



Consent Item 10

TO: East Bay Community Energy Board of Directors
FROM: Inder Khalsa, EBCE General Counsel
SUBJECT: Complimentary Ticket Distribution and Event Sponsorship Policies
DATE: June 19, 2019

Recommendation

Adopt a resolution to adopting a Complimentary Ticket Policy to guide the distribution of tickets EBCE receives, and a resolution adopting an Event Sponsorship Policy to guide EBCE in determining which events EBCE may sponsor.

Background

I. Complimentary Ticket Policy

The Fair Political Practices Commission (“FPPC”) adopts regulations that implement the Political Reform Act. In general, gifts to a public official that exceed \$50 in value are required to be reported on an official’s annual Statement of Economic Interests (commonly known as a “Form 700”) and an official may not accept gifts that exceed \$500 from a single source in a calendar year (through 2020).

The FPPC, however, has adopted a regulation (Regulation 18944.1), that provides that when a public agency distributes a ticket or pass to a certain type of event and when the official uses that ticket or pass, such ticket or pass does not have to be reported as a gift and is not subject to the annual gift limit if the agency adopts a policy for the distribution of such tickets. This policy, however, must comply with certain criteria set forth in Regulation 18944.1. Regulation 18944.1 was recently updated on May 16, 2019.

EBCE does not currently have a policy relating to the complimentary distribution of tickets. From time to time, EBCE receives complimentary tickets to events which may be distributed to agency officials. Staff recommends adopting a ticket distribution policy so that these tickets may be distributed to EBCE officials in accordance with FPPC regulations and guide EBCE in distributing such tickets. The policy will also ensure that tickets are distributed in a manner that promotes the public purposes of the EBCE.

This policy will give EBCE discretion over who uses the tickets, require that tickets be distributed to serve a public purpose of EBCE, restrict the disproportionate use of tickets by

particular individuals, and outlines reporting requirements accompanying the distribution of tickets.

II. Event Sponsorship Policy

Article 16, Section 6 of the California Constitution limits the gift of public funds. This limitation has been interpreted as precluding public entities from making payments to persons or entities without there being a public purpose furthered by making the payment. EBCE, as a public entity, is subject to this requirement.

From time to time EBCE receives requests to sponsor, and has the opportunity to sponsor, various events and programs in the community. The sponsorship policy will assist staff in determining which events to sponsor.

Sponsorship opportunities will be reviewed by General Counsel and approved by the CEO - or a designee - if under \$5,000 or by the Board if \$5,000 or more, and sponsorships may not be executed if they create a prohibited conflict of interest.

Conclusion

The Complimentary Ticket Policy should be adopted by approving the resolution to guide the distribution of tickets EBCE receives and to comply with the FPPC ticket distribution regulations (2 Cal. Code Regs., Section 18944.1).

The Event Sponsorship Policy should be adopted by approving the resolution to guide EBCE in determining which events EBCE may sponsor and to comply with the state Constitutional gift of public funds prohibition (Cal. Const., Art. 16, Sec. 6).

Enclosures

- A. Resolution of the Board of Directors of the East Bay Community Energy Authority Adopting a Complimentary Ticket Policy
- B. Complimentary Ticket Policy
- C. Resolution of the Board of Directors of the East Bay Community Energy Authority Adopting an Event Sponsorship Policy
- D. Event Sponsorship Policy

RESOLUTION EBCE R-2019-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING A
COMPLIMENTARY TICKET POLICY**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County as a community choice aggregation agency (“CCA”); and

WHEREAS, pursuant to the Joint Powers Agreement the EBCE and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 et seq.) and the Board may adopt additional conflict of interest regulations; and

WHEREAS, occasionally the EBCE receives complimentary tickets or passes to a facility, event, show or performance for entertainment, amusement, recreational or similar purposes; and

WHEREAS, Fair Political Practices Commission Regulation 18944.1 requires public agencies to adopt a written policy governing the distribution of complimentary tickets and passes that includes a statement describing the public purpose to be accomplished by such policy; and

WHEREAS, it is in the interest of EBCE to establish a ticket or pass distribution policy that facilitates the distribution of tickets or passes; and

WHEREAS, it is the purpose of the Complimentary Ticket Policy to establish a fair and equitable process for the distribution to EBCE officials of complimentary tickets and passes received by EBCE to a facility, event, show or performance for entertainment, amusement, recreational or similar purposes in compliance with the requirements of Fair Political Practices Commission Regulation 18944.1.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Board hereby adopts Policy # ____, “Complimentary Ticket Policy,” attached hereto as Exhibit A, and resolves that the distribution of tickets to EBCE officials shall be governed by this Policy.

SECTION 2. This resolution shall become effective immediately upon its passage and adoption.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Exhibit A

Complimentary Ticket Policy

**Policy No.
Resolution no.**

**Agenda: June 19, 2019
Item: 10**

1. Purpose.

The purpose of this Complimentary Ticket Policy (“Policy”) is to establish a fair and equitable process for the distribution of complimentary tickets or passes to EBCE in compliance with the requirements of Section 18944.1 of the Fair Political Practices Commission (“FPPC”) Regulations. This Policy is subject to the California Political Reform Act of 1974, Government Code § 81000, et seq. (“Political Reform Act”) and the FPPC Regulations, Title 2, Division 6 of the California Code of Regulations, Sections 18110 et seq., as they now exist or may hereafter be added or amended.

2. Definitions.

- a. “Event” means an occasion, show, or performance for an entertainment, amusement, recreational, or similar purpose to which admission is granted with a ticket or pass.
- b. “Official” means any member of the EBCE Board of Directors or any EBCE employee.
- c. “Ticket or Pass” means either a “ticket” or a “pass” as defined in FPPC Regulation 18946, as amended from time to time, but which are currently defined as:
 - i. “Ticket.” A “ticket” is anything that provides access, entry, or admission to a specific future event or function and for which similar tickets are sold to the public to view, listen to, or otherwise take advantage of the attraction or activity for which the ticket is sold and includes any benefits that the ticket provides.
 - ii. “Pass.” A “pass” is a ticket that provides repeated access, entry, or admission to a facility or series of events and for which similar passes are sold to the public.

3. Applicability.

This Policy shall only apply to distribution of a ticket or pass to an event or function provided by EBCE to an Official, or at the behest of an Official.

4. Ticket Distribution.

The ticket or pass shall not be earmarked by the original source for use by the Official who uses the ticket or pass. EBCE shall determine in its sole discretion which Official may use the ticket or pass. Specific guidelines for the dissemination of tickets or passes to Events may be established by the Chief Executive Officer or designee pursuant to an administrative procedure.

5. Public Purposes.

Tickets or passes may be provided to an Official subject to this Policy to support any of the following public purposes:

- a. As a part of EBCE's community outreach efforts;
- b. Representing EBCE as an event to sustain or build relationships with businesses or local, regional, state, or federal agencies;
- c. The Event will provide educational information that will benefit the EBCE or Official attending the Event;
- d. The Official's written job duties require the Official to appear at the Event.
- e. Attendance of an Official of the EBCE at the Event will in some other way support the purpose of the EBCE; or
- f. To support general employee morale, retention or to reward public service. [This public purpose may not be used for tickets or passes distributed to members of the Board of Directors, the Chief Executive Officer, or a department head in compliance with FPPC Regulation §18944.1 (e).]

6. Requirement of Public Purposes.

The distribution of any ticket or pass to, or at the behest of, an Official must accomplish a stated public purpose of the agency listed in Section 5 of this Policy.

7. Prohibition Against Transfer.

A ticket or pass distributed to an Official pursuant to this Policy may not be transferred by the Official to any person, except to members of the Official's immediate family or no more than one guest solely for their attendance at the event.

8. Disproportionate Use Prohibited.

The disproportionate use of tickets or passes by a member of the Board of Directors, the Chief Executive Officer, or a department head is prohibited.

9. Record and Reporting.

This Policy shall be posted on the EBCE website within 30 days of adoption or amendment. The record of the distribution of a ticket or pass pursuant to this Policy shall be maintained as a public record and be subject to inspection and copying under California Government Code

Section 81008. In addition, the record of the distribution of a ticket or pass pursuant to this Policy shall be posted on a Form 802 provided by the FPPC on the EBCE website, within 45 days after the distribution.

RESOLUTION EBCE R-2019-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING
AN EVENT SPONSORSHIP POLICY**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County as a community choice aggregation agency (“CCA”); and

WHEREAS, as a public agency, EBCE is subject to state Constitutional restrictions on the expenditure of public funds which forbid public agencies from gifting public funds; and

WHEREAS, an appropriation of public funds for use by a private party is not an unconstitutional gift if it serves a public purpose; and

WHEREAS, occasionally the EBCE has opportunities to sponsor events that serve such public purposes, including but not limiting to marketing EBCE’s energy programs to current and prospective customers; and

WHEREAS, it is in the interest of EBCE to establish an event sponsorship policy to help guide which events EBCE may sponsor.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Board hereby adopts Policy # ____, “Event Sponsorship Policy,” attached hereto as Exhibit B, and resolves that the expenditure of funds to sponsor events be governed by this Policy.

SECTION 2. This resolution shall become effective immediately upon its passage and adoption.

ADOPTED AND APPROVED this 19TH day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Exhibit B

Event Sponsorship Policy

Policy No.

Resolution No.

Agenda: June 19, 2019

Item: 10

Purpose:

From time to time East Bay Community Energy (“EBCE”) receives requests to sponsor, and has the opportunity to sponsor, various events and programs in Alameda County. EBCE desires to sponsor events which further the public purposes of EBCE, including but not limited to events that can promote, implement, operate, or administer EBCE’s energy programs. It is in the interest of EBCE to establish an event sponsorship policy to guide EBCE in determining which events it may sponsor so that sponsorship expenditures made by EBCE do not violate the state Constitutional gift of public funds prohibition (Cal. Const., Art. 16, Sec. 6).

Policy:

1. **Public Purpose.** The state Constitution provides that public agencies may only spend public funds on public purposes. Therefore, EBCE shall only expend funds on sponsorships that advance the purposes for which it was established. Those purposes include, but are not limited to: promoting, developing, conducting, operating, and managing energy and energy-related climate change programs of EBCE.
2. **Sponsorship Agreements.**
 - a. EBCE must enter into a sponsorship agreement with the entity seeking event sponsorship.
 - b. Sponsorship agreements must identify the public purpose for EBCE prompting the expenditure as the consideration for making it. For example, the description can list tangible benefits of sponsorship for EBCE such as a table or literature distribution booth at the event which helps promote EBCE energy programs to current or potential customers.
3. **Sponsorship Review Process.**
 - a. Sponsorship agreements for events at an expenditure amount of \$5,000 or less may be executed by the Chief Executive Officer or his/her designee without Board approval.
 - b. Sponsorship agreements for events at an expenditure amount exceeding \$5,000 require approval by the Board of Directors.
 - c. All event sponsorship agreements require General Counsel review and approval to ensure a public purpose is accomplished through the sponsorship before EBCE may enter into a sponsorship agreement.
 - d. Prior to executing any sponsorship agreement, the individual executing shall ensure: (i) that the sponsorship compensation has been budgeted for in the current EBCE budget, (ii) that such funds are unexpended and unencumbered

sufficient to pay the expense of the sponsorship, and (iii) that the sponsorship agreement has been approved by the General Counsel or his/her designee.

4. Sponsorship Limits.

- a. EBCE shall not sponsor an event unless it is determined that a public purpose, as described in Section 1 of this Policy, will be accomplished.
- b. EBCE shall not sponsor an event which would create a conflict of interest under the following authorities: (i) the Political Reform Act (California Government Code Section 81000 et seq.); (ii) Government Code Section 1090; and (iii) the Common Law Doctrine Against Conflicts of Interest.