CONTRA COSTA COUNTY LIBRARY COMMISSION
AGENDA ATTACHMENT 5

MEETING DATE: Thursday, September 23, 2010

AGENDA ITEM #: 12 A

ITEM:  FUNDAMENTALS OF BROWN ACT & BETTER GOVERNMENT ORDINANCE

RECOMMENDED ACTION:

- Commissioners will receive a presentation from County Counsel and participate in a question and answer session.
2009 Annual Training
for Advisory Bodies to the Board of Supervisors

Lara DeLaney, County Administrator’s Office
Mary Ann Mason, County Counsel’s Office

Monday, December 7, 2009
4:00 p.m. – 5:30 p.m.
Board Chambers, 651 Pine Street

Agenda

1. Welcome and Introductions
2. Review of Advisory Body Handbook
3. Scope of Authority of Advisory Bodies
4. Brown Act Requirements and the County’s Better Government Ordinance
5. Conflicts of Interest and Recusal
6. Training Requirements
7. Advisory Body Vacancies, Appointments, Recruitment
8. Reporting Requirements
9. Questions and Answers

The Clerk of the Board will provide reasonable accommodations for persons with disabilities planning to attend the meeting who contact Lara DeLaney at least 48 hours before the meeting, at (925) 335-1097. An assistive listening device is available from the Clerk, Room 106.

Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Board of Supervisors less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 1st floor, during normal business hours.
2009 Annual Training
for Advisory Bodies to
the Contra Costa County
Board of Supervisors

Lara DeLaney, County Administrator’s Office
Mary Ann Mason, County Counsel’s Office
December 7, 2009

Advisory Body Handbook
- Introduction: Scope, Role, Responsibilities
- Fundamentals of the Brown Act/BBO
- Selected Brown Act/BBO provisions
- Board policies on “Conflict of Interest and
  Open Meetings”
- FPPC’s “Can I Vote” pamphlet
- Training Certification Form
- Board Reso on Appointment procedures and
  Responsibilities of Advisory Bodies
- Sample press release, vacancy Board Order,
  and appointment Board Order
- Advisory Body webpage printouts

Scope of Authority
- Unless otherwise specified by statute, advisory
  bodies serve at the pleasure of the Board of
  Supervisors in an advisory capacity only, and
  have no authority to create fiscal or other
  obligations on behalf of the County.
- Each advisory body's governing resolution
  specifies the body's scope of authority. Each
  advisory body must adhere to that scope of
  authority.
- Please familiarize yourself with your advisory
  body’s governing resolution and adopted
  Bylaws.

Examples of Limits on Authority
- Bank Accounts and spending
- Contracting
- Setting and/or waiving of County fees
- Personnel actions
- Closed meeting sessions
- Taking positions on bills; legislative advocacy

Legislative Advocacy
- An advisory body may not take any action that would
  imply the County’s support or opposition to
  legislation in the absence of, or inconsistent with,
  adopted Board positions.
- Only the Board of Supervisors can send position
  letters on a particular piece of legislation, unless a
  state or federally mandated advisory body has
  followed the specified protocol to do so on their own
  behalf. (See Oct. 14, 2008 Board Order)
- As individuals, advisory body members may
  communicate their opinions and advocate for
  legislation.

Permissible Closed Sessions
- To receive legal advice on pending or threatened
  litigation;
- To instruct labor negotiators or real property
  negotiators;
- To take employment actions.

In general, advisory bodies are not eligible to hold
Closed Sessions. If questions, contact the County
Counsel’s Office.
**Agenda Requirements**
- Publish at least 96 hours before the meeting.
- Must list name of body, time, date, and location of meeting.
- Must provide an opportunity for public comment.
- Must describe each item of business to be considered.
- Must contain information about accessibility for the disabled.
- Must contain information about public access to records.

**New Agenda Language for Every Agenda**
Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the [name of advisory body or subcommittee] to a majority of members of the [advisory body or subcommittee] less than 96 hours prior to that meeting are available for public inspection at [address] during normal business hours.

**On the Front Page of Every Agenda**
The (name of advisory body or subcommittee) will provide reasonable accommodations for persons with disabilities planning to participate in (name of advisory body or subcommittee) meetings who contact (name of chair or committee staff) at least 48 hours before the meeting at (telephone number of chair or staff named above).

**Meeting Space and Accessibility**
- Meeting notice shall be clearly posted at the meeting location.
- Meeting space shall be open and accessible to the public.
- ADA (Americans with Disabilities Act) language shall be placed on the front page of every agenda.

**Public Comment**
- Meetings must be open; all persons must be permitted to attend.
- Every agenda must provide an opportunity for public comment.
- Public must be permitted to speak on an item before or during consideration of the item.
- Public shall be given an opportunity to speak on items not on the agenda but under the jurisdiction of the body.
- Body may adopt reasonable rules limiting total amount of time for comment on issues and total amount of time per speaker.
- Body may not prohibit public criticism of body's policies, programs, procedures, services, or actions.

**Proper Meeting Conduct**
- Be attentive and courteous to members of the public.
- Avoid cell phones, eating, chatting, reading, wandering.
- Be respectful and courteous to fellow commissioners.
- Avoid interrupting and personal remarks.
- Professionalism helps body gain respect and influence.
SERIAL MEETINGS PROHIBITED

- Advisory body members may only discuss the body's business at properly noticed meetings which the public can attend.
- The Brown Act specifically prohibits advisory body members from having face-to-face conversations, phone conversations, e-mail conversations, or conversations through staff where a majority of the body discusses or deliberates or takes action on an item in the body's jurisdiction.
- A simple discussion, even if no consensus is reached, is enough to violate the law.

Examples of Serial Meetings

- Commissioner A calls Commissioner B who calls Commissioner C, or
- Commissioner A e-mails Commissioners B and C, or
- Commissioner A has Commission staff talk with Commissioners B and C

Permissible Staff Communications

Staff may communicate with individual advisory body members outside of noticed meetings:

- to answer questions
- to provide information

Staff may not communicate one advisory body member's comments or position to another member of the advisory body.

Recusal / Conflict of Interest

- Publicly identify, orally, in detail the economic interest that creates the conflict.
- Ask that recusal and reasons be recorded in the meeting minutes.
- Leave the room before discussion of the item ensues.
- The disqualified member may not be counted towards the quorum requirement while the item is being discussed.

Two Limited Exceptions on Recusal

- Consent agenda item - after recusal, remain on the dais (or at the table), but do not participate in any way.
- Item involves personal residence or wholly-owned business - after recusal, leave the dais (or table). You may speak as a member of the public during public comment and remain in the audience for the item.

Gift Limit

- The Gift Limit applies only to persons required to file Form 700, statement of economic disclosure. These people cannot accept gifts aggregating more than $420 in a calendar year from a single source.
- Exceptions include gifts from family members, equal gift exchanges with friends, and meals in the host's home.
**What is a Quorum?**

A quorum is the number of members of the body who must be present for a lawful meeting.

**Are "Moving Quorums" okay? No!**

The Internal Operations Committee has directed that a Quorum is the majority of the total number of authorized seats on the body, not the majority of the total number of filled seats.

**What to Do If There Is No Quorum**

- Body cannot meet unless a quorum is present.
- If no quorum, members cannot take any action except to vote to adjourn to a later date.
- Post notices of adjournment indicating the date, time, and location of the next meeting.
- Within 24 hours of adjournment, post Notice on meeting room door, and send to advisory body members and media outlets on agenda subscription list.

**Brown Act / Ethics Training Certification**

- Within 3 months of appointment, all advisory body appointees and staff must view and certify that they have viewed the two training programs: "The Brown Act and the Better Government Ordinance" and "Ethics Orientation for County Officials."
- These programs are available for viewing at the County's website: www.co.contra-costaa.ca.us, under the Board of Supervisors page.
- Staff of advisory bodies may be provided with copies of the tapes, and the programs may be viewed on the local community access station.

The "Brown Act" program is shown on CCTV every first and third Saturday at 3:00 p.m.

The "Ethics" program is shown on CCTV every second and fourth Saturday at 3:00 p.m.

The 2007 training session is shown on CCTV every first and third Sunday at 3:00 p.m.

If Comcast is your cable provider, CCTV is broadcast on Channel 27.

If Astound is your cable provider, CCTV is on Channel 32.

If AT&T U-verse is your cable provider, CCTV is on Channel 99.
AB 1234 Ethics Training

- Effective January 1, 2005, AB 1234 requires that local officials that receive compensation, salary, stipends, or expense reimbursements must receive training in public service ethics laws and principles every two years.
- The requirement applies not only to the governing body of a local agency, but also commissions, committees, boards, or other local agency bodies, whether permanent or temporary, decision-making or advisory.

Scheduled vs. Unscheduled Vacancies
- Scheduled vacancy occurs when the term for a seat expires
- No Board action is necessary to vacate seat
- No special posting is necessary
- Board can make new appointment at any time
- Recruitment should be initiated 30 days prior to term expiration

Unscheduled vacancy occurs when appointee leaves seat before the term is expired
- Board action is necessary to vacate the seat and prompt the Clerk to post the vacancy
- New appointment may not be made until vacancy is posted for ten days.

Recruitment of New Members
- Appointing body is usually the Board of Supervisors.
- Recruitment is the responsibility of staff (if provided) and advisory bodies.
- Board's policy requires competitive recruitment.
- Board's policy is that all appointees must either reside or work in the County, unless otherwise specified by law.
- Goal is to interest men and women of diverse racial, ethnic, economic backgrounds, and who are from different geographical areas of the County.

Recommended Recruitment Process
- Issue a media advisory (sample in Handbook).
- Undertake whatever additional recruitment needed to interest a diverse group of people.
- Screen applications against an eligibility criteria.
- Screen and/or interview applicants.
- Formulate nominations and forward either to the Board of Supervisors (Board Order), appropriate Board Subcommittee (memo), or Supervisorial District Office (memo).

Annual Report Requirement
- Two-page report on the second Tuesday of each December (due date each December 1).
- Generally agendized as a Consent Calendar item.
- Report to be maintained for public inspection in a binder by the Clerk of the Board.
Why Submit an Annual Report?

- A Board of Supervisors requirement.
- The self-evaluation of prior-year activities and the establishment of new goals helps to focus the advisory body on its mission.
- An opportunity to communicate to the Board of Supervisors the accomplishments and future goals of your advisory body and justify its continuation.
- Provides public exposure to your mission and accomplishments via Board agenda and Clerk binder.

Annual Report Format

- Activities and accomplishments of the year (1 page)
- Attendance of membership (1/4 page)
- Video training certification (1/4 page)
- Work Plan and goals for the coming year (1/2 page)

Key Points to Remember...

- With few exceptions, advisory bodies serve solely at the pleasure of the Board of Supervisors.
- Primary purpose of an advisory body is to provide citizens an opportunity to actively participate in their government and provide input and advice to the Board.
- Meetings must be adequately and publicly noticed, and open and accessible to the public.
- Advisory bodies cannot hold closed sessions.
- Appointees must recuse themselves if a conflict exists.

Website for Advisory Body Information

http://contra.napanet.net/maddybook/

Or... go to

www.co.contra-costa.ca.us

and click on "Board Advisory Bodies" under the Board of Supervisors listing on the main page.

Question / Answer Session

Contact:

Lara DeLaney, 335-1097
ldela@cao.cccounty.us
Date: February 10, 2009

To: County Boards, Commissions, and Committees and their Administrative Officers and Secretaries

From: Silvano B. Marchesi, County Counsel
By: Mary Ann McNett Mason, Deputy County Counsel

Re: Amendment to the Ralph M. Brown Act Effective January 1, 2009

For your information, we summarize a recent amendment to the Ralph M. Brown Act, the open meeting law, as amended by Statutes of 2008, chapter 63. This amendment took effect January 1, 2009.

Government Code section 54952.2 has been amended in three significant ways. First, the definition of a “meeting” has been revised. Second, the scope of the communications that can constitute a prohibited serial meeting has been expanded. Finally, the section now identifies which staff member communications to individual board members outside of noticed public meetings are permissible and which can result in a prohibited serial meeting.

A. Definition of “Meeting” For Purposes of the Brown Act

A meeting of a legislative body, such as the Board of Supervisors or the Planning Commission, is any congregation of a majority of the body’s members at the same time and location, including a permitted teleconference location, “to hear, discuss, deliberate, or take action” on any item that is within the body’s subject matter jurisdiction. All meetings must be noticed in accordance with the Brown Act and the County’s Better Government Ordinance.

B. The Prohibition on Serial Meetings Has Been Expanded

The Brown Act now expressly provides that outside of a lawfully noticed meeting, a majority of the body shall not use a series of communications of any kind, directly or through intermediaries, either to discuss, to deliberate, or to take action on any item of business that is

1 “Board” and “Board members” as used herein refers generically to various types of bodies: boards, committees, commissions, subcommittees, etc.

2 Gov’t. Code, § 54951.4 (a).

3 Gov’t. Code, § 54954.2; Ord. § 25-3.206 (a).
within the subject matter jurisdiction of the body. A mere serial discussion by a majority of the body about one of its business items is now sufficient to violate the Brown Act. For example, a series of e-mails or telephone calls among a majority of board members about a pending a land use matter can be an unlawful serial meeting, even if no consensus about the decision is reached before the matter is considered at a properly noticed public meeting. With this amendment, the Legislature specifically rejected a prior California Appellate decision holding that an unlawful serial meeting does not occur unless over the course of the communication members of the body develop a collective concurrence about action to be taken.

C. Express Parameters For Informal Staff Communications With Board Members Added

Parameters for staff interactions with board members have been clarified. The serial meeting prohibition does not prevent an employee or official of a local agency from engaging in separate conversations or communications outside of a noticed meeting with a majority of board members to answer questions or to provide information about a matter in the body’s subject matter jurisdiction, as long as the staff member does not communicate one board member’s positions or comments to another board member. To avoid acting as an intermediary in a prohibited serial meeting, a staff member must be very careful not to share information about one or more board members’ views or concerns with another board member. Outside of a noticed meeting, staff should provide information or answer questions for board members on an individual basis. In addition, staff should not send e-mail communications to a majority of board members to request the members’ response on any business matter.

MAM/am

c: Members, Board of Supervisors
   County Administrator
   Attn: Julie Enea, Senior Deputy County Administrator
   Lara Delaney, Senior Management Analyst
   Department Heads
   District Attorney
   Attn: Steven Bolen, Senior Deputy District Attorney

4 Gov’t. Code, § 54952.2 (b) (1).
6 Gov’t. Code, § 54952.2 (b) (2).