




Berkeley Housing Authority

Office of the Executive Director

Item 7B
ACTION CALENDAR
September 16, 2010

To: Honorable Chairperson and
Members of the Housing Authority Commission

From:  T. M. Ingram, Executive Director

Subject: Consideration of a resolution adopting a Conflict of Interest Code for the Berkeley Housing Authority, establishing categories for staff reporting requirements, and authorizing transmittal to the Berkeley City Manager for approval by the City Council Interest Code

RECOMMENDATION

Adopt a Conflict of Interest Code for the Berkeley Housing Authority, establishing categories for staff reporting requirements, and authorizing transmittal to the Berkeley City Manager for approval by the City Council Interest Code.

BACKGROUND

A. Process for Adoption. The California Political Reform Act of 1974, Government Code Sections 81000 et seq. (the "Act"), requires public officials to disclose personal and financial information that may be affected by their official duties. The Act, at Section 87300, requires that state and local agencies adopt conflict of interest codes which specify designated positions subject to financial disclosure. People in these designated positions are required to annually file individual Statements of Economic Interests annually, i.e., the Fair Political Practices Commission's Form 700.

The Housing Authority was previously included under the City of Berkeley's Conflict of Interest Code. Despite the fact that they are separate legal entities, it is a common practice for a housing authority to be covered under a city's conflict of interest code. For example, the housing authorities of Oakland, San Francisco and Los Angeles are all listed in the Conflict of Interest Codes adopted by their respective City Council or Board of Supervisors and do not have separately adopted conflict of interest codes. However, in November 2007 the City Council, without notice to BHA, eliminated BHA from its Conflict of Interest Code. Since the City no longer includes BHA in its Code, BHA is required to adopt its own Conflict of Interest Code. Although it is technically adopting its own Code, the action is more like an amendment to an existing Code since BHA was previously included in the City's Conflict of Interest Code.

Incorporation by reference of FPPC Regulation 18730, along with the designation of employees and the formulation of disclosure categories, constitutes the adoption and promulgation of a Conflict of Interest Code within the meaning of Section 87300 of the Act. After its adoption by the BHA Board, the Act, at Section 87303, requires the Code to be approved by the City Council, which, according to Section 82011(c), is the "code reviewing body".

In addition to its role as the code reviewing body, Section 87306.5 of the Act required the City Council, by July 1, 2010, to notify city agencies not covered under the City's Conflict of Interest Code to review their codes and to submit a "2010 Local Biennial Notice Form" to the City Council no later than October 1, 2010. Unfortunately, there was apparently some confusion as to its responsibilities in regard to BHA, so no such notice was sent to BHA by the City. Staff of the Fair Political Practices Commission has confirmed that, despite the fact that a city housing authority is a separate legal entity from the city, it is considered a city agency under the Act for this purpose alone.

B. Designated Filers and Disclosure Categories. All BHA Board Members are required by the Act, at Section 87200, to file Statements of Economic Interest. The purpose of the Conflict of Interest Code is to designate employees or consultants who are in positions that involve the making or participation in the making of decisions which may foreseeably have a material effect on their financial interests. It is recommended that the employees and consultants in the following positions be required to file Statements of Economic Interests: Executive Director, Finance Manager, Management Analyst, Administrative Assistant, Accountant, Housing Specialist, and General Counsel.

In addition to designating employees and consultants who are required to file Statements of Economic Interests, the FPPC allows public entities to designate different levels of disclosure, depending on the filer's responsibilities. Given the small size of the BHA, it is recommended that there be only one disclosure category to which all designated filers are subject, Category 1.

In addition to its function as the code reviewing body, Section 87500(j) of the Act provides that ~~the City Council is also the "filing officer" for purposes of the collection of completed~~ Statements of Economic Interest. The City Council can direct BHA to collect the Statements of Economic Interest, make copies, and forward the originals to the City, or it may provide that the originals be filed directly with it and no copies retained by BHA.

FISCAL IMPACTS OF RECOMMENDATION

No direct impact.

CONTACT PERSON

Tia Ingram, Executive Director, 981-5471.
Jennifer Bell, Legal Counsel, 836-6336

Attachments:

1. Resolution
2. Conflict of Interest Code

RESOLUTION NO. 10-

ADOPTING THE BERKELEY HOUSING AUTHORITY'S
CONFLICT OF INTEREST CODE ESTABLISHING CATEGORIES FOR STAFF REPORTING
REQUIREMENTS AND AUTHORIZING TRANSMITTAL TO THE BERKELEY CITY
MANAGER FOR APPROVAL BY CITY COUNCIL

WHEREAS, pursuant to the Political Reform Act of 1974, as amended, Government Code Section 81000 et seq. (the "Act"), public entities are required to adopt conflict of interest codes; and

WHEREAS, the Berkeley Housing Authority was included in the City of Berkeley's Conflict of Interest Code until the City Council removed it pursuant to Resolution Number 64,675, N.S., dated, November 10, 2007; and

WHEREAS, since it is no longer included in the City of Berkeley's Conflict of Interest Code, the Berkeley Housing Authority is required to adopt its own Conflict of Interest Code; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard model conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments to the Act; and

WHEREAS, the Berkeley Housing Authority desires to adopt by reference the provisions of 2 California Code of Regulations Section 18730 as its Conflict of Interest Code; and

WHEREAS, the Berkeley Housing Authority desires to designate the positions of Executive Director, Finance Manager, Management Analyst, Administrative Assistant, Accountant, Housing Specialist and General Counsel as required to file the disclosures required by the Act.

~~NOW THEREFORE, BE IT RESOLVED, that the Board of the Berkeley Housing Authority hereby~~
incorporates by reference the provisions of Title 2, California Code of Regulations, Section 18730, as its Conflict of Interest Code, as set forth in Exhibit A.

BE IT FURTHER RESOLVED, that the Board of the Berkeley Housing Authority designates the positions of Executive Director, Finance Manager, Management Analyst, Administrative Assistant, Accountant, Housing Specialist and General Counsel as required to file the disclosures required by the Act, and includes these positions in Appendix A to the Conflict of Interest Code attached hereto as Exhibit B.

BE IT FURTHER RESOLVED, that the Board of the Berkeley Housing Authority adopts the list of disclosure categories set forth in Appendix B to the Conflict of Interest Code attached hereto as Exhibit C.

BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized and directed to transmit the Conflict of Interest Code to the Berkeley City Manager, for Council for approval.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on September 16, 2010 by the following vote:

Ayes:

Noes:

Absent:

Attest: _____
Tia M. Ingram, Secretary

BERKELEY HOUSING AUTHORITY CONFLICT OF INTEREST CODE

This Conflict of Interest Code is promulgated under the authority of the Political Reform Act, Government Code Sections 81000, et seq., which 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 Section, 18730, which contains the terms of a standard conflict of interest code, which may be incorporated by reference, and which may be amended by the Fair Political Practices Commissions to conform to amendments to the Political Reform Act after public notice and hearings.

Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendices A and B in which officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the Berkeley Housing Authority.

APPENDIX A

DESIGNATED POSITIONS

1. Persons occupying the following positions are designated employees or hold designated positions and must disclose financial interests defined in Appendix B.

POSITION:	DISCLOSURE CATEGORY
Executive Director	1
Finance Manager	1
Administrative Assistant	1
Accountant I	1
Housing Specialists	1
Management Analyst	1
General Counsel	

APPENDIX B

DISCLOSURE CATEGORY

Given the small size of the Berkeley Housing Authority there is only one Disclosure Category, Category 1. All persons in the designated positions listed in Appendix A must fully complete the California Fair Political Practices Commission's Form 700 Statement of Economic Interests, which requires the reporting of:

(a) Interests in real property located entirely or partly within the jurisdiction of the Berkeley Housing Authority, i.e., the City of Berkeley, California. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.

(b) Investments or business positions in or income from sources which:

1. are engaged in the acquisition or disposal of real property within the boundaries of the Berkeley Housing Authority;

2. are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the Berkeley Housing Authority;

3. manufacture or sell supplies, books, machinery or equipment of the type used by the Berkeley Housing Authority.

