



Consent Item 8

TO: East Bay Community Energy Board of Directors
FROM: Molly Gilmore, Legal Analyst
SUBJECT: Amendment to Sponsorship Policy
DATE: May 20, 2020

Recommendation

Adopt a Resolution of the Board of Directors of the East Bay Community Energy Authority Approving the First Amendment and Restatement of the Sponsorship Policy

Background and Discussion

From time to time EBCE is asked to sponsor various local events and programs throughout its service area. Staff developed a Sponsorship Policy that establishes the criteria for an appropriate sponsorship opportunity, one that ensures the event or program furthers the public purposes of EBCE. The amendments made to the policy further clarify the administration of the sponsorship approval process, making it consistent with the signing authorities provided for in the Administrative Procurement Policy, and the minimum terms any agreement for sponsorship must satisfy.

Attachments:

- A. Resolution to approve the first amended and restated the sponsorship policy
- B. Exhibit A: Amended Policy Sponsorship Policy
- C. Sponsorship Policy Redline

RESOLUTION EBCE R-2020-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO APPROVE THE
FIRST AMENDED AND RESTATED SPONSORSHIP POLICY**

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

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.

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

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

WHEREAS It is in the interest of EBCE to establish a sponsorship policy to help guide which events and programs 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 the First Amendment and Restatement of the “Sponsorship Policy,” attached hereto as Exhibit A, and resolves that the expenditure of funds to sponsor events and programs be governed by this Policy.

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

ADOPTED AND APPROVED this 20th day of May, 2020.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Amended and Restated Sponsorship Policy

Policy No. 12.1

Resolution No. R-2020-XX

Agenda: May 20, 2020

Item: Consent Item 8

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 its service area. EBCE desires to sponsor events and programs 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 a sponsorship policy to guide EBCE in determining which events and programs 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.** EBCE does not have a standard sponsorship agreement or require the execution of one, but the sponsored party may provide such an agreement for execution. Among its listed terms, a sponsorship agreement 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 Approval Process**
 - a. All event Sponsorship Agreements over \$5,000 require General Counsel review and approval as to form.
 - b. 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 and are sufficient to pay the expense of the sponsorship, and (iii) that the sponsorship agreement has been approved as to form by the General Counsel or his/her designee if applicable.
 - c. All sponsorship agreements are subject to the following signing authority restrictions in Table 1.

Table 1

SIGNING AUTHORITY	DOLLAR AMOUNT
Board of Directors Approval	> \$100,000 per fiscal year
Chief Executive Officer, or his/her designee	\$0 - \$100,000 per fiscal year
General Counsel	\$0-\$50,000 per fiscal year
Chief Operating Officer	\$0-\$25,000 per fiscal year
Senior Director or Vice President	\$0-\$10,000 per fiscal year
Director	\$0-\$5,000 per fiscal year

4. Sponsorship Restrictions

- a. EBCE shall not sponsor an event or program 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 or program 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.



Exhibit B



Amended and Restated Sponsorship Policy

Policy No. 12.1
Resolution No. R-2019-152020-XX

Agenda: June 19, 2019 May 20, 2020
Item: 40

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, its service area. EBCE desires to sponsor events and programs 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 and programs 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 does not have a standard sponsorship agreement with require the entity seeking event execution of one, but the sponsored party may provide such an agreement for execution. Among its listed terms, a sponsorship-

b. Sponsorship agreements agreement 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 Renewal/Approval Process

a. All event 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 shall require Board approval.

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Attachment Consent Item 8C

over \$5,000 require approval by the Board of Directors.

~~c.a. All event sponsorship agreements require~~ General Counsel review and approval as to ensure a public purpose is accomplished through the sponsorship before EBCE may enter into a sponsorship agreement form.

~~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

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Attachment Consent Item 8C

b. an are sufficient to pay the expense of the sponsorship, and (iii) that the sponsorship agreement has been approved as to form by the General Counsel or his/her designee if applicable.

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c. All sponsorship agreements are subject to the following signing authority restrictions in Table 1.

Table 1

<u>SIGNING AUTHORITY</u>	<u>DOLLAR AMOUNT</u>
<u>Board of Directors Approval</u>	<u>> \$100,000 per fiscal year</u>
<u>Chief Executive Officer, or his/her designee</u>	<u>\$0 - \$100,000 per fiscal year</u>
<u>General Counsel</u>	<u>\$0-\$50,000 per fiscal year</u>
<u>Chief Operating Officer</u>	<u>\$0-\$25,000 per fiscal year</u>
<u>Senior Director or Vice President</u>	<u>\$0-\$10,000 per fiscal year</u>
<u>Director</u>	<u>\$0-\$5,000 per fiscal year</u>

4. Sponsorship Limits-Restrictions

a. EBCE shall not sponsor an event or program unless it is determined that a public purpose, as described in Section 1 of this Policy, will be accomplished.

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~~b.~~ EBCE shall not sponsor an event or program 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.

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b. 2

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