

*Mendocino County Russian River Flood Control & Water Conservation Improvement District*  
**Policies**

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**3000 Personnel**

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**Employment Practices**

**3100 Accommodations for Disability**

The employment related provisions of the Fair Employment and Housing Act (“FEHA”) and the Americans with Disabilities Act (“ADA”) apply to all employees and job applicants seeking employment with the District. Under the ADA, a qualified individual with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the position in which the individual is employed. The District will attempt to provide reasonable accommodation for known physical or mental disabilities if a job applicant or employee is otherwise qualified, unless undue hardship related to the necessity of business operations would result, in accordance with federal or state law. An applicant or employee who requires accommodation in order to perform the essential functions of the job should inform the General Manager or Board President to request an evaluation of such an accommodation. The District will participate in the interactive process with the employee in order to determine whether or not a reasonable accommodation, which does not present undue hardship to the District, exists. Employee or applicant should contact the General Manager for further information.

**3105 Equal Opportunity**

The District employs persons having the best available skills to efficiently provide high quality service to the public. The District provides equal opportunity for all persons in all aspects of employment, including recruitment, selection, promotion, transfer, training, compensation, educational assistance, benefits, discipline, working conditions, reduction in force, reinstatement, and all other matters of employment. Such equality of opportunity shall be based solely on job related knowledge, skills, and job performance, and shall be without discrimination because of race, color, religion, sex, age, sexual orientation, gender identification, gender expression, handicap, marital status, national origin, ancestry, citizenship genetic information, medical condition, disability, veteran status, or any other factor unrelated to job performance.

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## **3110 Unlawful Harassment**

The District does not tolerate harassment or discrimination on the basis of race, color, religion, sex, age, sexual orientation, gender identification, gender expression, handicap, marital status, national origin, ancestry, citizenship genetic information, medical condition, disability, veteran status, or any protected basis prohibited by federal and state law. This applies to members of the District Board of Directors, independent contractors, unpaid interns, volunteers, persons providing services to the District pursuant to a contract, and other persons with whom District employees may come into contact while working.

Abusive conduct or workplace bullying of the District's employees, by any person in or from the work environment, is strictly prohibited.

Prohibited acts of sexual harassment can take a variety of forms ranging from unwanted verbal or physical actions from subtle pressure for sexual activity to physical assault. Sexual harassment conduct need not be motivated by sexual desire to be unlawful or to violate this policy. For example, hostile acts toward an employee because of their gender can amount to sexual harassment, regardless of whether the treatment is motivated by sexual desire.

Prohibited harassment is not just sexual harassment but harassment based on any protected category.

Any employee who believes they are the victim of unlawful harassment, abusive conduct, or discrimination on any prohibited basis, or who has observed such conduct, or believes they are subject to retaliation may file a formal or informal confidential complaint to the General Manager, the Board of Trustees, or if necessary, the District's Legal Counsel or HR Consultant without fear of reprisal or embarrassment.

## **3120 Disciplinary Action**

The District expects all employees to act in the best interests of the District and its customers and constituents. It is the responsibility of all employees to observe all rules, guidelines, and operating procedures of the District. The District further expects that each of its employees will act in a polite and professional manner when dealing with members of the public and others. General rules of conduct, along with the "Examples of Unacceptable Conduct" listed below, are not meant to be all-inclusive, but rather to provide illustrations of acceptable conduct versus problematic conduct.

### Examples of Unacceptable Conduct

The following list presents examples of some of the types of unacceptable conduct that may result in disciplinary action, up to and including immediate termination. This list is not an exhaustive list of what conduct may result in discipline, but is merely meant to be illustrations of unacceptable conduct:

- Discourteous treatment of others.
- Dishonesty, fraud, theft, falsifying records
- Disorderly conduct.
- Use, possession, or being under the influence of alcohol or illegal drugs on duty or on District premises.
- Abuse of sick leave, habitual absence or tardiness.

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- Incompetence. Inefficiency, willful disobedience, insubordination.
- Misuse of District property, being wasteful of material, property, or working time.
- Neglect of duty.
- Conduct unbecoming a District employee.
- Violation of the District's Unlawful Harassment Policy.
- Possession of firearms or dangerous weapons on District property.
- Any act or failure to act during or outside of work hours, which is detrimental to the best interest of the District as determined by the General Manager or the Board.

The District also reserves the right to discipline an employee for unsatisfactory job performance including incompetence and/or inefficiency, permanent or chronic physical or mental ailment (including impairment from alcohol or drugs) or other condition which renders the employee unable to perform the essential duties of their job, or failure to satisfactorily perform job tasks or responsibilities.

### Prior to Disciplinary Action

Depending on the nature of the conduct or the performance deficiency, the District will generally give an employee a verbal warning, which is corrective and is non-disciplinary in nature, prior to taking formal disciplinary action. A verbal warning is encouraged but is not required before issuing formal disciplinary action.

A verbal warning is a communication to an employee that their performance or behavior must be improved and failure to do so may result in discipline. An employee's supervisor or the General Manager may note the date, time, and content of verbal warning, but no record of a verbal warning shall be placed in the employee's personnel file unless subsequent disciplinary action is taken.

### Types of Disciplinary Action

Disciplinary action includes written warning, suspension, reduction in salary, demotion, or termination of employment.

**Written Warning:** a formal written notice to an employee that further disciplinary action will be taken unless their performance or behavior improves. A copy of the written reprimand is given to the employee and the original is placed in the employee's personnel file. The employee must acknowledge receipt of the written warning by signing the letter at the time of presentation; this signature signifies only the receipt of the document, it does not signify the employee's agreement with the allegations.

**Suspension:** the temporary removal of an employee from their duties without pay for disciplinary purposes for up to thirty (30) working days. Employees suspended from their employment with the District forfeit all rights, privileges, and salary with the exception of group health and life insurance benefits.

**Reduction in Salary:** a decrease in salary paid to an employee for a specified period of time for disciplinary purposes.

**Demotion:** the removal of an employee from a position to another position carrying a lower maximum rate of pay as a result of a disciplinary action.

**Discharge:** the removal of an employee from District services, as provided for in these Guidelines.

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## **3125 Whistleblowing**

Employees are free to report violations of law, abuse of authority, fraud, economic waste, or gross misconduct, incompetence or inefficiency without fear of retaliation or retribution. This policy is based on a finding that the District best serves itself and its membership when it can be candid and honest without reservation in conducting business.

The District prohibits retaliation by employees, Trustees, or volunteers against any staff member, Trustee, or volunteer for making good faith complaints, reports or inquiries regarding illegal or improper activities under this policy to the District or any law enforcement agency, or for participating in a review or investigation of any such complaints under this policy. This protection extends to those whose allegations are made in good faith but prove to be mistaken. The District reserves the right to discipline persons who make bad faith, knowingly false, or vexatious complaints or reports regarding alleged illegal or improper activities, or who otherwise abuse this policy.

### Definitions:

- a) "Illegal Order" means a directive to violate or assist in violating a federal, state or local law, rule or regulation, or an order to an employee to work or cause others to work in conditions outside of their scope of duty that could unreasonably threaten the health and safety of employees or the public.
- b) "Illegal or Improper Activity" means an activity by a member of the Board of Trustees, an employee, or a volunteer of the District that is undertaken in the performance of that person's duties that is either: (1) a violation of any state or federal law or regulation including, but not limited to, corruption, malfeasance, bribery, theft of property, fraud, coercion, conversion, abuse of property or willful omission to perform a duty; or (2) violates District policies, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. Illegal or Improper Activity includes alleged financial, accounting or audit improprieties and alleged ethical violations by employees or Trustees.
- c) "Protected Disclosure" means a good faith communication from an employee or Trustee of the District to the District or law enforcement agencies that discloses information that may be evidence of Illegal or Improper Activity.
- d) "Retaliation" means an employee or Trustee using or attempting to use his or her official authority or influence over an employee to intimidate, threaten, or coerce any employee in order to interfere with the rights of employees to freely report Illegal or Improper Activity to the District or a law enforcement agency. Retaliation includes, but is not limited to, promising to confer, or conferring any benefit; affecting or threatening to affect any reprisal; or taking or directing others to take, recommend, or approve any personnel action against an employee making a Protected Disclosure including, but not limited to, demotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action including termination.

The District encourages employees and Trustees to file complaints or reports about Illegal Orders or Illegal or Improper Activity or alleged Retaliation. All such complaints shall include specific facts supporting any allegation of Illegal or Improper Activity, or Retaliation, as defined by this policy. Complaints of Illegal or Improper Activity or Retaliation may be made anonymously, but such anonymity may impede the ability of the District to conduct a thorough investigation. Complaints or reports should be filed with the General

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Manager. If the General Manager is alleged to be involved in the complaint or report, then such complaint shall be filed with the Board President. If the Board President is also alleged to be involved in the complaint, then the complaint or report shall be filed with the District's Legal Counsel. This policy is not intended to provide a procedure for the filing of employee or Board member complaints regarding any employment issues other than whistleblowing activities and protection of employees from Retaliation for making Protected Disclosures.

Upon receiving a complaint from any employee or Trustee that an employee or Trustee has engaged in an Illegal or Improper Activity, an investigation will be conducted. The identity of the person filing the complaint, or of any person providing information in confidence regarding the facts in the complaint shall not be disclosed without the express permission of the person providing the information. Disclosure of the facts will be necessary in the complaint to a law enforcement agency in the event that an allegation of criminal conduct is contained in the complaint filed with the District. Assistance of District Legal Counsel and/or any outside consultant for assistance may be necessary in evaluating an allegation of Illegal or Improper Activity or conducting an investigation of Illegal or Improper Activity as authorized by this policy. There shall be an investigation of the allegations in the complaint and a report of the results of the investigation prepared within sixty (60) days of the date of the complaint.

If, upon completion of the investigation, it is found that an employee or Trustee may have engaged or participated in an Illegal or Improper Activity, such findings shall be included in the investigative report and include recommended actions to prevent the continuation or recurrence of the Illegal or Improper Activity. Such recommendations may include taking disciplinary action. The investigative report may also recommend imposing sanctions, including loss of office, on those Trustees found to have violated this policy. In that event the report shall be filed with the President of the Board of Trustees which shall comply with the policies of the District in initiating discipline against a Trustee. The District shall keep confidential all investigation work product including the investigative report.

### Complaints of Retaliation and Investigation

An employee, Trustee, or volunteer who believes they have been subjected to Retaliation as defined and prohibited by this policy shall file a written complaint which specifies the alleged retaliatory conduct and identifies the individuals allegedly engaged in such conduct. Complaints or reports should be filed with the General Manager. If the General Manager is alleged to be involved in the complaint or report, then such complaint shall be filed with the Board President. If the Board President is also alleged to be involved in the complaint, then the complaint or report shall be filed with the District's General Counsel.

Upon receipt of the complaint an investigation of the allegations contained in the complaint of Retaliation shall commence, which shall include interviews of the complainant and any potential witnesses. General Counsel and/or other consultants can be utilized in conducting such investigation and preparing an investigation report. A written investigation report regarding the alleged Retaliation shall be completed within thirty (30) days of receipt of a complaint of Retaliation.

Based on the investigation, a determination shall be made by the investigating party as to whether Retaliation occurred in violation of this policy and, if so, what steps should be taken to remedy the situation which shall be communicated to the complainant.

If it is alleged that improper disciplinary action was taken against the complainant in Retaliation for having made a Protected Disclosure, the investigating party shall consider whether the taking or failing to take any

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personnel action with respect to an employee who has complained of Retaliation is justified on the basis of evidence separate and apart from the fact that the person has made a Protected Disclosure, such as inadequate job performance. If the evidence in the investigation reveals that a Protected Disclosure was a contributing factor in the alleged Retaliation against a former or current employee, the burden of proof shall be on the party imposing the discipline to demonstrate by clear and convincing evidence that the alleged personnel action would have occurred for legitimate, independent reasons even if the complaining employee had not engaged in Protected Disclosures of Illegal or Improper Activity.

The investigation report of the alleged Retaliation prepared by the investigating party shall include a written decision as to whether this policy has been violated. If the investigation report concludes that this policy has not been violated and the complainant disagrees with the determination, the complainant may appeal in writing the decision to the Board of Trustees. That appeal must be filed within ten (10) business days of receipt of the investigation report and decision of the investigating party.

If an appeal is filed, the Board of Trustees shall conduct a hearing of the complaining employee's appeal and hear and receive all evidence submitted by the complaining employee. In hearing the appeal, the Board may take evidence and hear testimony from the complaining employee and other witnesses. The Board shall consider whether an activity protected by this policy was a contributing factor in the alleged Retaliation against the complaining employee and if the alleged retaliatory action could have occurred for legitimate, independent business reasons even if the complaining employee had not made Protected Disclosures. The Board shall render a final decision in writing to the complaining employee within thirty (30) days after completing the hearing which concludes whether Retaliation prohibited by this policy has occurred or not. If the Board finds that the provisions of this policy have been violated, it shall order that any personnel action taken against the complaining employee be reversed and that a memorandum be placed in the employee's personnel file indicating the results of the decision of the Board on appeal.

A complaining employee shall be required to exhaust administrative remedies by filing an appeal with the Board of Trustees regarding any alleged violation of this policy before being entitled to commence a civil action in the Superior Court.

### **3130 Telecommuting**

The General Manager qualifies for telecommuting for those duties that can be performed away from the District office and when absence from the primary work location does not disrupt the workflow and/or overall management of the District. Telecommuting during a probationary or introductory period of a new employee shall not be granted because of the need to clarify job responsibilities with the General Manager and to assess the employee's suitability for continued employment, and because of the employee's need to establish relationships with co-workers. If the District engages employees other than the General Manager, telecommuting eligibility policy will be developed prior to the on boarding of the first new employee.

All benefits and compensation will be based on the employee's position, with no distinction made between telecommuting and onsite employees. All applicable contracts, agreements and policies governing an employee's position shall continue to apply in the telecommuting program.

Employees who telecommute are bound by all District policies as if they were working onsite or at the District office. This includes policies governing appropriate conduct in the workplace and towards others,

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regardless of working location. Any employee who violates any of District's policies while telecommuting shall be subject to revocation of the telecommuting arrangement, in addition to any disciplinary measures that would be taken if the employee was working onsite.

If an employee incurs an injury or illness in the course or scope of employment while telecommuting, Workers' Compensation laws apply. Employees must immediately notify their supervisor and complete all necessary paperwork. Actions that the telecommuter may take during break periods from working and actions not directly related to the approved remote worksite will not be covered under Workers' Compensation. These non-covered actions include, but are not limited to, all actions that the employee would not be able to perform in the District office, such as caring for children or pets, domestic tasks, yard work, retrieving the mail, cooking, exercising, and interacting with non-District employees for non-business purposes. The District shall in no instance be liable for injuries to third persons, including members of the telecommuting employee's family, who enter the employee's worksite or otherwise interact with the employee or use their home office equipment.

The District understands that compliance with the health and safety provisions of this policy does not necessarily provide the reasonable accommodations required by employees with disabilities. Telecommuting employees with disabilities shall be entitled to the same rights and accommodations they would be entitled to under all applicable state and federal laws and District policy.

### **3200 General Manager Evaluation**

The District employs a General Manager, subject to the terms and conditions of an Employment Agreement that states the Board of Trustees shall conduct an annual performance evaluation based on District policy and on previously agreed upon goals and objectives for the Employee.

This policy shall apply to only the General Manager, who is an at-will employee and serves at the pleasure of the District Board of Trustees. This policy shall not contradict any term of the current Employment Agreement between the General Manager and the District.

Responsibility for conducting this evaluation lies with the Ad Hoc Committee, appointed annually by the Board of Trustees, with assistance from a Human Resources Consultant. The Ad Hoc Committee will oversee the evaluation process, summarize the evaluation, determine and recommend any changes in compensation to the Board, and deliver the evaluation to the General Manager. The evaluation period will be the calendar year, and any compensation changes will go into effect March 1 of the year directly following the reviewed calendar year.

The components of the evaluation are as follows:

1. The General Manager Evaluation form which shall be updated annually by the Ad Hoc Committee in collaboration with the General Manager and HR Consultant, as needed. The form follows the Annual Operations Plan for the same period and includes areas for the General Manager Self Evaluation, Board feedback, and any goals in addition to those identified in the Annual Operations Plan.

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2. Board of Trustees Review: With all materials compiled, the HR Consultant will lead a Public Employee Performance Evaluation Closed Session review with the Board of Trustees for input on the General Manager Evaluation form and compensation adjustments.
3. Final Evaluation Meeting: With all materials compiled and reviewed, a meeting will be held with the General Manager, Ad Hoc Committee, and HR Consultant to discuss the materials and assessments, and negotiate any terms and conditions, as needed.
4. In a Regular Board meeting, the Board of Trustees will consider approval of the annual Performance Evaluation, and any compensation changes will be documented in an Amended & Restated Contract and considered for approval in public session.

The outcomes of the evaluation process will be:

1. Documented General Manger Evaluation report, including memorializing the General Manager's performance goals for the coming year in the Board adopted Annual Operations Plan.
2. Determination of compensation changes and establishment and documentation of metrics for the coming year.
3. Signed extension of the General Manager's employment contract.

The General Manager Performance Evaluation process can be reviewed annually by the Ad Hoc Committee and General Manager and suggested updates be presented to the Board for approval.

An exit interview shall be offered to the General Manager upon conclusion of employment with the District.

### **3500 Employee Records**

All personnel information and records are to be considered confidential to the extent allowed by federal or state law. The District policy is to require all personnel files to be maintained in a secure and private location and to have all employees manage personnel information in a safe and confidential manner.