

ABAG Finance Authority for Nonprofit Corporations

Executive Committee

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November 7, 2019

Agenda Item 6

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Conflict of Interest Code

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**Subject:** Amendment of ABAG FAN Conflict of Interest Code

**Background:** A local agency's conflict of interest code (COIC) must reflect the current structure of the agency and properly identify officials and employees who should be filing Form 700, the Statement of Economic Interests. A COIC tells public officials, employees and consultants what types of financial interests they must disclose on their Form 700s. To ensure COICs remain current and accurate, each local agency is required to review its code at least every even-numbered year. In connection with the 2018 biennial review of ABAG FAN's COIC, staff determined that the designated positions needed to be updated to reflect the Metropolitan Transportation Commission (MTC)-Association of Bay Area Governments (ABAG) staff consolidation.

Pursuant to the Contract for Services between ABAG and MTC, dated as of May 30, 2017 (Contract for Services), the staff of ABAG became employees of MTC, effective July 1, 2017. The following MTC consolidated staff positions have been determined to make or participate in the making of ABAG FAN decisions that may foreseeably have a material financial effect on an economic interest: Deputy Executive Director, Local Government Services; General Counsel; Senior Deputy General Counsel; Senior Counsel; Director, Finance & Accounting; and Director, Treasury & Revenue. These positions have been added to the list of designated positions in ABAG FAN's COIC (formerly Appendix A, now Appendix B).

Other proposed changes to the COIC include the deletion of one of the disclosure categories per the direction of Fair Political Practices Commission (FPPC) staff; deletion of the former Appendix B and concomitant listing of officials who manage public investments at the end of the list of designated positions (formerly Appendix A, now Appendix B), where they are listed for informational purposes only, because they file Form 700 under the Political Reform Act (Government Code § 87200); and the addition of background information in a section entitled "Conflict of Interest Disclosure Designations." All of the proposed changes have been reviewed and given initial approval by the FPPC.

FPPC amendment procedures require that a written notice of intent to amend the COIC must be given 45 days prior to the time the proposed amendment is submitted to the FPPC for formal

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approval. A copy of that written notice is attached to this Summary Sheet. The comment period will run from Friday, November 8, 2019 through Monday, December 23, 2019.

Any interested person may request a public hearing to comment on the proposed COIC amendment, if any such request is made no later than 15 days prior to the close of the comment period, or by Friday, December 6, 2019. If no request for a hearing is received, staff would submit the proposed amended COIC to the FPPC for formal approval, and the COIC as amended would be effective 30 days after FPPC approval.

**Issues:** None identified.

**Recommended Actions:** The ABAG FAN Executive Committee is requested to authorize staff to circulate the proposed changes to the Conflict of Interest Code for public comment and to schedule a public hearing if there is a request from the public to do so; and, assuming no comments are received, to authorize staff to submit the proposed amended COIC to the Fair Political Practices Commission for formal approval.

**Attachments:** A. Notice of Intention to Amend the Conflict of Interest Code of ABAG Finance Authority for Nonprofit Corporations

B. Proposed Amended Conflict of Interest Code

**Reviewed:**

  
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Therese McMillan

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE  
OF ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

NOTICE IS HEREBY GIVEN that ABAG Finance Authority for Nonprofit Corporations (ABAG FAN), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict of interest code. A comment period has been established commencing on November 8, 2019 and closing on December 23, 2019. All inquiries should be directed to the contact listed below.

ABAG FAN proposes to amend its conflict of interest code to include Metropolitan Transportation Commission (MTC) employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

Changes to the conflict of interest code include: changes reflecting the ABAG-MTC staff consolidation, and other technical changes.

The proposed amendment and explanation of the reasons for the changes can be obtained from the agency's contact.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than December 23, 2019, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than December 6, 2019.

ABAG FAN has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

Copies of the proposed amendment and explanation of the reasons for it will be made available to any interested person who calls Frederick Castro, Clerk of the Board, ABAG FAN, during business hours at (415) 820-7913. Written requests for copies of the proposed amendment and explanation of the reasons for it, and written comments on the amendment, may be sent to Mr. Castro at ABAG's offices, 375 Beale Street, Suite 700, San Francisco, CA 94105. Any inquiries concerning the proposed amendment should be directed to Cynthia Segal, MTC Deputy General Counsel, at (415) 778-6713, or [csegal@bayareametro.gov](mailto:csegal@bayareametro.gov).

Revisions in ~~strikeout~~ and underline

~~SECOND~~THIRD AMENDED

CONFLICT OF INTEREST CODE

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

The Political Reform Act, Government Code Sections 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 ~~S~~g 18730, et seq., which 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 it 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, Sections 18730, et seq., and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendices in which officials and ~~employees~~positions are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the ~~Second~~Third Amended Conflict of Interest Code of ABAG Finance Authority for Nonprofit Corporations (Authority).

~~Designated employees~~Persons who hold designated positions shall file their statements with the Association of Bay Area Governments (ABAG) who will make the statements available for public inspection and reproduction. (Gov. Code Section 81008). Statements for all persons who hold designated ~~employees~~positions will be retained by ~~the Association of Bay Area Governments~~ABAG.

## APPENDIX A

### DISCLOSURE CATEGORIES

#### Disclosure Category 1

Persons designated in this category must disclose all investments and business positions in business entities and sources of income if such entities or sources of income filed claims against any member jurisdiction of the Authority or the Authority itself during the reporting period.

#### Disclosure Category 2

~~Persons designated in this category must disclose all investments and business positions in business entities and sources of income if the business entities are of the type in which the Authority is empowered to invest its funds.~~

#### Disclosure Category 32

Persons designated in this category must disclose all investments and business positions in business entities and sources of income if the business entities or sources of income are of the type that contract with the Authority, or its administrative agency, to supply goods, services, materials, supplies or leased space.

#### Disclosure Category 43

Persons designated in this category must disclose all investments and business positions in business entities and sources of income that are insurance companies, ~~eariers~~carriers, holding companies, underwriters, agents, solicitors or brokers.

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

APPENDIX AB

DESIGNATED POSITIONS

<u>Designated Positions</u>	<u>Disclosure Category</u>
Members and Alternate Members of Board of Directors	1, 2, 3, 4
President*	1, 2, 3, 4
Manager, Financial Services	1, 2, 3, 4
Legal Counsel	1, 2, 3, 4
<i>MTC Staff serving ABAG and the Authority pursuant to the Contract for Services, including:</i>	<i>1, 2, 3 (except where otherwise indicated)</i>
<ul style="list-style-type: none"><li><i>Deputy Executive Director, Local Government Services</i></li><li><i>General Counsel</i></li><li><i>Senior Deputy General Counsel</i></li><li><i>Senior Counsel</i></li><li><i>Director, Finance &amp; Accounting (Categories 2, 3)</i></li><li><i>Director, Treasury &amp; Revenue (Categories 2, 3)</i></li></ul>	
Consultants/ <u>New Positions</u> *	<u>1, 2, 3</u>

\*This position is held by the Executive Director, Association of Bay Area Governments.

\* With respect to ~~C~~consultants/new positions, the ~~President, who is the Chief Administrative Officer,~~Executive Director of the Metropolitan Transportation Commission (MTC) may determine in writing that a particular consultant or new position, although a “designated person,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this Section. 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 the disclosure requirements and shall be retained ~~in the Comp Pool's files~~for public inspection in the same manner and location as this Conflict of Interest Code. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

### **OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

It has been determined that the positions listed below manages public investments and will file a Statement of Economic Interests pursuant to Government Code Section 87200:

Members and Alternate Members of Executive Committee of Authority Board of Directors

Executive Director of MTC, acting pursuant to the Contract for Services

Chief Financial Officer of MTC, acting pursuant to the Contract for Services

An individual holding one of the above listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

## CONFLICT OF INTEREST DISCLOSURE DESIGNATIONS

The Authority has identified three (3) disclosure categories: (1) requires disclosure of business entities and business positions in which designated parties have investments or sources of income to them if such entities or sources of income have filed claims against any member jurisdiction of the Authority or the Authority itself; (2) requires designated persons to disclose business entities and business positions in which they have investments or sources of income to them if such entities are of the type which contract with the Authority or ABAG to supply goods, services, materials, supplies, or leased space; and (3) requires designated persons to disclose business entities and business positions in which designated parties have investments or sources of income to them if such entities or sources of income are insurance companies, carriers, holding companies, underwriters, agents, solicitors or brokers.

The designated position list is intended to include all persons with decision-making powers or influence concerning how, where and with whom the Authority invests funds and contracts for goods and services to disclose any bias such parties may have in making substantive decisions concerning the operations of the Authority.

Effective July 1, 2017, the Metropolitan Transportation Commission (MTC), pursuant to the Contract for Services dated as of May 30, 2017 (Contract for Services) between MTC and ABAG, provides consolidated staff to perform work for ABAG and its affiliated Local Collaboration Programs, including the Authority.

The primary decision-making positions of the Authority are the members and alternate members of the Executive Committee of the Authority Board of Directors (Board). The members and alternate members of the Executive Committee of the Board are not included in the Code because "city, county and local agency public officials who manage public investments" are not "designated employees" and file Statements of Economic Interest pursuant to Government Code § 87200. However, under the Contract for Services, certain MTC staff may make recommendations to or bring information or proposals to the members of the Board and thus may influence the Board's decisions concerning the Authority. MTC staff serving ABAG and the Authority under the Contract for Services are not employees of ABAG but are included in the list of designated positions under this Code as consultants pursuant to Government Code Section

82019, which includes consultants within the definition of "designated employee". Additionally, with the exception of consultants whose duties are limited in scope and who thus may have limited disclosure responsibilities, consultants shall be required by the Authority's Code to file Statements of Economic Interest and any supplementary information that may from time to time be required annually and upon assuming and leaving office/job position as set forth in 2 California Code of Regulations, § 18730(b)(5).

APPENDIX B

~~OFFICIALS WHO MANAGE PUBLIC INVESTMENTS~~

~~It has been determined that the position listed below manages public investment and will file a Statement of Economic Interests pursuant to Government Code Section 87200:~~

~~Chief Financial Officer\*~~

~~\*This position is held by the Finance Director, Association of Bay Area Governments.~~