



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, EBCE General Counsel

SUBJECT: Adopt a Resolution to Amend the Conflict of Interest Code to Add Four New Positions and Update the Code Reviewing Body

DATE: October 21, 2020

Recommendation

Adopt a Resolution Amending the Authority's Conflict of Interest Code to add four new positions, update the code reviewing body, and other items.

Background and Discussion

Shortly after the formation of EBCE, the Board of Directors adopted a Conflict of Interest Code as required by the Political Reform Act (Government Code Section 81000, et seq.). The Code lists the positions within EBCE that are required to file statements of economic interests (Form 700). The Code was amended in January 2018 and November 2018 to add new positions.

Since the last amendment, EBCE has created four new staff positions: Vice President of Technology and Analytics; Vice President of Local Development, Electrification, and Innovation; Senior Director of Public Policy and Deputy General Counsel; and Human Resources Business Partner. In addition, the EBCE service area now includes the city of Tracy in San Joaquin County, which makes EBCE a multi-county agency. Accordingly, EBCE's code reviewing body is now the Fair Political Practices Commission.

In accordance with the requirements of the Political Reform Act, a new conflict of interest code must be adopted by resolution which includes the updated information. The attached Resolution rescinds Resolution Nos. R-2017-1 and R-2018-36, the prior Conflict of Interest Code and most recent amendment to the Code, and adopts a revised Conflict of Interest Code to add the new positions, enumerate the appropriate disclosure categories, update the code reviewing body, rename the titles of previously designated positions, and delete positions that have been eliminated.

Attachments

- A. Resolution of the Board of Directors of the East Bay Community Energy Authority Amending the Authority's Conflict of Interest Code

RESOLUTION NO. __

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
AMENDING THE AUTHORITY'S CONFLICT OF INTEREST CODE**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the city of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS, the Political Reform Act, Government Code Section 81000, *et seq.*, (the “Political Reform Act”) requires all agencies, including the Authority, to adopt and promulgate a local conflict of interest code.

WHEREAS, the Fair Political Practices Commission (the “FPPC”) has adopted a regulation (2 California Code of Regulations Section 18730), which contains the terms of a standard conflict of interest code and can be incorporated by reference in an agency’s code.

WHEREAS, on January 30, 2017, the Board of Directors of the Authority approved Resolution No. R-2017-1, adopting a Conflict of Interest Code for the Authority. Appendix A to the Conflict of Interest Code lists the employee and consultant positions subject to the Code and establishes economic disclosure categories, and Appendix B identifies the specific financial interests to be reported.

WHEREAS, on January 17, 2018, the Board of Directors approved Resolution No. R-2018-7, amending the Conflict of Interest code to update Appendix A to add new positions and enumerate the appropriate disclosure categories.

WHEREAS, on November 7, 2018, the Board of Directors approved Resolution No. R-2018-36, further amending the Conflict of Interest Code to update Appendix A to add new staff positions and enumerate the appropriate disclosure categories.

WHEREAS, since the EBCE service area has expanded to include the city of Tracy in San Joaquin County, EBCE is now a multi-county agency, and its code reviewing body is the Fair Political Practices Commission.

WHEREAS, the Board of Directors now desires to amend its Conflict of Interest Code to add four new positions, enumerate the appropriate disclosure categories,

update the code reviewing body, rename the titles of previously designated positions, and delete positions that have been eliminated.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Board of Directors hereby rescinds Resolution Nos. R-2017-1 and R-2018-36, and adopts the attached Conflict of Interest Code, including its Appendices of Designated Positions and Disclosure Categories.

Section 2. All officials and employees required to submit a statement of economic interests pursuant to Appendix A shall file their statements with the Authority's Filing Official. The Filing Official, or his or her designee, shall make and retain a copy of all statements filed with the Authority and forward the originals of such statements to the Fair Political Practices Commission. All retained statements, original or copied, shall be available for public inspection and reproduction (Gov. Code Section 81008).

Section 3. The Board of Directors hereby directs the Secretary of the Board to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years in accordance with the requirements of Government Code Sections 87306 and 87306.5. Future revisions to the Conflict of Interest Code should reflect changes in employee or official designations. If no revisions to the Code are required, the Authority shall submit a report to the Fair Political Practices Commission no later than October 1st of the same year, stating that amendments to the Authority's Conflict of Interest Code are not required.

ADOPTED AND APPROVED this 21st day of October, 2020.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

**EAST BAY COMMUNITY ENERGY AUTHORITY
CONFLICT OF INTEREST CODE**

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices, designating positions and establishing disclosure categories, shall constitute the conflict of interest code for the **East Bay Community Energy Authority (“Authority”)**.

All designated officials and employees must file their statements of economic interests electronically with the **Authority**, which will make the statements available for public inspection and reproduction under Government Code Section 81008. Upon receipt of the statements, the **Authority** shall make and retain copies and forward the originals to the **Fair Political Practices Commission**. All original statements will be retained by the **Fair Political Practices Commission**.

EAST BAY COMMUNITY ENERGY AUTHORITY
CONFLICT OF INTEREST CODE

APPENDIX "A"

DESIGNATED POSITIONS

<u>Designated Positions</u>	<u>Disclosure Categories</u>
Member of Board of Directors	1, 2, 3, 4
Member of Board of Directors (Alternate)	1, 2, 3, 4
Chief Executive Officer	1, 2, 3, 4
Chief Operating Officer	1, 2, 3, 4
General Counsel	1, 2, 3, 4
Clerk of the Board	1, 2, 3, 4
Vice President of Marketing and Customer Accounts	1, 2, 3, 4
Vice President of Technology and Data Analytics	1, 2, 3, 4
Vice President of Local Development, Electrification, and Innovation	1, 2, 3, 4
Senior Director of Power Resources	1, 2, 3, 4
Senior Director of Public Policy and Deputy General Counsel	1, 2, 3, 4
Human Resources Business Partner	1, 2, 3, 4
Consultants	*
Newly Created Position	**

* Consultants¹

Designated Consultants

Consultants who make (not just recommend) governmental decisions, such as whether to approve a rate, rule, or regulation, authorize or grant Authority approval to enter into, modify, or renew a contract that requires Authority approval, adopt or grant Authority approval to a plan, design, report, study, or adopt or grant Authority approval of policies, standards, or guidelines for the Authority or any subdivision thereof.

Consultants who serve in a staff capacity with the Authority, and in that capacity participate in making a governmental decision by providing information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

Consultants who perform the same or substantially all the same duties for the Authority that would otherwise be performed by an individual holding a designated position in the Authority's Conflict of Interest Code.

Disclosure Categories

1, 2, 3, 4²

Disclosure required at the same level as a comparable designated position in the same or similar Department identified elsewhere in this Code.

Disclosure required at the same level as the comparable designated position identified elsewhere in this Code.

¹ When the consultant is a corporation or partnership, only individuals who fit into one of the three categories of "Designated Consultants" must file disclosure statements.

² Unless the Chief Executive Officer determines in writing that a particular consultant is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the section. If the Chief Executive Officer determines in writing that a particular consultant is not required to fully comply with the requisite disclosure requirements, then such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

**** Newly Created Position**

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority's Conflict of Interest Code, is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the Code, subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular newly created position, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Section 81008.)

Within 90 days of the creation of a newly created position that must file a statement of economic interests, the Authority shall update this Conflict of Interest Code to add the actual position title in its list of designated positions, and submit the amended Conflict of Interest Code to the Fair Political Practices Commission for code reviewing body approval. (Gov. Code Section 87306.)

**EAST BAY COMMUNITY ENERGY AUTHORITY
CONFLICT OF INTEREST CODE**

APPENDIX "B"

DISCLOSURE CATEGORIES

Designated positions must report financial interests in accordance with the assigned disclosure categories.

Category 1: Persons in this category shall disclose interests in real property located within the jurisdiction of the East Bay Community Energy Authority. Real property shall be deemed within the Authority's jurisdiction if the property or any part of it is located within two miles of the borders of any of the parties to the Joint Powers Agreement for the Authority, or within two miles of any land owned or used by the Authority.

Designated persons are not required to disclose property used primarily as their principal residence.

Category 2: Persons in this category shall disclose reportable income from persons or business entities that have contracted with the Authority, or that provide, plan to provide, or have provided within two years from the time a statement is required under this Conflict of Interest Code, contractual services, or other services, supplies, materials or equipment of the type utilized by the Authority.

Category 3: Persons in this category shall disclose reportable investments in business entities that contract with the Authority or that provide, plan to provide or have provided within two years from the time a statement is required under this Conflict of Interest Code, contractual services, or other services, supplies, materials or equipment of the type utilized by the Authority.

Category 4: Persons in this category shall disclose reportable business positions in business entities that contract with the Authority or that provide, plan to provide or have provided within two years from the time a statement is required under this Conflict of Interest Code, contractual services, or other services, supplies, materials or equipment of the type utilized by the Authority.