

ABAG Publicly Owned Energy Resources (ABAG POWER)

Board of Directors

October 30, 2019

Agenda Item 3.b.1

Authorization of Amendment to ABAG POWER Conflict of Interest Code

Subject: Amendment of ABAG POWER 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 responsible for filing Form 700, Statement of Economic Interests. A COIC details what must be disclosed on the California Fair Political Practices Commission (FPPC), Form 700 (Statement of Economic Interests). To ensure a COIC remains 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 POWER's COIC, staff determined that the positions that need to report should be updated to reflect the Metropolitan Transportation Commission (MTC) - Association of Bay Area Governments (ABAG) staff consolidation, that took effect July 1, 2017 pursuant to the Contract for Services between ABAG and MTC, dated May 30, 2017.

The following MTC consolidated staff positions have been determined to make or participate in the making of ABAG POWER decisions that may foreseeably have a material financial effect on an economic interest, thereby requiring the filing of Form 700: Deputy Executive Director, Local Government Services; General Counsel; Senior Deputy General Counsel; Senior Counsel; Director, Finance & Accounting; Director, Treasury & Revenue; and Assistant Director, Energy Programs. These positions have been added to Appendix B of ABAG POWER's COIC.

Other proposed changes to the COIC include the deletion of one of the disclosure categories per the direction of the FPPC; and deletion of Appendix C; and concomitant listing of officials who manage public investments (at the end of Appendix B), where they are listed for informational purposes only, because they file Form 700 under the Political Reform Act (Government Code § 87200). All of the ABAG POWER proposed changes have been reviewed and given initial approval by the FPPC.

Written notice of intent to amend a COIC must be given 45 days prior to the time the proposed amendment is submitted to the

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FPPC for formal approval. A comment period for interested parties to submit comments to the COIC amendment will run from October 31, 2019 through December 16, 2019. (A copy of the Notice is attached to this Summary Sheet.)

Any interested person may request a public hearing to comment on the proposed COIC amendment, no later than 15 days prior to the close of the comment period, or by Wednesday, November 27, 2019. If no request for a hearing is received, staff would submit the proposed amended COIC to the FPPC for formal approval; the COIC as amended would be effective 30 days following FPPC approval.

Recommended Actions:

The ABAG POWER Board of Directors is requested to authorize staff to submit the proposed changes for public comment and to schedule a public hearing upon request.

Assuming no comments are received, authorize staff to submit the proposed amended COIC to the FPPC for formal approval; the COIC as amended would be effective 30 days after FPPC approval.

Issues:

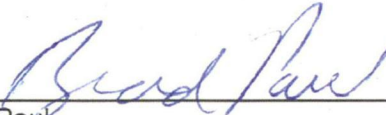
None.

Attachments:

Notice of Intention to Amend the Conflict of Interest Code of ABAG Publicly Owned Energy Resources

Proposed Amended Conflict of Interest Code

Reviewed:



Brad Paul

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**NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE
OF ABAG PUBLICLY OWNED ENERGY RESOURCES**

NOTICE IS HEREBY GIVEN that ABAG Publicly Owned Energy Resources (ABAG POWER), 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 October 31, 2019 and closing on December 16, 2019. All inquiries should be directed to the contact listed below.

ABAG POWER 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 16, 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 November 27, 2019.

ABAG POWER 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 Ryan Jacoby, Program Manager, ABAG POWER, during business hours at (415) 820-7956. 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. Jacoby 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.

Revisions in ~~strikeout~~ and underline

FIRST AMENDED CONFLICT OF INTEREST CODE

ABAG PUBLICLY OWNED ENERGY RESOURCES

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 18730, 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, Section 18730, 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 First Amended Conflict of Interest Code of ABAG Publicly Owned Energy Resources (ABAG POWER).

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

CONFLICT OF INTEREST DISCLOSURE DESIGNATIONS

ABAG POWER has identified ~~four (4)~~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 of ABAG POWER or ABAG POWER itself; ~~(2) 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 are of the type in which ABAG POWER is empowered to invest its funds;~~ (3) 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 ABAG POWER or the Association of Bay Area Governments (ABAG), its administrator, to supply goods, services, materials, supplies, lease space or which are energy consultants, research firms, engineering firms or entities which design, build, manufacture, sell, distribute or service equipment of the type that is either presently utilized by natural gas or 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 or natural gas production; 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 private electric or natural gas utility companies.

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

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 ABAG POWER.

The primary decision-making positions of ABAG POWER are the members and alternate members of the Board of Directors (Board). The members and alternate members of the Board are

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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 ~~the president, financial officer, manager of ABAG POWER Program, legal counsel and some consultants~~ may make recommendations to or bring information or proposals to the members of the Board and thus may influence the Board's decisions concerning ABAG POWER. MTC staff serving ABAG and ABAG POWER 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". ~~Therefore~~ Additionally, with the exception of, consultants whose duties are limited in scope and who thus may have limited disclosure responsibilities, ~~the remaining positions set forth in the preceding sentence~~ consultants shall be required by ABAG POWER'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 A

DISCLOSURE CATEGORIES

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 ABAG POWER or ABAG POWER itself during the reporting period.

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 or sources of income are of the type in which ABAG POWER is empowered to invest its funds.~~

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 ABAG POWER or ABAG, its administrative agency, to supply goods, services, materials, supplies, leased space or which are energy consultants, research firms, engineering firms or entities which design, build, manufacture, sell, distribute or service equipment of the type that is either presently utilized by natural gas or 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 or natural gas production.

Category 43

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 private electric or natural gas utility companies.

APPENDIX B

DESIGNATED POSITIONS

<u>Designated Positions</u>	<u>Disclosure Category</u>
President *	1, 2, 3, 4
Secretary/Manager, ABAG POWER	1, 3, 4
Legal Counsel	1, 2, 3, 4
<u>MTC Staff serving ABAG and ABAG POWER pursuant to the Contract for Services, including:</u>	<u>1, 2, 3 (except where otherwise indicated)</u>
<ul style="list-style-type: none"> • <u>Deputy Executive Director, Local Government Services</u> • <u>General Counsel</u> • <u>Senior Deputy General Counsel</u> • <u>Senior Counsel</u> • <u>Director, Finance & Accounting</u> <u>(Categories 2, 3)</u> • <u>Director, Treasury & Revenue</u> <u>(Categories 2, 3)</u> • <u>Assistant Director, Energy Program</u> 	
Consultants/ <u>New Positions</u> *	1, 2, 3, 4

* With respect to consultants/new positions, the Executive Director of 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 disclosure requirements and shall be retained in ABAG POWER's files. Nothing herein excuses any such consultant or new position from any other provision of this Conflict of Interest Code.

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

The following individuals are not covered by the conflict of interest code because they must file under Political Reform Act's section 87200 and, therefore, are listed for informational purposes only:

Members and Alternate Members of ABAG POWER 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 that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by section 87200.

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

~~** With respect to Consultants, the President, who is the Chief Administrative Officer, may determine in writing that a particular consultant, 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 duties and, based upon that description, a statement of the extent of disclosure requirements and shall be retained in ABAG POWER's files. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.~~

APPENDIX C

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that the position listed below manages public investment and will file Form 721 Statement of Economic Interest:

Chief Financial Officer serving as ABAG's "Financial Officer"