

REVISED

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

Action Information

MEAD Number:
200750

Resolution:
 Yes No

TITLE:

Board Member Fiduciary Duties and Confidentiality

PRESENTATION SUMMARY:

Present principles of fiduciary duties and confidentiality for members of the WMATA Board of Directors.

PURPOSE:

The purpose of this presentation is to obtain Governance Committee review and approval of principles of fiduciary duties and confidentiality for members of the WMATA Board of Directors.

DESCRIPTION:

The Board and leadership of WMATA are responsible for fostering high ethical standards for WMATA, its officers and employees, thereby strengthening public confidence that WMATA's programs are conducted with impartiality and integrity. The Board adopts a Code of Ethics to assure the highest degree of confidence and public trust in WMATA, and that the judgment of Board Members will not be compromised or affected by conflicting interests or the appearance of a conflict of interest.

Key Highlights:

- The Board Code of Ethics is a document that addresses a number of Board responsibilities including (but not limited to) resolving actual and apparent conflicts; making disclosures and acknowledgments; and addressing any violations.
- In order to improve transparency and accountability, the Governance Committee asked staff to review and propose revisions to the current Board Code of Ethics regarding fiduciary duties and confidentiality.

Background and History:

On January 23, 2014, the Governance Committee requested a review of the Board Code of Ethics in comparison to the Code of Ethics for the Metropolitan Washington Airports Authority (MWAA) Board. On March 13, 2014, the Governance Committee discussed the impact of adopting key MWAA ethics provisions. On April 24, 2014, the Governance Committee reviewed a draft revised Code of Ethics and related Bylaws clarification. While those efforts continue, the Governance Committee requested a set of principles regarding fiduciary duties and confidentiality.

Discussion:

Members of the Board of Directors have fiduciary duties, including a duty of loyalty, duty of confidentiality, duty of care and duty to avoid conflicts of interest. While these fiduciary duties underly the Board's Code of Ethics, the Code does not clearly state what they consist of and how they operate in practice.

The Governance Committee asked Staff to review the current Metro Board Code of Ethics, and collaborate with jurisdictional partners to develop principles of fiduciary duties and confidentiality (Principles), in order to provide clarity and transparency for Board Members, staff and the public alike.

The Principles will govern the conduct of Board Members in their official duties, supersede the Code of Ethics and subsequently be incorporated into the Code of Ethics. All other provisions of the Code of Ethics remain in full force and effect.

FUNDING IMPACT:

No funding impact because this is a matter of Board governance.	
Project Manager:	Kathryn Pett
Project Department/Office:	Office of General Counsel & Office of the Board Secretary

TIMELINE:

Previous Actions	On January 23, 2014, the Governance Committee requested a staff review and recommendation for revisions of the current Board of Code of Ethics in comparison to the Code governing the MWAA Board. On March 13, 2014, the Governance Committee discussed the impact of adopting key MWAA ethics provisions. On April 24, 2014, the Governance Committee reviewed a draft revised Code of Ethics and related Bylaws revision.
Anticipated actions after presentation	Revise Code of Ethics as directed by Governance Committee. Seek Board approval of same.

RECOMMENDATION:

Board approval of the resolution establishing principles of fiduciary duties and confidentiality.

PRESENTED AND ADOPTED: July 24, 2014

SUBJECT: PRINCIPLES OF FIDUCIARY DUTIES AND CONFIDENTIALITY FOR MEMBERS OF THE WMATA BOARD OF DIRECTORS

2014-41

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) Board of Directors is committed to continuing to improve the governance of the Authority; and

WHEREAS, Pursuant to Resolution 2013-05, the Board of Directors approved a revised Code of Ethics for members of the WMATA Board ("Code of Ethics"); and

WHEREAS, The Code of Ethics adopted by Resolution 2013-05 does not set out the fiduciary duties for members of the Board of Directors, including the duty of confidentiality; and

WHEREAS, The Board of Directors believes it is advantageous to explicitly state their fiduciary duties, including the duty of confidentiality; now, therefore be it

RESOLVED, That the Board of Directors approves the Principles of Board Fiduciary Duties and Confidentiality ("Principles") in Attachment A to this Resolution; and be it further

RESOLVED, That the Principles will govern the members of the Board of Directors in the conduct of their official duties, and that the Principles supersede any contrary or different provisions in the Code of Ethics; and be it further

RESOLVED, That all other provisions of the Code of Ethics remain in full force and effect; and be it further

RESOLVED, That Staff will prepare a revision to the Code of Ethics incorporating the Principles and present it to the Governance Committee no later than the Committee's October session; and be it finally

Motioned by Mr. Dyke, seconded by Mrs. Hudgins

Ayes: 6 – Mr. Downs, Mr. Nichols, Mrs. Hudgins, Mr. Dyke, Ms. Bowser, and Mr. Goldman

Abstain: 2 – Mr. Downey, Mr. Acosta

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Kathryn H.S. Pett
General Counsel

WMATA File Structure No.:
2.1.2 Board Code of Ethics

Principles of Board Fiduciary Duties and Confidentiality

Board Members' Fiduciary Duty

Compact § 4 establishes WMATA as a "body corporate and politic," and an "instrumentality and agency of each of the signatory parties" (District of Columbia, Maryland and Virginia), with governance through a Board of Directors. As a result, Board Members owe fiduciary duties to WMATA and to their respective "Jurisdiction" as that term is defined in Article III J. A Board Member's fiduciary duties include separate duties of loyalty, confidentiality, care and to avoid conflicts of interest and to earn and retain public trust through loyal, diligent, honest, faithful and disinterested service.

A. Duty of Loyalty

Board Members shall act in the best interests of WMATA and their respective Jurisdictions in carrying out their duties as Members of the Board, rather than in the Member's interest or in the interest of another person or organization with which the Members are personally associated. Board Members also shall not engage in conduct that would bring discredit upon WMATA. Board Members owe their duties of loyalty to WMATA and to their respective Jurisdictions and not to any other person or organization.

B. Duty of Confidentiality

Board Members owe a duty of confidentiality to WMATA and to their respective Jurisdictions. WMATA and the Jurisdictions share common interests between and among them in all matters by virtue of the Compact relationship. Board Members shall keep confidential all matters involving the Authority that have not been disclosed to the public except as described herein. Members may disclose all information obtained in their capacity as Members (including privileged and non-privileged information obtained in Executive Session) to the leadership of the State and political Jurisdiction from which they were appointed. Members are encouraged to advise the Board of Directors of any such disclosure of confidential information to the leadership of their Jurisdiction. Members should request that the leadership of their Jurisdiction treat disclosed confidential information in a manner consistent with its sensitive nature. Leaders of the Jurisdiction will use their discretion in treating the information in a confidential manner consistent with the sensitive nature of the information disclosed. Any information that includes an actual or prospective personnel action, personnel evaluation or any other personnel information the disclosure of which is restricted by applicable statute shall be

disclosed only pursuant to agreement of the recipient to maintain the confidentiality of such information. In the rare instance where an actual conflict of interest arises and where the WMATA General Counsel wishes to share any information covered by the attorney-client or attorney-work-product privileges with the Board or one or more of the Jurisdictions, the WMATA General Counsel will identify and disclose to the Board of Directors the nature of the conflict in writing in sufficient detail to allow the Board of Directors to assess whether additional restrictions on the disclosure of that information should apply. If the Board determines by vote that additional restrictions on disclosure of privileged information should apply, the WMATA General Counsel shall prepare a confidentiality agreement for approval by the Board and the relevant Jurisdiction(s) that shall include safeguards appropriate to the circumstances that would restrict the disclosure of information only as actually necessary to protect the privileged information from disclosure.

C. Duty of Care

Board Members owe a duty to their respective Jurisdictions to provide liaison continuously and comprehensively with regard to plans, policies and actions requiring consideration in the planning for transit and in the development of planned transit facilities.

Board Members shall make reasonable efforts to be diligent, attentive and prudent, including giving due consideration of matters before making decisions for WMATA. Board Members shall exercise their duty of care in the interests of WMATA, their respective Jurisdictions and the public, and therefore consider the views and policies of public officials, government bodies, and other individual stakeholders during the decision-making process. Once a decision has been voted by the Board of Directors, Board Members shall work together to implement that decision.

D. Duty to Avoid Conflicts of Interest

Board Members shall avoid conflicts of interest or appearance thereof and place ethical principles and compliance with the law above private gain and personal interests inconsistent with their responsibility to WMATA and their respective Jurisdictions. Regardless of whether specifically prohibited by this Code, Members shall endeavor to avoid conflicts of interest or the appearance of conflicts of interest, refrain from using their positions for personal profit or gain, or for any other personal advantage; refrain from the appearance of favored treatment to any person or entity; avoid compromising independence or impartiality; and avoid any other action that is likely to adversely affect the confidence of the public in the integrity of the Board of Directors or of WMATA.

Use of Official Position

Board Members shall not use, nor give the appearance that they are using, their official position with WMATA in a manner inconsistent with their responsibilities to WMATA and their respective Jurisdiction. Board Members shall not:

- A. Use their position with WMATA for their own personal financial gain, for the endorsement of any product, service or enterprise in which they have a Substantial Interest or Duty, or for the private financial gain of friends, relatives, or individuals or entities with which they are affiliated, including nonprofit organizations of which they are officers or members, or with which they have or seek employment or business relations;
- B. Use or permit others to use information not generally available to the public obtained from WMATA through the Board Member's official position with WMATA to further the Substantial Interests or Duties of a Board Member, a Household Member, a Member's Business Associate, or any Interested Party;
- C. Disclose or permit others to disclose to anyone outside WMATA other than to staff of their respective Jurisdictions information obtained through their official position with WMATA and not generally available to the public except where and to the extent necessary to fulfill the Board Member's Fiduciary responsibilities; provided, however, that disclosure of confidential information shall be made only in accordance with the terms of Article II (B);
- D. Use WMATA property other than for authorized purposes, nor seek assistance from other WMATA personnel, while in duty status, to assist them in connection with business enterprises (including self-employment, home-based businesses, consulting, purchase or sale of real estate or other professional services) or personal matters (non-WMATA matters including a Board Member's social, religious or educational interests);
- E. Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in their employment with the Authority (Compact § 10); or
- F. Receive compensation from WMATA except for reimbursement for necessary expenses incurred incident to the performance of their duties, in accordance with and to the extent permitted under WMATA's expense reimbursement policies. Members are expected to exercise prudence when incurring expenses in connection with official duties.