



Board Policy No. 702

Conflicts of Interest and Standards for Ethical Conduct

ADOPTED: 12/13/2017

RECENT AMENDMENT: 1/13/21

SEE ALSO: 101, 160, 217, 203, 465, 349, 701

SUBJECT CATEGORY: SECTION 700, CONFLICTS OF INTEREST

SUBSECTION: GENERAL

CONTROL DEPARTMENT: DISTRICT SECRETARY, GENERAL COUNSEL

I. PURPOSE

The purpose of this policy is to establish protocols that will foster public confidence in the integrity of the District, and, if complied with, will ensure that public officials act independently and impartially in exercising their judgment and taking action on issues which come before the District. In addition, and consistent with Federal Transit Administration Circular No. 4220.1F (third party contracting guidance) and subsequent amendments thereto, this policy shall be used to guide persons affected by it when addressing personal conflicts of interest and the acceptance of gifts and gratuities. This policy is in addition to and does not supersede any other rules, regulations or policies of the District governing any of the issues contained within this Code.

II. PERSONS AFFECTED

Specifically, members of the Board of Directors, Board Officers, Board-appointed members of any internal or external advisory committee, board, or similar body; and anyone serving in the capacity of a position covered by the Alameda-Contra Costa Transit District Conflict of Interest Code, including those positions designated as filers under Government Code Section 87200, and consultants designated to file by the General Manager. In general, all employees, contractors and sub-contractors performing work on behalf of the District are encouraged to practice the standards set forth in this policy.

III. DEFINITIONS

“Common Grant Rules” shall have the meaning set forth in Federal Transit Administration Circular 4220.1F published at 73 FR 56896 on September 30, 2008, or any amendments or revisions to said circular that may occur in the future.

“Favor” means to lend supportive approval to, to be favorably disposed to, and to show partiality towards.

“Gift” means any payment that confers a personal benefit to the recipient as defined in Government Code section 82028 and as it may be amended from time to time.

“Gratuity” means a material favor or gift, usually money, given in return for service.

“Substantial Financial Interest” means any gift, gratuity or favor, from a single source within the preceding 12 months aggregated to a total value of the amount specified under the Political Reform Act of 1974 and any amendments to it (presently, Government Code Section 89053, as adjusted).

IV. POLICY

A. Duty and Care

As agents of the public and conservators of the public trust, those persons affected by this policy are bound to comply with the Political Reform Act (Cal. Govt. Code section 87100 et seq.), California Government Code section 1090 et seq., and all of the related ~~State-state~~ and ~~Federal~~ federal laws, rules and regulations that pertain to conflicts of interest. The aforementioned persons shall also observe the highest standards of integrity and discharge faithfully the duties of their offices and/or positions. In addition, Board members, Board Officers and executives have a duty to act in the best interest of the District.

B. Conflicts of Interest

Board members shall not hold two public offices that are incompatible as defined in California Government Code Section 1099.

No one affected by this policy, or members of ~~their~~his/her immediate family, including registered domestic partner, or dependent child, or an organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract ~~supported with FTA assistance~~ if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when any of the persons above has a financial or other interest in the firm selected for award.

Persons affected by this policy should conduct their official and private affairs in a way that does not give the appearance of being improperly influenced in the performance of ~~their~~his/her duties on behalf of the District.

Conduct which should be avoided includes:

1. Accepting gifts, favors or promises of future benefits as consideration for preferential treatment, bias, or partiality towards the gift giver or which might compromise or tend to impair independent judgment or action.
2. Willful participation in activities that create contractual (GC §1090), non-contractual (GC §81000) or common law conflicts of interest or activities.

3. Elected Officials cannot vote on licensing, permitting, or other entitlement proceedings if they accepted a campaign contribution of \$250 or more from a financially interested person in the past 12 months.

If a situation arises where a conflict or the appearance of a conflict may occur, the public official should:

- a. Discuss the matter with their supervisor and/or the General Counsel.
- b. Cooperate with the General Counsel, if requested, in the procurement of an advice letter from the Fair Political Practices Commission, or any other body with jurisdiction over the alleged conflict.
- c. ~~Consult~~ ~~Obtain an opinion from~~ with the General Counsel for an opinion or ~~the District's outside legal counsel when the General Counsel~~ determination of whether ~~es~~ an outside legal opinion is warranted. All opinions are to be procured through the General Counsel's Office.
- d. Immediately terminate all communications and discussions both internally and with the vendor/consultant/manufacture/supplier and terminate involvement in all negotiations or other decisions related to the matter or transaction until advised it is legally permissible to do so.

43. For elected officials and Board Officers, disclose all individual conflicts or impediments to participating in a decision on the record before the item is considered and leave the dais (and meeting room if possible) during consideration of the item. For all other persons affected by this policy, disclosure could also be to a supervisor, who may memorialize such disclosure in the project file or in the employee's personnel file, as required by law.

C. Acceptance of Gifts/Gratuities or Favors

No gifts, gratuities or favors covered by the provisions of the Political Reform Act of 1974 (Govt. Code §§ 81000, et seq., or its implementing regulations) shall be accepted which might reasonably be interpreted as an attempt to influence actions with respect to District business. (See Govt. Code § 87103; Title 2, Division 6 of Calif. Code of Regulations §§18940-18961)

No one affected by this policy shall knowingly accept, or agree to accept, either directly or indirectly, for ~~their~~his/her personal benefit any gifts, gratuities or favors from customers, vendors, or any other person doing (or seeking to do) business with the District if acceptance of the gift would violate Government Code Section 89503 (gift limit) or such gifts would create a substantial financial interest. Gifts over \$50.00 must be reported in the affected person's Statement of Economic Interest (Form 700).

D. Disclosure of Interests in Legislation

Any financial or other private interest in any legislation shall be disclosed on the record, including the nature and extent of such interest.

E. Confidential Information

Information received in a closed session meeting, or confidential information received, acquired by or made available to anyone covered by this Code of Ethics or any employee or agent of the District, shall not be disclosed, except as required or authorized by law. No one shall use any confidential information for speculation or personal gain for himself/herself or another.

No member of the Board of Directors or any other individual who has participated in a closed session shall disclose any information provided or obtained in closed session without the approval of a majority of the Board of Directors. Board members who have a real or perceived interest that conflicts with the District's position in litigation or potential litigation shall notify the General Counsel and Board for a determination of whether they should be excluded from closed sessions concerning the litigation or potential litigation. In the event that a Board member~~Director~~ violates this policy, the Board of Directors, may by four (4) affirmative votes, (1) exclude the Board member~~Director~~ from future closed session discussions of the same matter, or (2) exclude the Board member~~Director~~ from all future closed session discussions until it obtains guidance from a court, or (3) take any other action it deems appropriate as outlined in Section IV.K. of this Policy.

Board members shall refrain texting during closed session and may not use any device to record closed session discussions. All documentary information received in closed session, including any notes taken by Board members, -shall be returned to the General Counsel. The General Counsel shall maintain a file on information provided in closed session which may be reviewed by Board members during normal business hours. The District Secretary shall maintain the official record of closed session discussions, including any actions taken or direction given.

F. Use of District Resources or Facilities for Private Gain

District personnel, facilities, equipment, materials or supplies shall not be used for private gain, advantage, or outside employment. No one covered by this policy shall use or attempt to use their~~his/her~~ position to secure unwarranted privileges or exemptions for themselves or others. (See Board Policy Nos. 217- Use of District Resources)

G. Use of Official Position

Persons affected by this policy shall not use their official position to negotiate on behalf of the District outside of any process established for that purpose, or for any personal gain or benefit.

H. Reporting Breach of Public Trust

Any knowledge of impropriety~~er governmental activities~~ pertaining to the District shall be disclosed to the appropriate authority(ies) within the District for investigation and appropriate action. No one shall directly or indirectly use or attempt to use the authority or influence of

~~their~~~~his/her~~ office or position for the purpose of intimidating, threatening, coercing, commanding, or influencing any person with the intent of interfering with that person's duty to disclose such improper activity.

I. Fair and Equal Treatment

The individuals covered by this policy shall:

1. Provide fair, unbiased, and equal treatment to all persons and matters coming before the Board of Directors, its Committees, advisory bodies or any other committee or commission created by the Board of Directors.
2. The Board, Board Officers, and members of committees, advisory and oversight bodies shall attend all meetings unless excused in accordance with Board Policies and/or Board resolutions.
3. Not receive special consideration, treatment or advantage beyond that which is available to every other individual.
4. Faithfully perform all duties of ~~his/her~~ their office or position.
5. Behave in a respectful manner towards others, refrain from abusive or disruptive conduct, personal charges or verbal attacks upon the character, motives, ethics, or morals of others, or other personal comments not germane to the issue(s) under consideration.

J. Conduct Toward Staff

1. Board members and members of committees, advisory or oversight bodies shall not publicly or privately engage in personal attacks on Board Officers or employees or attempt to discipline any Board Officer or employee, except to the extent the Board is permitted to discipline Board Officers. Any concerns regarding a District employee's performance or conduct, other than a Board Officer, shall be communicated to the General Manager. Any concerns regarding a Board Officer's performance or conduct shall be communicated to the affected Board Officer. Nothing in this section shall affect the right of the Board to evaluate the Board Officers. Board members shall not become involved in personnel matters except for any discussion by the Board regarding one or more of the Board Officers.
2. Board members, unless authorized by the Board, shall not individually direct the work of Board Officers or staff, or attempt to influence the content of reports from Board Officers or staff.
3. Board members shall not have access to or use any departmental, consultant or legal files without prior written consent of the General Manager and General Counsel and shall not

have access to the personnel files of employees, except the Board shall have access to the personnel files of the Board Officers.

4. Board members and members of committees, advisory or oversight bodies shall not have access to personnel files or become involved in personnel matters except for any closed session discussion by the Board regarding one or more of the Board Officers.

K. Non-Compliance, Enforcement and Sanctions

1. Board of Directors

- a. In addition to any other penalty as provided by law, or as otherwise specified in this policy, violations of the Political Reform Act of 1974 and this policy may be used as a basis for subjecting the offender to one or more of the following: removing the offender from the position of chair of a committee; removing the offender from membership on a committee; denying the offender any other assignments for or on behalf of the District; subjecting the offender to public censure; reporting the offender's conduct to the appropriate county's civil grand jury or District Attorney; or restricting the ability of the offender to use theirhis/her travel account for a specified period.
- b. For any violations not subject to the Political Reform Act of 1974, the Board of Directors shall impose such sanctions or disciplinary actions as it deems appropriate under the circumstances.
- c. To the extent any violation of this policy would also be a violation of the Political Reform Act of 1974, the Board may refer the matter to the Fair Political Practices Commission for investigation and action.

2. All Other Persons Affected

- a. In addition to any other penalty provided by law, violations of the Political Reform Act of 1974 and this policy may be used as a basis for disciplinary action up to and including termination depending on the severity of the offense and subject to applicable Board Policies, Administrative Regulations and Collective Bargaining Agreements.
- b. To the extent any violation of this policy would also be a violation of the Political Reform Act of 1974, the District may refer the matter to the Fair Political Practices Commission for investigation and action.

L. Distribution

This policy shall be distributed to all affected persons subject to conflict of interest of laws upon election, appointment, or hire and annually thereafter.

V. AUTHORITY

~~A.~~ The Board of Directors has the authority to amend the policy as it deems appropriate or as otherwise required by law.