors

From: Matthew H. Litchfield, General Manager 

Date: September 4, 2024

Subject: Employee Health Care Cost CY 2025

Funds Budgeted: \$

Fiscal Impact: \$

#### Staff Recommendation

No Action Necessary – Information Only

#### Background

Medical	Employees pay 0 - 10% of medical premiums for individual/couple/family.
Dental	Delta Dental PPO or DeltaCare HMO. Premiums are 100% paid by TVMWD.
Vision	Vision Service Plan (VSP). Premiums are 100% paid by TVMWD.
EAP	Anthem Employee Assistance Program. Premiums are 100% paid by TVMWD.
Medical Opt Out	Employees may opt themselves and/or family members out of medical coverage with proof of comparable alternative medical coverage. The employee receives 70% of the average plan cost. Cash back is not available for elected officials.
CDA	Eligible participants are provided \$1,000 to their HRA or HSA. The District contributes \$400/EE or \$800/Family to HSA for employees enrolled in a CDHP.

#### Discussion

The 2025 Employee Benefits Renewal has been finalized in partnership with the Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA). The budget assumption for calendar year increases in health care cost was 10% increase (\$48,729); the actual increase in the health care cost is \$43,150, resulting in no budget impact.

2025 Summary Rate Changes	
Anthem PPOs	10% increase
Anthem HMOs	5% increase
Kaiser	5.46% increase
Employee Assistance Program (EAP)	No Change
Delta Dental PPO and HMO	No Change
Vision Service Plan (VSP)	No Change

For the 2025 program year, ACWA JPIA is balancing rate increases with managing the excess funds to stabilize the experience of its members. After two bounce-back years, claims have now surpassed pre-pandemic levels due to inflation and other cost pressures. The ACWA JPIA plans are still not in par with the increase in the costs. The self-insured PPO plan rates were increased to address the increased costs. In addition, the fully insured HMO Program (Kaiser and Anthem) rates were increased to address the increased claims and costs.

Last year AWCA JPIA anticipated a double-digit increase in the premiums. The District will continue to budget accordingly based on anticipated industry trends.

#### 2025 Plan/Benefit Change Summary:

- Consumer Driven Health Plans (CDHPs) – To comply with IRS requirements for HSA compatibility in 2025, Anthem CDHP deductibles will increase from \$1,600/\$3,200 to \$1,650/\$3,300 for single/family.
- Delta Dental PPO - Effective January 1, 2025, plan benefits will include a third annual cleaning at no cost if using an in-network provider. Additionally, diagnostic/preventive services such as cleanings, exams, and x-rays will no longer count against the plan's benefit maximum leaving more funds available for other dental care.

#### Environmental Impact

None

#### Strategic Plan Objective(s)

3.1 – Diversity

3.2 – Workforce Excellence

3.3 – Emerging Technology

#### Attachment(s)

Exhibit A – Health Care Cost Summary 2025

#### Meeting History

None

NA/VR

Page 2 of 2



**Three Valleys MWD  
Health Care Cost 2025- Monthly**

***TVMWD provides Health Coverage through ACWA/ JPIA. Employees are responsible for paying up to 10% of the medical premium as a pre-taxed monthly payroll deduction. The following exceptions apply: single employees enrolled in the lowest cost medical plan and Employees in CDHP. Dental and Vision are provided at no cost to employees and their dependents.***


Family Status	Medical				Dental		Vision
	Anthem Blue Cross		Kaiser		Delta		VSP
	PPO	CDHP	HMO	HMO	PPO	HMO	PPO
<b>Total Premium</b>							
EE	\$ 888.44	\$ 710.74	\$ 1,043.50	\$ 812.70	\$ 35.36	\$ 29.19	\$ 17.21
EE+1	\$ 1,776.88	\$ 1,421.48	\$ 2,087.00	\$ 1,625.40	\$ 69.99	\$ 45.36	\$ 17.21
Family	\$ 2,354.37	\$ 1,883.46	\$ 2,765.28	\$ 2,259.31	\$ 128.10	\$ 64.72	\$ 17.21
<b>Employee COST</b>							
EE	\$ 88.84	\$ -	\$ 104.35	\$ -	\$ -	\$ -	\$ -
EE+1	\$ 177.69	\$ -	\$ 208.70	\$ 162.54	\$ -	\$ -	\$ -
Family	\$ 235.44	\$ -	\$ 276.53	\$ 225.93	\$ -	\$ -	\$ -
<b>TVMWD COST</b>							
EE	\$ 799.60	\$ 710.74	\$ 939.15	\$ 812.70	\$ 35.36	\$ 29.19	\$ 17.21
EE+1	\$ 1,599.19	\$ 1,421.48	\$ 1,878.30	\$ 1,462.86	\$ 69.99	\$ 45.36	\$ 17.21
Family	\$ 2,118.93	\$ 1,883.46	\$ 2,488.75	\$ 2,033.38	\$ 128.10	\$ 64.72	\$ 17.21
<b>HSA/HRA BENEFITS</b>							
	HRA	HSA	HRA	HRA			
EE	\$ 1,000.00	\$ 1,400.00	\$ 1,000.00	\$ 1,000.00	Full-time staff and elected officials provided \$1,000 each calendar year to HSA/HRA.		
EE+1	\$ 1,000.00	\$ 1,800.00	\$ 1,000.00	\$ 1,000.00			
Family	\$ 1,000.00	\$ 1,800.00	\$ 1,000.00	\$ 1,000.00			
CDC Option	FSA	LFSA	FSA	FSA	Employee tax-advantaged deduction		
<b>Medical Opt Out</b>							
Employees may opt themselves and/or family members out of medical coverage during open enrollment with proof of comparable alternative medical coverage. The opt out amount is 70% of the average plan cost (based on status). JPIA requires medical coverage for 75% of TVMWD employees, so opt out is first come first serve.. Cash back is not available for elected officials.							
<b>Opt Out Cash Back</b>							
	EE:	EE+1:	Family:				
	\$ 605	\$ 1,209	\$ 1,621				



## BOARD INFORMATION

### BOARD OF DIRECTORS STAFF REPORT

To: TVMWD Board of Directors

From: Matthew H. Litchfield, General Manager 

Date: September 4, 2024

Subject: Alternative Employee Health Care Cost CY 2025

Funds Budgeted: \$

Fiscal Impact: \$

#### Staff Recommendation

No Action Necessary – Information Only

#### Background

On September 6, 2023, staff presented to the Three Valleys Board of Directors the 2024 Health Care Costs including the Association of California Water Agencies Joint Power Insurance Authority's (ACWA JPIA) projections of double-digit rate increases for the subsequent years. The Board directed staff to present options for the District to absorb the anticipated premium increases for the 2025 Health Cost Care Cost.

#### Discussion

The District's health benefits are as follows:

Medical	Employees pay 0- 10% of medical premiums for individual/couple/family.
Dental	Delta Dental PPO or DeltaCare HMO. Premiums are 100% paid by TVMWD.
Vision	Vision Service Plan (VSP). Premiums are 100% paid by TVMWD.
EAP	Anthem Employee Assistance Program. Premiums are 100% paid by TVMWD.
Medical Opt Out	Employees may opt themselves and/or family members out of medical coverage with proof of comparable alternative medical coverage. The employee receives 70% of the average plan cost. Cash back is not available for elected officials.
CDA	Eligible participants are provided \$1,000 to their HRA or HSA. The District contributes \$400/EE or \$800/Family to HSA for employees enrolled in a CDHP.

The District offers the Anthem CDHP and Kaiser (employee-only) plans at no cost to employees. Currently, 40% of the participants are enrolled in the Anthem CDHP plan and will not be impacted by any premium increases. However, about 33% of participants, who pay 10% of the premiums, will be impacted by these increases.

Staff is presenting two alternative options that would cover the majority of the health premium increases for 2025 and future years.

PLAN	STATUS	Medical Cost	CURRENT 10%	Employer Cost	OPTION 1 8%	Employer Cost	OPTION 2 10%	Employer Cost
			Employee Cost		Employee Cost		Employee Cost	
Anthem HMO	single	1,043.50	104.35	939.15	83.48	960.02	104.35	939.15
	two-party	2,087.00	208.70	1,878.30	166.96	1,920.04	208.70	1,878.30
	family	2,765.28	276.53	2,488.75	221.22	2,544.06	276.53	2,488.75
Anthem PPO	single	888.44	88.84	799.60	71.08	817.36	88.84	799.60
	two-party	1,776.88	177.69	1,599.19	142.15	1,634.73	177.69	1,599.19
	family	2,354.37	235.44	2,118.93	188.35	2,166.02	235.44	2,118.93
Anthem CDHP	single	710.74	0.00	710.74	0.00	710.74	0.00	710.74
	two-party	1,421.48	0.00	1,421.48	0.00	1,421.48	0.00	1,421.48
	family	1,883.46	0.00	1,883.46	0.00	1,883.46	0.00	1,883.46
Kaiser	single	812.70	0.00	73,143.00	0.00	747.68	0.00	812.70
	two-party	1,625.40	162.54	14,628.60	130.03	1,495.37	0.00	1,625.40
	family	2,259.31	225.93	2,033.38	180.74	2,078.57	0.00	2,259.31

**Options 1:**

This option maintains the current structure where participants pay a percentage of the health premiums. In the current structure, the participants contribute 10%; option 1 proposes to reduce the employee contribution from 10% to 8%.

The financial impact on the District for the FY 2024-2025 would be approximately \$2,500.

**Option 2:**

This option would maintain the 10% premium contributions from participants and have the Anthem CDHP plan at no cost to participants while adding the Kaiser plan at no cost.

The Kaiser plan is the District's second most popular plan, with 23% of participants enrolled. This option provides participants the option to choose between an HMO (Kaiser) and a PPO (CDHP) plan 100% District paid premiums. This option would protect participants from the financial impact of the premium increase. However, it is important to note that the District's burden will continue to rise as the premiums increase.

The financial impact on the District for the FY 2024-2025 would be approximately \$9,500.

**Environmental Impact**

None

**Strategic Plan Objective(s)**

3.1 – Diversity

3.2 – Workforce Excellence

3.3 – Emerging Technology

**Attachment(s)**

None

**Meeting History**

None


NA/VR



## BOARD INFORMATION

BOARD OF DIRECTORS  
STAFF REPORT

To: TVMWD Board of Directors

From: Matthew H. Litchfield, General Manager 

Date: September 4, 2024

Subject: Conflict of Interest Code Biennial Update

Funds Budgeted: \$

Fiscal Impact: \$

**Staff Recommendation**

No Action Necessary – Informational Item Only

**Background**

The Political Reform Act requires local government agencies to review its Conflict of Interest Code biennially to determine if any changes are needed. A Conflict of Interest Code tells public officials, governmental employees, and consultants what financial interests they must disclose on their Statement of Economic Interests (Form 700). The Los Angeles County Board of Supervisors (BOS) is the code reviewing body of Three Valleys Conflict of Interest Code.

**Discussion**

The BOS has initiated the 2024 biennial review process to indicate if an amendment is necessary. Current designated positions were reviewed, and it was determined that the Conflict of Interest Code should be amended to change a position title from *Senior Financial Analyst* to *Finance Manager* in accordance with the district's organizational chart, which was approved by the Board of Directors in June 2023. In addition, the *Executive Assistant* position title is being changed to *Executive Board Secretary*. **Exhibit A** includes the Biennial Review Certification form and supporting document that was submitted to the BOS on July 23, 2024, for review and consideration of approval.



Once the amended Conflict of Interest Code is approved by the BOS it will be returned to the Three Valleys Board of Directors to adopt by resolution with an immediate effective date.

**Environmental Impact**

None

**Strategic Plan Objective(s)**

2.2 – Accountability

**Attachment(s)**

Exhibit A – Biennial Review Certification form

**Meeting History**

None

NA/ML

**2024 BIENNIAL REVIEW CERTIFICATION FORM**Submit now or no later than October 1, 2024

Name of Agency: Three Valleys Municipal Water District  
 Name of Agency Head: Matthew H. Litchfield, General Manager  
 Mailing Address: 1021 E. Miramar Ave.  
 City: Claremont State: CA Zip Code: 91711  
 Agency Code Officer: Nadia Aguirre Office Phone No.: 909-621-5568  
 E-Mail Address: naguirre@tvmwd.com

*Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.*

**This agency has reviewed its conflict of interest code and has determined that (check one box):**

**1. AN AMENDMENT IS REQUIRED** (Check all that apply. You have 90 days to submit your changes):

- Include new positions  
 Revise disclosure categories  
 Revise the titles of existing positions  
 Delete titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions  
 Other (describe) \_\_\_\_\_

**2. NO AMENDMENT IS REQUIRED.**

**(If your code has not been amended in more than five years, amendments may be necessary.)**

---

**Verification (to be completed EVEN if no amendment is required)**

*This agency's conflict of interest code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions. The code includes all other provisions required by Government Code Section 87302.*

Matthew H Litchfield Digitally signed by Matthew H Litchfield  
Date: 2024.07.23 11:49:39 -07'00'

Signature of Agency Head or Designee

7/23/2024

Date

**All agencies must complete and return this notice even if no amendment is required, and regardless of how recently your code was approved or amended. Please submit this notice electronically no later than October 1, 2024 to [COICODES-Desk@bos.lacounty.gov](mailto:COICODES-Desk@bos.lacounty.gov)**

**PLEASE DO NOT RETURN THIS FORM TO THE FPPC**



County of Los Angeles  
Conflict of Interest Code  
Amendment Form for Changing a Position Title

Name of Agency: Three Valleys Municipal Water District

Name of Agency Code Officer: Nadia Aguirre Date: 7/23/2024

**My agency has the following title change(s):**

**Current Position Title:** Senior Financial Analyst

**Position Title Changed to:** Finance Manager

**Reason for the Change:**

Is this simply a title change with no change in responsibilities? If yes, no further information is needed. If no, briefly describe the increased and/or decreased responsibilities.

Title change only

**Current Position Title:** \_\_\_\_\_

**Position Title Changed to:** \_\_\_\_\_

**Reason for the Change:**

Is this simply a title change with no change in responsibilities? If yes, no further information is needed. If no, briefly describe the increased and/or decreased responsibilities.

**Current Position Title:** \_\_\_\_\_

**Position Title Changed to:** \_\_\_\_\_

**Reason for the Change:**

Is this simply a title change with no change in responsibilities? If yes, no further information is needed. If no, briefly describe the increased and/or decreased responsibilities.



County of Los Angeles  
Conflict of Interest Code  
Amendment Form for Changing a Position Title

Name of Agency: Three Valleys Municipal Water District

Name of Agency Code Officer: Nadia Aguirre Date: 8/29/2024

**My agency has the following title change(s):**

**Current Position Title:** Executive Assistant

**Position Title Changed to:** Executive Board Secretary

**Reason for the Change:**

Is this simply a title change with no change in responsibilities? If yes, no further information is needed. If no, briefly describe the increased and/or decreased responsibilities.

Title change only

**Current Position Title:** \_\_\_\_\_

**Position Title Changed to:** \_\_\_\_\_

**Reason for the Change:**

Is this simply a title change with no change in responsibilities? If yes, no further information is needed. If no, briefly describe the increased and/or decreased responsibilities.

**Current Position Title:** \_\_\_\_\_

**Position Title Changed to:** \_\_\_\_\_

**Reason for the Change:**

Is this simply a title change with no change in responsibilities? If yes, no further information is needed. If no, briefly describe the increased and/or decreased responsibilities.

