

Association of Bay Area Governments

Executive Board

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November 21, 2019

Agenda Item 6.g.

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Conflict of Interest Code Amendment

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**Subject:** Authorization to circulate proposed amendment of the ABAG Conflict of Interest Code for public comment, to schedule a public hearing if there is a request from the public to do so, and to submit the proposed amended Conflict of Interest Code to the Fair Political Practices Commission for formal approval if no comments are received

**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'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, 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 decisions that may foreseeably have a material financial effect on an economic interest: Deputy Executive Director, Policy; Deputy Executive Director, Operations; Deputy Executive Director, Local Government Services; General Counsel; Senior Deputy General Counsel; Senior Counsel; Administrative Director, Office of the General Director; Director, Deputy Director, and Assistant Directors, Integrated Planning Department; Director, Finance & Accounting; Director, Treasury & Revenue; Director and Assistant Directors, Legislation and Public Affairs; Director, SF Estuary Partnership; Assistant Director, Energy Program; and Assistant Directors, Finance. These positions have been added to the list of designated positions in ABAG's COIC (Appendix A).

Other proposed changes to the COIC include the deletion of one disclosure category and adjustments to two of the disclosure categories per the direction of Fair Political Practices Commission (FPPC) staff; and deletion of the former Appendix C and concomitant listing of officials who manage public investments at the end of Appendix A, where they are listed for informational

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purposes only, because they file Form 700 under the Political Reform Act (Government Code § 87200). 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 approval. A copy of that written notice is attached to this Summary Sheet. The comment period will run from Friday, November 22, 2019 through Monday, January 6, 2020.

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 20, 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

**Recommended Actions:** The Executive Board 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 the Association of Bay Area Governments

B: Proposed Amended Conflict of Interest Code

**Reviewed:**



Therese W. McMillan

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE  
OF THE ASSOCIATION OF BAY AREA GOVERNMENTS

NOTICE IS HEREBY GIVEN that the Association of Bay Area Governments (ABAG), 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 22, 2019 and closing on January 6, 2020. All inquiries should be directed to the contact listed below.

ABAG 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 January 6, 2020, 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 20, 2019.

ABAG 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, 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

**~~FOURTH~~FIFTH AMENDED**

**CONFLICT OF INTEREST CODE**

**ASSOCIATION OF BAY AREA GOVERNMENTS**

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 Sections 18730, et seq., which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. 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 ~~Fourth~~Fifth Amended Conflict of Interest Code of the Association of Bay Area Governments (ABAG).

~~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.

ASSOCIATION OF BAY AREA GOVERNMENTS

APPENDIX A

DESIGNATED POSITIONS

<u>Designated Positions</u>	<u>Disclosure Category</u>
Executive Board Members and Alternates	AH
Executive Director	AH
Deputy Executive Director	AH
Legal Counsel	AH
Program Directors	AH
<u>MTC Staff serving ABAG pursuant to the Contract for Services between MTC and ABAG, including:</u>	<u>All (except where otherwise indicated)</u>
<ul style="list-style-type: none"><li>• <u>Deputy Executive Director, Policy</u></li><li>• <u>Deputy Executive Director, Operations</u></li><li>• <u>Deputy Executive Director, Local Government Services</u></li><li>• <u>General Counsel</u></li><li>• <u>Senior Deputy General Counsel</u></li><li>• <u>Senior Counsel</u></li><li>• <u>Administrative Director, Office of the Executive Director</u></li><li>• <u>Director, Deputy Director, and Assistant Directors, Integrated Planning Department (Categories 1, 2)</u></li><li>• <u>Director, Finance &amp; Accounting (Category 1)</u></li><li>• <u>Director, Treasury &amp; Revenue (Category 1)</u></li><li>• <u>Director, Legislation and Public Affairs (LPA) (Categories 1, 2)</u></li></ul>	

- Director, SF Estuary Partnership (Categories 1, 2)
- Assistant Director, Energy Program (Categories 1, 2)
- Assistant Directors, LPA (Disclosure Category: 1)
- Assistant Directors, Finance (Disclosure Category: 1)

Consultants/New Positions\*\*

All

\*\* With respect to €consultants/new positions the Executive Director of the Metropolitan Transportation Commission (MTC), acting pursuant to the Contract for Services dated as of May 30, 2017 (Contract for Services) between MTC and ABAG, 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 written 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 Executive Director'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. 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 manage public investments and shall file a statement of economic interests pursuant to Government Code Section 87200:

ABAG Executive Board Members and Alternates

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.

## APPENDIX B

### DISCLOSURE CATEGORIES

#### Category 1:

All investments, business positions in business entities, sources of income, and interests in real property located in whole or in part within or not more than two miles outside the boundaries of ABAG's jurisdiction.

#### Category 2:

All investments and business positions in business entities, and sources of income, which provide services, supplies, materials or equipment of the type utilized by the Association.

#### Category 2

All interests in real property located in whole or in part within or not more than two miles outside the boundaries of ABAG's jurisdiction.

#### Category 3:

All ~~interests in real property~~, investments and business positions in business entities, and sources of income from entities or persons who have filed a claim, or have a claim pending, against ABAG.

**ASSOCIATION OF BAY AREA GOVERNMENTS**  
**CONFLICT OF INTEREST DISCLOSURE DESIGNATIONS**

~~The Association of Bay Area Governments (ABAG) has identified three (3) disclosure categories: (1) Category number one requires disclosure of business entities in which designated parties have an investment or business position or which are sources of income to them of the type in which ABAG is empowered to invest its funds and interests in real property located in whole or in part within or not more than two miles outside the boundaries of ABAG's jurisdiction; (2) Category number ~~two~~one requires designated persons to disclose business entities in which they have an investment or business positions or which are sources of income to them if such entities are of the type which contract with ABAG to supply goods, services, materials, supplies or lease equipment; (2) Category number two requires designated persons to disclose interests in real property located in whole or in part within or not more than two miles outside the boundaries of ABAG's jurisdiction; (3) Category number three requires designated persons to disclose investments or business positions in business entities or sources of income from business entities which have filed a claim against or have a claim pending against ABAG.~~

The designated position list is intended to include all persons with decision-making powers or influence concerning how, where and with whom ABAG invests funds, contracts or engages in real property transactions and to disclose any bias such parties may have in making substantive decisions concerning the operations of ABAG. ~~All designated parties must make disclosure in all three (3) categories set forth above.~~

Effective July 1, 2017, MTC, pursuant to the Contract for Services, provides consolidated staff to perform work for ABAG and its affiliated Local Collaboration Programs, including ABAG Publicly Owned Energy Resources and the ABAG Finance Authority for Nonprofit Corporations.

~~The changes from the prior code are changes (1) to the disclosure categories to reflect changes in the Act and (2) to the designated positions to reflect a change in title of one position and to add consultants to those persons covered by the Code.~~

The primary decision-making positions with ABAG are the members and alternate members of the Executive Board (Board). However, under the Contract for Services, certain MTC



~~staff the executive director, associate executive director, financial officer, program directors, 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. MTC staff serving ABAG 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'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, Section 18730(b)(5).

APPENDIX C

~~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:~~

~~Administrative Officer Serving as ABAG's "Financial Officer"~~