

Metropolitan Transportation Commission Administration Committee

October 12, 2022

Agenda Item 2h - 22-1370

MTC Resolution No. 1198, Revised – Revisions to MTC’s Conflict of Interest Code to Update List of Designated Positions – Release for Public Comment

Subject:

A request that the Committee authorize staff to circulate proposed changes to MTC Resolution No. 1198, Revised for public comment and to schedule a public hearing should the request arise during the public comment period.

Background:

The Metropolitan Transportation Commission (MTC) Conflict of Interest Code (COIC) serves as the COIC for the Bay Area Toll Authority, the MTC Service Authority for Freeways and Expressways, the Bay Area Headquarters Authority, the Bay Area Infrastructure Financing Authority, and the Advancing California Financing Authority. The MTC COIC is being updated in order to add the Bay Area Housing Finance Authority (BAHFA) and to update the designated positions to reflect the creation of two new positions and MTC’s current organizational structure.

Incumbents of positions designated in the Appendix to MTC’s proposed COIC must file an annual Statement of Economic Interests (FPPC Form 700) with the agency. The attached draft COIC is amended consistent with FPPC Regulation 18734, which requires individuals serving in newly created positions to file Form 700, the Statement of Economic Interests. The attached “track changes” version (*additions in italics and underlined, deletions in strikethrough*) reflects the most recent changes from the version of the COIC attached to MTC Resolution No. 1198, last approved by the FPPC on February 26, 2020.

BAHFA was created pursuant to state legislation (AB 1487, Chiu, 2019). MTC acts as the BAHFA authority board, and the ABAG Executive Board acts as the executive board, with the two boards working in conjunction to fulfill BAHFA’s mission. BAHFA’s purpose is to raise, administer, and allocate funding and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production. MTC has determined that the new position of BAHFA Director makes or participates in the making of decisions that may foreseeably have

a material financial effect on an economic interest. This position has been added to Appendix A of MTC's COIC.

The following new, re-named or re-assigned positions have been determined to make or participate in the making of decisions that may foreseeably have a material financial effect on an economic interest: Deputy General Counsel; Director, Administration & Human Development (AHD); Director, Facilities & Contract Services (FCS); Director, Regional Planning Program (RPP); Director, Funding Policy & Programs (FPP); and Director, Energy Programs. These positions have been added to Appendix A of MTC's COIC. The disclosure categories are tailored to the responsibilities of each role. Other revisions have been made to reflect changes in MTC's organizational structure and position nomenclature. 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 MTC takes formal action. A copy of that written notice is attached to this Summary Sheet. The comment period will run from November 1, 2022 through December 15, 2022. The notice will be posted on MTC's website, and copies of the proposed revised COIC will be made available to any interested person who contacts Kimberly Ward, Clerk to the Commission.

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 November 30, 2022. If no request for a hearing is received, staff will return in early 2023 to seek Committee authorization to submit the proposed COIC to the FPPC for approval, and to refer the approved COIC to the Commission for adoption at a date to be determined.

Issues:

None

Recommendation:

Staff recommends that the Committee authorize staff to circulate the proposed changes for public comment, and to schedule a public hearing if there is a request from the public to do so. Staff will request adoption of the revised agenda by the Commission in January 2023 following the public comment period.

Attachments:

- Attachment A: Notice of Intention to Amend the Conflict of Interest Code of the Metropolitan Transportation Commission
- Attachment B: Proposed Amended Conflict of Interest Code
- Attachment C: MTC Resolution No. 1198, Revised



Therese W. McMillan

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE
OF THE METROPOLITAN TRANSPORTATION COMMISSION

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC), 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 1, 2022 and closing on December 15, 2022. All inquiries should be directed to the contact listed below.

MTC proposes to amend its conflict of interest code to include 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: the addition of the Bay Area Housing Finance Authority (“BAHFA”) to the code and to update the designated positions to reflect the creation of two new positions – Director, Energy Programs and Director, BAHFA - and MTC’s current organizational structure.

The proposed amendment and explanation of the reasons 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 **5:00 p.m. on Thursday, December 15, 2022**, 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 **5:00 p.m. on Wednesday, November 30, 2022**.

MTC 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 contacts Kimberly Ward, Clerk to the Commission at (415) 778-5367 or kward@bayareametro.gov. Written comments on the amendment, may be sent to Ms. Ward at kward@bayareametro.gov. Any inquiries concerning the proposed amendment should be directed to Andrea Visveshwara, MTC Senior Counsel, at (415) 778-6637, or avisveshwara@bayareametro.gov.

Revisions in ~~strikeout~~ and underlined italics

**CONFLICT OF INTEREST CODE FOR THE
METROPOLITAN TRANSPORTATION COMMISSION**

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 Metropolitan Transportation Commission (“MTC”), a statutorily created regional transportation planning agency pursuant to Government Code Section 66500 *et seq.*, is for the purposes of the Political Reform Act, a local government agency pursuant to Government Code Section 82041. MTC also functions as the MTC Service Authority for Freeways and Expressways (“MTC SAFE”) pursuant to Streets and Highways Code Sections 2550-2556, ~~and~~ the Bay Area Toll Authority (“BATA”) pursuant to Streets and Highways Code Section 30950 *et seq.*, and the Bay Area Housing Finance Authority (“BAHFA”), pursuant to California legislation (AB 1487, Chiu, 2019). In addition, pursuant to the Contract for Services dated as of May 30, 2017 between MTC and the Association of Bay Area Governments (“ABAG”), provides consolidated staff to perform work for ABAG and its affiliated Local Collaboration Programs, including ABAG Publicly Owned Energy Resources (“POWER”) and the ABAG Finance Authority for Nonprofit Corporations (“FAN”). MTC is also a member of and provides staff for the Bay Area Infrastructure Financing Authority (“BAIFA”) ~~and~~ the Bay Area Headquarters Authority (“BAHA”), and the 375 Beale Condominium Corporation, and staffs the Advancing California Financing Authority (“ACFA”), a joint powers authority formed by ABAG and FAN. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code Regs. Sec. 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 hearings, 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 Cal. Code of Regs. Sec. 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 **Metropolitan Transportation Commission (MTC).**

Individuals holding designated positions shall file their statements of economic interests with **MTC**, which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.) All statements will be retained by **MTC**.

APPENDIX A

DESIGNATED POSITIONS

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
Deputy Executive Director, Policy	1, 3, 4
Deputy Executive Director, Operations	1, 3, 4
Deputy Executive Director, Local Government Services (LGS)	1, 3, 4
General Counsel	1, 3, 4
Senior Deputy General Counsel	1, 3, 4
<u>Deputy General Counsel</u>	<u>1, 3, 4</u>
Senior Counsel	1, 3, 4
Associate Counsel	1, 3, 4
Special Counsel	1, 3, 4
Director, Administration & Human Development (AHD) Administrative Director, Office of the Executive Director	
1, 3, 4	
Director, Administration & Facilities & Contract Services (FCS)	
1, 3	
Director, Regional Planning Program (RPP) Integrated Planning Department (PLN)	
	2, 3
Director, Design & Project Delivery (DPD)	2
Director, Field Operations & Asset Management (FOAM)	2
Director, Electronic Payments (EPS)	2
Director, Funding Policy & Programs (FPP) Programming and Allocations (PAC)	
	2, 3
Director, Legislation and Public Affairs (LPA)	1, 3
Director, Technology Services (TSS)	2
Director, SF Estuary Partnership	2, 3
Director, Finance & Accounting (aka Deputy Finance Director)	1
Director, Treasury & Revenue (aka Deputy Treasurer)	1
Director, Bay Area Regional Collaborative (BARC)	2, 3
<u>Director, Energy Programs</u>	<u>2, 3</u>
<u>Director, Bay Area Housing Finance Authority (BAHFA)</u>	<u>2, 3</u>
Deputy Director, PLN (aka Deputy Planning Director)	2, 3
Assistant Directors: RPP, FPP, PLN, PAC, LGS, Bay Area Regional Collaborative (BARC)	
2, 3	
Assistant Directors: DPD, FOAM, EPS, TSS	2
Assistant Directors: LPA	1

Assistant Directors: <i>AHD, FCS AF</i>	1, 3
Assistant Directors: Finance	1
<i>Assistant Directors: Treasury & Revenue</i>	<i>1</i>
Clipper® Executive Board Members	2
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:

The Executive Director may determine in writing that a particular consultant or new position, although a “designated position,” 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 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. 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. (Gov. Code Section 81008.) Nothing herein excuses any such consultant from any other provision of the 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.

MTC Commissioners
 Chief Financial Officer
 Executive Director

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

Designated positions shall disclose pursuant to the appropriate disclosure category as indicated in Appendix A.

- CATEGORY 1** – Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from, entities that provide services, products, or equipment of the type utilized by MTC, including public utilities, consultants, transportation companies, and manufacturers.
- CATEGORY 2** – Investments and business positions in business entities, and income including receipt of loans, gifts, and travel payments, from, sources that provide services, products, or equipment of the type utilized by the designated position’s department or division.
- CATEGORY 3** – All 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 MTC.
- CATEGORY 4** – Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from, sources that filed a claim against MTC during the previous two years, or have a claim pending against MTC.

Date: October 27, 1982
W.I.: 99110
I.D.: File 1
Referred by: Administration Committee
Revised: 06/26/91-C 07/27/94-C
11/18/98-C 06/28/00-C
11/20/02-C 09/28/11-C
05/22/13-C 03/25/15-C
09/28/16-C 04/25/18-C
02/26/20-C 10/26/22-C

ABSTRACT

Resolution No. 1198, Revised

Subject

This resolution adopts the amendments to the Metropolitan Transportation Commission's Conflict of Interest Code, directs the Executive Director to submit a copy of the amended code to the Fair Political Practices Commission, provides for future amendments, and revises Appendix A of the Commission Procedures Manual (Resolution No. 1058).

Resolution No. 1198 supersedes Resolution No. 859.

This resolution was revised on June 26, 1991 to include the disclosure of "business positions in business entities," to add a disclosure category for telecommunications services and equipment manufacturers to cover the activities of the MTC SAFE, to update the designated positions to reflect MTC's current organizational structure, and to clarify the definition of "consultant."

This resolution was revised on July 27, 1994 to amend the disclosure categories to cover MTC and MTC SAFE activities in the areas of towing services and intelligent vehicle highway systems (IVHS) and to update the designated positions to reflect MTC's current organizational structure.

This resolution was revised on November 18, 1998 to amend the conflict of interest code to reflect changes in FPPC regulations, amend the disclosure categories to cover the MTC Service Authority for Freeways and Expressways ("MTC SAFE") and Bay Area Toll Authority ("BATA") activities, and to update the designated positions to reflect MTC's current organizational structure.

This resolution was revised on June 28, 2000 to add Associate Counsel as a designated position, delete the Legislation and Public Affairs and Finance sections to create one Funding and External Affairs section, and rename Treasury to Finance.

This resolution was revised on November 20, 2002, to delete the Funding and External Affairs section, to create a Programming and Allocations section and a Legislation and Public Affairs section, and to replace the Deputy Executive Director's position with two Deputy Directors' Positions.

This resolution was revised on September 28, 2011, to update the designated positions to reflect MTC's current organizational structure and disclosure categories.

This resolution was revised on May 22, 2013, to more accurately reflect the most current designated positions and assigned disclosure categories in MTC's organizational structure.

This resolution was revised on March 25, 2015, to more accurately reflect the most current designated positions and assigned disclosure categories in MTC's organizational structure.

This resolution was revised on September 28, 2016, to more accurately reflect the most current designated positions and assigned disclosure categories in MTC's organizational structure, and to add Clipper[®] Executive Board member as a designated position.

This resolution was revised on April 25, 2018, to add designated positions in MTC's organization and their assigned disclosure categories resulting from the consolidation of the staffs of MTC and the Association of Bay Area Governments ("ABAG"), pursuant to the Contract for Services between ABAG and MTC, dated as of May 30, 2017 and the formation of the Advancing California Finance Authority, its staffing by MTC, and its adoption of the MTC Conflict of Interest Code; and to more accurately reflect the most current designated positions and assigned disclosure categories in MTC's organizational structure.

This resolution was revised on February 26, 2020, to add the Bay Area Regional Collaborative (BARC) Director as a designated position, and to more accurately reflect the most current designated positions and assigned disclosure categories in MTC's organizational structure.

This resolution was revised on _____, 202_, to add the Bay Area Housing Finance Authority (BAHFA) and to update the designated positions to reflect the creation of two new positions and MTC's current organizational structure.

Date: October 27, 1982
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Referred by: A&O Committee

RE: Adoption of the Amendments to the Metropolitan Transportation Commission's Conflict of Interest Code.

METROPOLITAN TRANSPORTATION COMMISSION

RESOLUTION NO. 1198

WHEREAS, the Metropolitan Transportation Commission (MTC), is the regional transportation planning agency pursuant to Government Code § 66500 *et seq.*; and

WHEREAS, MTC has adopted for purposes of the Political Reform Act (Government Code § 81000 *et seq.*) a Conflict of Interest Code (Resolution No. 859) which has been approved by the Fair Political Practices Commission; and

WHEREAS, MTC desires to amend its Conflict of Interest Code; and

WHEREAS, the proposed amendments have been submitted to the public for comment and subject to a public hearing; now, therefore, be it

RESOLVED, that the amended Conflict of Interest Code, incorporated herein as though set forth at length as Attachment A, is adopted; and, be it further

RESOLVED, that the Executive Director is directed to submit a copy of the Conflict of Interest Code to the California Fair Political Practices Commission for approval; and, be it further

RESOLVED, that MTC may from time to time further amend Attachment A as appropriate, in accordance with the applicable statutory and regulatory provisions; and, be it further

RESOLVED, that MTC Resolution No. 859 is superseded by Resolution No. 1198; and, be it further

RESOLVED, that Appendix A of the Commission Procedures Manual (MTC Resolution No. 1058) is revised by Resolution No. 1198.

METROPOLITAN TRANSPORTATION COMMISSION

/s/ _____
William R. "Bill" Lucius, Chairman

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California, on October 27, 1982.

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CONFLICT OF INTEREST CODE FOR THE METROPOLITAN TRANSPORTATION COMMISSION

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 Metropolitan Transportation Commission (“MTC”), a statutorily created regional transportation planning agency pursuant to Government Code Section 66500 *et seq.*, is for the purposes of the Political Reform Act, a local government agency pursuant to Government Code Section 82041. MTC also functions as the MTC Service Authority for Freeways and Expressways (“MTC SAFE”) pursuant to Streets and Highways Code Sections 2550-2556, the Bay Area Toll Authority (“BATA”) pursuant to Streets and Highways Code Section 30950 *et seq.* and the Bay Area Housing Finance Authority (“BAHFA”), pursuant to California legislation (AB 1487, Chiu, 2019). In addition, pursuant to the Contract for Services dated as of May 30, 2017 between MTC and the Association of Bay Area Governments (“ABAG”), provides consolidated staff to perform work for ABAG and its affiliated Local Collaboration Programs, including ABAG Publicly Owned Energy Resources (“POWER”) and the ABAG Finance Authority for Nonprofit Corporations (“FAN”). MTC is also a member of and provides staff for the Bay Area Infrastructure Financing Authority (“BAIFA”), the Bay Area Headquarters Authority (“BAHA”), and the 375 Beale Condominium Corporation, and staffs the Advancing California Financing Authority (“ACFA”), a joint powers authority formed by ABAG and FAN. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code Regs. Sec. 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 hearings, 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 Cal. Code of Regs. Sec. 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This

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regulation and the attached Appendices, designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the **Metropolitan Transportation Commission (MTC)**.

Individuals holding designated positions shall file their statements of economic interests with **MTC**, which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.) All statements will be retained by **MTC**.

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APPENDIX A

DESIGNATED POSITIONS

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
Deputy Executive Director, Policy	1, 3, 4
Deputy Executive Director, Operations	1, 3, 4
Deputy Executive Director, Local Government Services (LGS)	1, 3, 4
General Counsel	1, 3, 4
Senior Deputy General Counsel	1, 3, 4
Deputy General Counsel	1, 3, 4
Senior Counsel	1, 3, 4
Associate Counsel	1, 3, 4
Special Counsel	1, 3, 4
Director, Administration & Human Development (AHD)	1, 3, 4
Director, Facilities & Contract Services (FCS)	1, 3
Director, Regional Planning Program (RPP)	2, 3
Director, Design & Project Delivery (DPD)	2
Director, Field Operations & Asset Management (FOAM)	2
Director, Electronic Payments (EPS)	2
Director, Funding Policy & Programs (FPP)	2, 3
Director, Legislation and Public Affairs (LPA)	1, 3
Director, Technology Services (TSS)	2
Director, SF Estuary Partnership	2, 3
Director, Finance & Accounting (aka Deputy Finance Director)	1
Director, Treasury & Revenue (aka Deputy Treasurer)	1
Director, Energy Programs	2, 3
Director, Bay Area Housing Finance Authority (BAHFA)	2, 3
Assistant Directors: RPP, FPP, LGS, Bay Area Regional Collaborative (BARC)	2, 3
Assistant Directors: DPD, FOAM, EPS, TSS	2

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Assistant Directors: LPA	:	1
Assistant Directors: AHD, FCS		1, 3
Assistant Directors: Finance		1
Assistant Directors: Treasury & Revenue		1
Clipper® Executive Board Members		2
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:

The Executive Director may determine in writing that a particular consultant or new position, although a “designated position,” 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 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. 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. (Gov. Code Section 81008.) Nothing herein excuses any such consultant from any other provision of the 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.

MTC Commissioners
Chief Financial Officer
Executive Director

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

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has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

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APPENDIX B

DISCLOSURE CATEGORIES

Designated positions shall disclose pursuant to the appropriate disclosure category as indicated in Appendix A.

- CATEGORY 1** – Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from, entities that provide services, products, or equipment of the type utilized by MTC, including public utilities, consultants, transportation companies, and manufacturers.
- CATEGORY 2** – Investments and business positions in business entities, and income including receipt of loans, gifts, and travel payments, from, sources that provide services, products, or equipment of the type utilized by the designated position’s department or division.
- CATEGORY 3** – All 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 MTC.
- CATEGORY 4** – Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from, sources that filed a claim against MTC during the previous two years, or have a claim pending against MTC.

This is the last page of the conflict of interest code for the **Metropolitan Transportation Commission**.