



Consent Item 10

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, EBCE General Counsel

SUBJECT: Adopt Resolution to Adopt a Revised Conflict of Interest Code Based on Feedback from the FPPC

DATE: December 15, 2021

Recommendation

Adopt Resolution Adopting Amended Conflict of Interest Code clarifying that certain specified positions (Board of Directors and Treasurer) must file a Form 700 under Government Code Section 87200.

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, November 2018, and October 2020 to add new positions.

Since the addition of the City of Tracy in San Joaquin County in March 2020, the EBCE is now a multi-county agency under the Political Reform Act. The California Fair Political Practices Commission (FPPC) is now the EBCE's "code-reviewing body" which must approve the EBCE's Conflict of Interest Code pursuant to Government Code Section 87303.

After the last amendment in 2020, EBCE submitted its amended code to the FPPC. The FPPC reviewed the code and conferred with staff. The FPPC suggested that EBCE's code specify that members of the Board of Directors and the Treasurer likely meet the requirement of Government Code Section 87200, which states that "public officials who manage public investments" are subject to the Political Reform Act under statute (as opposed to the agency's conflict interest of code) and therefore must disclose all financial interests relevant to the agency in their Form 700 filings. The FPPC suggested

that the EBCE adopt a revised conflict of interest code clarifying that these positions are subject to this heightened standard.

Practically speaking, this clarification does not have a significant impact on the EBCE. Members of the Board of Directors are already Government Code Section 87200 filers for their respective member agencies, so they are already disclosing all financial interests as required by statute. In most cases, Board Members can simply file the Form 700 they are using for their City or County with the EBCE in order to meet this requirement. (Please note that since the EBCE's jurisdiction extends beyond that of any of its member agencies, board members should be careful to disclose any real property interests outside their city/county jurisdiction but within EBCE's jurisdiction.)

Likewise, we have also advised that the Treasurer (a position currently held by Howard Chang, COO) should be treated as a public official who manages public investments given his role in managing EBCE funds and investments. Thus, the revised Conflict of Interest Code clarifies that this position will fully disclose all financial interests required by Section 87200.

The FPPC approved EBCE's Conflict of Interest Code with this minor change and it will take effect after a 45 day review period. In the interests of transparency, we are submitting the revised Conflict of Interest Code to the Board for approval although this is not technically required under the law.

The attached Resolution rescinds Resolution Nos. R-2017-1, R-2018-36, and R-2020-29 the prior Conflict of Interest Code and most recent amendments to the Code, and adopts a revised Conflict of Interest Code to specify that the Board of Directors and the Treasurer are subject to the requirements of Government Code Section 87200.

Attachments

- A. Resolution of the Board of Directors of the East Bay Community Energy Authority Approving the Amended Conflict of Interest Code
- B. Conflict of Interest Code for East Bay Community Energy Authority

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, on October 21, 2020, the Board of Directors approved Resolution No. R-2020-29, 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 Fair Political Practices Commission reviewed the EBCE's code and approved it with a suggested revision to state that certain designated positions - specifically, the Treasurer and Board and Directors - are subject to Government Code Section 87200.

WHEREAS, the Board of Directors now desires to amend its Conflict of Interest Code to expressly state that the Treasurer and members of the Board of Directors are subject to Government Code Section 87200.

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, R-2018-36, and R-2020-29, 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 15th day of December, 2021.

Dianne Martinez, Chair

ATTEST:

Clerk of the Board

CONFLICT OF INTEREST CODE FOR
East Bay Community Energy Authority
(Revised, Effective December 15, 2021)

The Political Reform Act (Government Code §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 §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 §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 of the **East Bay Community Energy Authority (Authority)**.

Members and Alternates of the Board of Directors must file their statements of economic interests electronically with the **Fair Political Practices Commission**. All other individuals holding designated positions must file their statements with the **Authority**. All statements must be made available for public inspection and reproduction under Government Code Section 81008.

CONFLICT OF INTEREST CODE FOR
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APPENDIX A
Designated Positions

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORIES</u>
Chief Executive 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/New Positions	*

*Consultants and new positions shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

With respect to consultants and new positions, the Chief Executive Officer may determine in writing that a particular consultant or new position is hired to perform a range of duties that is limited in scope and thus, is not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant's or new 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 of this conflict of interest code.

The following positions are not covered by the code because the positions manage public investments. Individuals holding such positions must file under Government Code Section 87200 and are listed for informational purposes only. Section 87200 requires disclosure of all investments and business positions in business entities, all income, including gifts, loans and travel payments, and real property.

CONFLICT OF INTEREST CODE FOR
East Bay Community Energy Authority
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- Members and Alternates of the Board of Directors
- Chief Operating Officer/Treasurer

APPENDIX B
Disclosure Categories

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

Category 1: Interests in real property located within the jurisdiction or within two miles of the boundaries of the jurisdiction or within two miles of any land owned or used by the Authority, including any leasehold, beneficial or ownership interest or option to acquire such interest in real property.

Category 2: Investments and business positions in business entities, and income, including receipt of gifts, loans and travel payments, from sources, that provide services, supplies, materials, machinery, or equipment of the type utilized by the Authority.

Category 3: Investments and business positions in business entities, and income, including receipt of gifts, loans and travel payments, from entities which are private electric utility companies doing business within the jurisdiction of the Authority.

Category 4: Investments and business positions in business entities, and income, including receipt of gifts, loans and travel payments, from business entities which are energy consultants, research firms, engineering firms, or entities that design, build, manufacture, sell, distribute or service equipment of the type that is either presently utilized by electric power suppliers or that is used by the federal, state, or local government or by private industry in research designed to refine or develop new methods of electrical power generation.