



Board of Directors Meeting

Wednesday, November 7, 2018

6:00 pm

City of Hayward

Council Chambers

777 B Street,

Hayward, CA 94544

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or Scabrera@ebce.org.

If you have anything that you wish to be distributed to the Committee, please hand it to the clerk who will distribute the information to the Committee members and other staff. Please bring at least 15 copies.

1. Welcome & Roll Call

2. Pledge of Allegiance

3. Public Comment

This item is reserved for persons wishing to address the Committee on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Committee are customarily limited to three minutes per speaker. The Committee Chair may increase or decrease the time allotted to each speaker.

CONSENT AGENDA

4. Approval of Minutes from October 17, 2018

5. Contracts entered into (Informational Item)

REGULAR AGENDA

6. CEO REPORT

- A. Executive Committee Meeting;
- B. Marketing and Outreach update;
- C. Local Development Business Plan Update; and
- D. Update on Opt-out

7. Community Advisory Committee Report

8. Adopt Resolution Amending the Conflict of Interest Code to Update the Conflict of Interest Code (Action Item)

Adopt Resolution amending the EBCE Conflict of Interest Code to add 1 current and six new positions:

1. Director of Public Affairs;
2. Senior Director of Public Affairs;
3. Vice-President of Technology and Data Analytics;
4. Director of Government and Community Affairs;
5. Finance Manager;
6. Deputy General Counsel; and
7. Clerk of the Board

9. Formation of Two Board of Directors Sub-Committees (Action item)

Form two additional Sub-Committees to the Board of Directors:

- A. Sub-Committee on Marketing, Regulatory and Legislative Matters
- B. Sub-Committee on Finance, Administration and Procurement

10. New Office Space (Action item))

Approve staff recommendation to pursue negotiation of an office space lease agreement to bring to the Board for approval in the first quarter of 2019. EBCE office space selection will be based on the following five criteria:

1. Adjacent to a BART station;
2. Centrally located in Alameda County (Emeryville, Oakland, San Leandro, Hayward, Castro Valley);
3. Class A office space able to accommodate 30 to 40 staff;
4. Large enough conference room to host Community Advisory Committee, Executive Committee and Sub-Committee meetings; and
5. 2019 lease cost within EBCE's approved budget

11. Board Member and Staff Announcements including requests to place items on future Board Agendas

- 12. Adjournment - to Date:** Wednesday, December 5, 2018
Location: City of Hayward,
Council Chambers
777 B Street
Hayward, CA 94541



Draft Minutes
Board of Directors Meeting
Wednesday, October 17, 2018
6:00 pm
City of Hayward
Council Chambers
777 B Street,
Hayward, CA 94544

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or Scabrera@ebce.org.

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1. Welcome & Roll Call

Present: Directors: Pilch (Albany), Arreguin (Berkeley), Hernandez (Dublin), Martinez (Emeryville), Mendall (Hayward), Thomas (San Leandro), Vernaci-Dutra (Union City), Eldred (Community Advisory), Vice-chair Kalb (Oakland), and Chair Haggerty (Alameda County)
Excused: Directors: Bacon (Fremont), Spedowski (Livermore) and Rood (Piedmont)

2. Pledge of Allegiance

3. Appoint Labor Negotiators (Action Items)

Appoint the following Board members as Labor Negotiators:

- A. Chair Haggerty;
- B. Vice-chair Kalb; and
- C. Director Martinez

Chair Haggerty motioned to appoint the labor negotiators: Director Thomas seconded the motion which carried 8/0; Excused: Directors: Bacon, Spedowski, Rood and Vice-chair Kalb

Vice-Chair Kalb in at 6:16pm

4. Closed Session

- A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION under California Government Code Section 54957: Performance Evaluation of Chief Executive Officer
- B. CONFERENCE WITH LABOR NEGOTIATORS under California Government Code section 54957.6, EBCE Designated Representatives: Scott Haggerty, Dan Kalb, Diane Martinez, Unrepresented Employee: Chief Executive Officer
- C. CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION Significant exposure to litigation pursuant to paragraph (2) of Subdivision (d) of California Government Code Section 54956.9 -- one case.

5. General Counsel report out of Closed session

In Closed session the Board provided Counsel with direction re-pending litigation. Counsel will report out on labor negotiations under Item # 12 CEO Employment Agreement

6. Public Comment

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There were no speakers

CONSENT AGENDA

- 7. Approval of Minutes from September 26, 2018
- 8. Contracts entered into (Informational Item)
- 9. EBCE participation in the Special District Risk Management Agency Medical, Vision and Dental Insurance Program (Action Item)
Approve the following Recommendations:
 - A. Adopt a resolution authorizing EBCE to participate in the Special District Risk Management Agency (SDRMA) health, vision and dental plans; and
 - B. Approve a Memorandum of Understanding between SDRMA and EBCE regarding participation in the SDRMA medical, vision and dental insurance program.

Director Martinez motioned to approve the consent calendar. Director Dutra-Vernaci seconded the motion which carried 9/0; Excused: Directors: Bacon, Spedowski, and Rood

REGULAR AGENDA

10. CEO REPORT

- A. Executive Committee Meeting;
- B. Marketing and Outreach update;
- C. Local Development Business Plan Update; and
- D. Update on Opt-out

Presented

11. Community Advisory Committee Report

Presented

12. CEO Employment Agreement (Action Item)

Counsel outlined the proposed amendments:

- 3-year employment agreement
- 300,000 annual Salary
- Annual cost of living allowance of 3% or legal limit
- Annual evaluations in September
- Monthly car allowance of \$400
- Cost of Medical coverage

Director Martinez motioned to approve the CEO Employment Agreement.

Director Hernandez seconded the motion which carried 9/0; Excused: Directors: Bacon, Spedowski and Rood.

C-2018-115

13. Risk Oversight Committee Formation (Informational Item)

Receive update on the Risk Oversight Committee process. EBCE staff is in the process of forming the Risk Oversight Committee to monitor power procurement activities and ensure they are consistent with EBCE's Energy Risk Management Policy.

Presented

14. Regulatory Update - Power Charge Indifference Adjustment (Discussion item)

Receive update on the Power Charge Indifference Adjustment.

The Board discussed

- The power Charge indifference adjustment increasing 4% over current rate
- PCIA Calculations for phase 2
- PCIA Theory and potential solutions

Barbara Stebbins - Thanked Vice-chair Kalb for attending the PCIA decision hearing and regarding the CPUC's decision and California energy policy/management.

15. **Community Advisory Committee (CAC) workplan (Action Item)**
Review the CAC workplan and either approve it or return it to the CAC with its requested revisions.

Director Eldred presented the workplan and provided background on the process the CAC used to create their workplan.

Jessica Tovar - Thanked the CAC for their work in updating the workplan, supports the updated plan and would like to see a focus on LDBP implementation.

Director Arreguin motioned to approve the Community Advisory Committee Workplan, Vice-chair Kalb seconded the motion which carried 9/0; Excused: Directors: Bacon, Spedowski and Rood

16. **Insured Cash Sweep Memo (Action Item)**
Authorize the CEO to execute the Insured Cash Sweep (ICS) Deposit Placement Agreement and related documents with River City Bank, to establish a mandatory interest-bearing account for excess cash balances.

Director Pilch Motioned to authorize the CEO to execute the Insured Cash Sweep Deposit Placement Agreement. Director Dutra-Vernaci seconded the motion which carried 9/0; Excused: Directors: Bacon, Spedowski, and Rood

C-2018-116

17. **Credit Card Policy (Action Item)**
Approve the EBCE credit card policy and authorize the CEO to enter into a credit card agreement with American Express for administrative, travel, and small budget expenses.

The Board discussed:

- Expense approval process- CEO Expenses must be approved by the Board Chair
- Strike American Express from section 4 - To allow policy to apply to all cards
- Expenses must fall within pre-set budgets

Vice-Chair Kalb motioned to approve the Credit Card Policy as amended: Strike Section 4 specifying American Express
Director Mendall seconded the motion which passed 9/0; Excused: Directors: Bacon, Spedowski and Rood

18. **Carbon emission benchmarking and Accounting Methodology (Action Item)**
Approve a calendar year 2018 emissions factor benchmark at 142lbs of CO₂e/MWh for the Bright Choice product utilizing the Electric Power Sector Protocol by the Climate Registry.

The Board requested that staff also compare EBCE to other CCAs and PG&E later in the year.

Director Mendall motioned to approve the calendar year 2018 emissions factor benchmark. Director Hernandez seconded the motion which carried 9/0; Excused: Directors: Bacon, Spedowski, and Rood

19. Board Member and Staff Announcements including requests to place items on future Board Agendas

Director Dutra-Vernaci requested an update on staff action regarding Assembly member Quirk letter dated 10/16.

Director Hernandez announced the City of Dublin will be hosting a free workshop “The future of your Energy Bill and what you can do about it” on Tuesday, 10/30/18 at 6:00pm.

20. Adjourned



Consent Item 5

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: Contracts Entered into
DATE: November 7, 2018

RECOMMENDATION

Accept the CEO's report on contracts entered into between 10/17/18 to 11/2/18

1. C-2018-117 Keyes and Fox, LLP (Principal: Tim Lindl; Location: Oakland) to provide special counsel services for the period of 8/15/18 to project completion, in an amount not to exceed \$8,000.
2. C-2018-118 Dallas Wright Tremaine, LLP (Principal: Vidhya Prabhakaran; Location: San Francisco) to provide special counsel services for the period of 10/24/18 to 6/30/19, in an amount not to exceed \$40,000.
3. C-2018-119 Colantuono, Highsmith & Whatley, PC (Principal: Michael G. Colantuono; Location: Grass Valley) to provide special counsel services for the period of 6/1/18 to project completion, in an amount not to exceed \$3,000.
4. C-2018-120 JPRoss Consulting, LLC (Location: Berkeley) to provide Local Development Planning Services, for the period of 9/19/18 - 12/1/18, in an amount not to exceed \$40,000.



Staff Report Item 6

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: CEO Report (Informational Item)
DATE: November 7, 2018

Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

Executive Committee Meeting

No incremental update from October 17th, 2018 meeting.

Marketing and Outreach Update

East Bay Community Energy has started Phase 2 marketing and outreach efforts. Attached to this report is a presentation outlining current opt out and opt up figures.

Local Development Business Plan Update

No incremental update from October 17th, 2018 meeting.

Update on Opt-Outs

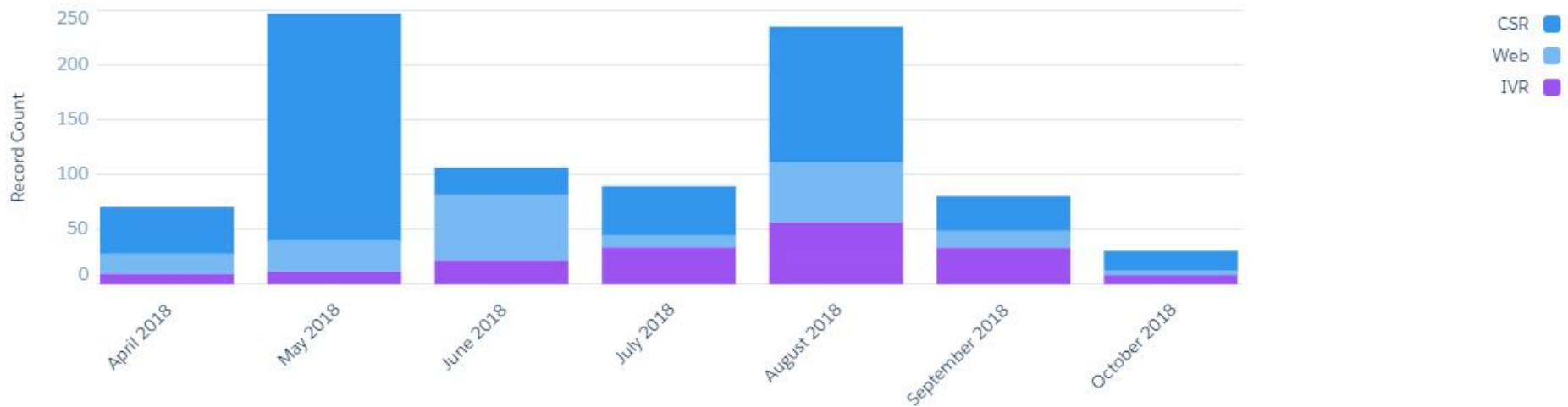
Opt-out report included as an attachment to this report.

ENROLLMENT UPDATE

	Eligible Accounts	Opt Outs	Opt Out %	Bright Choice	Bright Choice %	Brilliant 100	Brilliant 100 %	Renewable 100	Renewable 100 %
ALBANY	7,300	71	1.0%	20	0.3%	7,181	98.4%	28	0.4%
BERKELEY	54,268	320	0.6%	53,325	98.3%	409	0.8%	214	0.4%
DUBLIN	25,065	342	1.4%	24,473	97.6%	239	1.0%		0.0%
EMERYVILLE	8,441	96	1.1%	8,238	97.6%	85	1.0%	22	0.3%
FREMONT	84,229	961	1.1%	82,615	98.1%	611	0.7%	42	0.0%
HAYWARD	56,437	596	1.1%	13,954	24.7%	41,874	74.2%		0.0%
LIVERMORE	33,688	1,670	5.0%	31,960	94.9%	31	0.1%	27	0.1%
OAKLAND	182,611	1,475	0.8%	179,374	98.2%	1,406	0.8%	356	0.2%
PIEDMONT	3,667	70	1.9%	98	2.7%	149	4.1%	3,350	91.4%
SAN LEANDRO	35,969	536	1.5%	35,115	97.6%	285	0.8%	33	0.1%
UNINC ALAMEDA CO	53,780	923	1.7%	52,625	97.9%	201	0.4%	31	0.1%
UNION CITY	23,461	292	1.2%	23,153	98.7%		0.1%		0.0%
Total	568,916	7,352	1.3%	504,950	88.8%	52,483	9.2%	4,131	0.7%

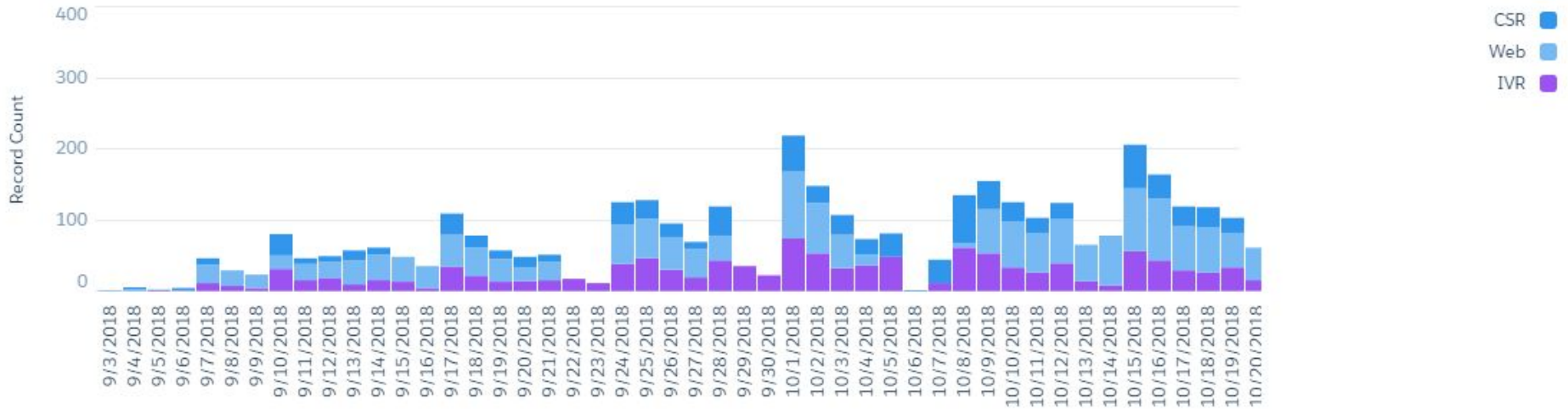
COMMERCIAL OPT OUTS

Monthly Opt Out Summary - EBCE COMM



RESIDENTIAL OPT OUTS

Daily Opt Out Summary - EBCE RES





Staff Report Item 8

TO: East Bay Community Energy Board of Directors

FROM: Leah Goldberg, General Counsel

SUBJECT: Adopt Resolution Amending the Conflict of Interest Code to Update the Conflict of Interest Code (Action Item)

DATE: November 7, 2018

Recommendation

Adopt Resolution amending the EBCE Conflict of Interest Code to add 1 current and six new positions:

- A. Director of Public Affairs;
- B. Senior Director of Public Affairs;
- C. Vice-President of Technology and Data Analytics;
- D. Director of Government and Community Affairs;
- E. Finance Manager;
- F. Deputy General Counsel; and
- G. Clerk of the Board

Background

Shortly after the formation of the EBCE, the Board of Directors adopted a conflict of interest code as required by the Political Reform Act, commencing at Government Code Section 81000. The code lists the positions within EBCE that are required to file statements of economic interests (Form 700). The Conflict Code was amended in January 2018 to add several new positions. Since then, additional positions have been added to the EBCE. Pursuant to Government Code 87306, EBCE must update its conflict of interest code within 90 days of the creation of a new position that must file a Form 700.

Analysis & Discussion

Six new staff positions have been created at EBCE: Director of Public Affairs, Senior Director of Public Affairs, Vice President of Technology and Data Analytics, Director of Government and Community Affairs, Finance Manager, and Deputy General Counsel. Changes to the position also require the addition of Clerk of the Board to the Conflict of Interest Code. In accordance with the requirements of the Political Reform Act, a

new conflict of interest code must be adopted by resolution which includes the newly created positions. The attached resolution amends Appendix A to the conflict of interest code to add the new positions.

Attachment:

1. Resolution Adopting updated conflict of interest.

RESOLUTION NO. _____

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
UPDATING THE CONFLICT OF INTEREST CODE**

**THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY
AUTHORITY DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:**

Section 1. The East Bay Community Energy Authority (“Authority”) was formed on December 1, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County.

Section 2. 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.

Section 3. 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.

Section 4. On January 17, 2018 the Board of Directors approved Resolution No. R-2018-7, replacing Appendix A to the Conflict of Interest Code adopted in Resolution No. R-2017-1 in order to add new positions and enumerate the appropriate disclosure categories.

Section 5. The Board of Directors desires to again amend Appendix A of the Conflict of Interest Code in order to add seven new positions that require economic disclosures and to enumerate the appropriate disclosure categories.

Section 6. Accordingly, the designated positions and disclosure categories described in Appendix A to this Resolution are hereby incorporated into the Authority’s Conflict of Interest Code. Appendix A to this Resolution shall replace Appendix A to Resolution No. R-2017-1.

ADOPTED AND APPROVED this 17th day of November, 2018.

Chair

ATTEST:

Clerk of the Board

**EAST BAY COMMUNITY ENERGY AUTHORITY
CONFLICT OF INTEREST CODE**

APPENDIX "A"

DESIGNATED POSITIONS

<u>Designated Positions</u>	<u>Disclosure Categories</u>
Member of Board of Directors	1, 2, 3, 4
Member of Board of Directors (Alternate)	1, 2, 3, 4
Chief Executive Officer	1, 2, 3, 4
Chief Operating 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
Director of Power Resources	1, 2, 3, 4
Director of Regulatory and Legislative Affairs	1, 2, 3, 4
Director of Government and Community Affairs	1, 2, 4, 4
Director of Public Affairs	1, 2, 3, 4
Senior Director of Public Affairs	1, 2, 3, 4
Deputy General Counsel	1, 2, 3, 4
Finance Manager	1, 2, 3, 4
Consultant	5
Newly Created Position	*

* Newly Created Position

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority's Conflict of Interest Code, is 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 Chief Executive Officer of the Authority may determine in writing that a particular newly created position, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created 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 as this Conflict of Interest Code. (Gov. Code Section 81008.)

Within 90 days of the creation of a newly created position that must file a statement of economic interests, the Authority shall update this Conflict of Interest Code to add the actual position title in its list of designated positions, and submit the amended Conflict of Interest Code to the County Administrator's Office for code-reviewing body approval by the Alameda County Board of Supervisors. (Gov. Code Section 87306.)



Staff Report Item 9

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, CEO
SUBJECT: Formation of Two Board of Directors Sub-Committees (Action item)
DATE: November 7, 2018

Recommendation

Form two additional Sub-Committees to the Board of Directors:

- A. Sub-Committee on Marketing, Regulatory and Legislative Matters
- B. Sub-Committee on Finance, Administration and Procurement

Background

As East Bay Community Energy continues to progress towards full operations, forming two standing Board of Directors sub-committees focused on both operational and policy matters will provide greater opportunity for Board members to engage more deeply in the on-going operations of East Bay Community Energy. The intent of forming the Sub-Committees is engage members of the Board of Directors in the operational decision making of East Bay Community Energy and provide a forum for Board Members to delve more deeply into these issues. At this time, these two sub-committees to the Board shall have no formal delegation of authority to make decisions for the full Board of Directors. The following is an initial overview of the scope of the two sub-committees.

Sub-Committee on Marketing, Regulatory and Legislative Matters:

- Discuss EBCE marketing activities, upcoming marketing campaigns and outreach
- Discuss major regulatory developments
- Discuss major legislative developments

Sub-Committee on Finance, Administration and Procurement:

- Review and discuss EBCE administrative policies and procedures
- Discuss EBCE energy procurement activities
- Review and discuss EBCE finances



Staff Report Item 10

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, CEO
SUBJECT: New Office Space (Action item)
DATE: November 7, 2018

Recommendation

Approve staff recommendation to pursue negotiation of an office space lease agreement to bring to the Board for approval in the first quarter of 2019. EBCE office space selection will be based on the following five criteria:

1. Adjacent to a BART station;
2. Centrally located in Alameda County (Emeryville, Oakland, San Leandro, Hayward, Castro Valley);
3. Class A office space able to accommodate 30 to 40 staff;
4. Large enough conference room to host Community Advisory Committee, Executive Committee and Sub-Committee meetings; and
5. 2019 lease cost within EBCE's approved budget

Background

As East Bay Community Energy continues to grow, its current office space at WeWork in Downtown Oakland will soon no longer meet the needs of EBCE Staff. EBCE staff has inquired about the possibility of expanding into additional WeWork space in the Downtown Oakland location and at this time, no space is available at this time. EBCE staff has started evaluating both near and longer-term office space options and at this time, EBCE staff recommends pursuing a 2-3 year lease that will provide EBCE staff with time to consider options like buying a building versus signing a long-term lease agreement. Part of this long-term evaluation will also be informed by EBCE's longer term staff growth in areas like customer service. As a result, EBCE staff believe a 2-3 year office lease provides EBCE with the maximum flexibility to evaluate all options while having the space it needs in 2019 and 2020.

As a starting point for EBCE's office search, EBCE staff are focusing on the following criteria for locations and office space:

1. Adjacent to a BART station

2. Centrally located in Alameda County (Emeryville, Oakland, San Leandro, Hayward, Castro Valley)
3. Class A office space able to accommodate 30 to 40 staff
4. Large enough conference room to host Community Advisory Committee, Executive Committee and Sub-Committee meetings
5. 2019 lease cost within EBCE's approved budget

Based on these criteria, EBCE staff will identify a 2-3 year office lease that we will negotiate and bring to the full Board for final approval.