CONTRA COSTA COUNTY LIBRARY COMMISSION
AGENDA ATTACHMENT 8

MEETING DATE: Thursday, March 24, 2011

AGENDA ITEM #: 12 C

ITEM: THE BROWN ACT & BETTER GOVERNANCE ORDINANCE

RECOMMENDED ACTION:

- Commissioners will have an opportunity to share information from the County’s Advisory Body Training with the Commission.
2011 Annual Training
for Advisory Bodies to the Board of Supervisors

Lara DeLaney, County Administrator’s Office
Mary Ann Mason, County Counsel’s Office
Arsenio Escudero, Clerk of the Board’s Office

Monday, February 28, 2011
4:30 p.m. – 6:00 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 & Training Opportunities
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.
Date: February 3, 2011

To: All County Department Heads and Fire Chiefs

From: Sharon L. Anderson, County Counsel
By: Mary Ann McNutt Mason, Assistant County Counsel

Re: Summary of the Ralph M. Brown Act and Better Government Ordinance (Open Meeting Law) - Effective January 1, 2011

You are asked to provide a copy of the attached informational memorandum about the Brown Act and Better Government Ordinance to all of the various commissions and advisory groups and committees and to the individual members of those entities, for which your staff provides assistance or liaison.

MAM/bw
Attachments
cc: Members of the Board of Supervisors, District Offices
    County Administrator
    Attn: Julie Enca, Senior Deputy County Administrator
    District Attorney
    Attn: Steven Bolen, Senior Deputy District Attorney
    Clerk of the Board (Press Box)
Date: January 27, 2011

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

From: Sharon L. Anderson, County Counsel
By: Mary Ann McNett Mason, Assistant County Counsel

Re: Brief Summary of Open Meeting Requirements

For your reference, we provide this brief summary of the fundamentals of the Brown Act and Better Government Ordinance. All County commissions, councils and advisory groups subject to the Brown Act and Better Government Ordinance must comply with the following every time a public meeting is held:

1. At least 96 hours in advance of a scheduled meeting of the county body, an agenda containing a general description of each item of business to be transacted, including items to be discussed, and the time and location of the meeting must be posted. (Gov. Code, § 54954.2(a); Ord. § 25-2.206(a).)

2. Meetings of county bodies must be open and accessible to the public. (Gov. Code, § 54950, 54961; Ord. § 25-2.602.)

3. If an item is not included on the agenda, the county body may not act on or discuss that item, or add that item to the meeting’s agenda as an urgency item, subject to limited exceptions. (Gov. Code, § 54954.2(a), (b); Ord. § 25-2.205.)

4. During each meeting, the public body must allow public comment on each agenda item and on other matters within the jurisdiction of the public body. (Gov. Code, § 54954.3(a); Ord. § 25-2.205(c).)

5. At least 96 hours before a scheduled meeting, all supporting written staff materials which concern agenda items and are provided to a majority of the body, must be made available to the public and to the members of the body, subject to limited exceptions. (Ord. § 2.206(a).)

This memorandum is only a brief summary of the open meeting requirements. A detailed description of open meeting requirements is provided in our memorandum of January 27, 2011, captioned “Selected Brown Act and Better Government Ordinance Provisions,” copy attached.

MAM/am
cc: Board of Supervisors, District Offices
    David Twa, County Administrator
    Steven Bolen, Senior Deputy District Attorney
    Department Heads
Date: January 27, 2011

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

From: Sharon L. Anderson, County Counsel
By: Mary Ann McNett Mason, Assistant County Counsel


County advisory bodies are subject to both the Ralph M. Brown Act (Government Code, sections 54950 et. seq.) and the County’s expanded open meeting law, the Better Government Ordinance (Contra Costa County Code, Chapter 25-2.) For your information, we provide this summary of the critical provisions of these open meeting laws.

A. Open Meetings. The Brown Act and Better Government Ordinance generally require that all County Board, commission and committee (“County body”) meetings be open for public attendance, that all interested persons be permitted to attend and participate, and that meetings be held on noticed dates at fixed times and places and in accordance with posted agendas. Most county bodies provide for regular fixed times and places for meetings. Meetings generally must be held within the jurisdictional limits of the Board of Supervisors and at locations accessible to the public, including disabled persons. (Gov. Code, §§ 54950, 54954(a), (b), 54961; Ord. § 25-2.602.)

B. County Bodies Subject to Open Meeting Laws. The Brown Act applies to all “legislative bodies” of a local agency, i.e., the County. Legislative bodies include: 1) the governing body of the local agency, (e.g., the Board of Supervisors); 2) committees created by statute; 3) committees created by formal action of the Board, whether composed of lay persons or a combination of lay persons and board members; 4) standing committees composed solely of members of the Board which have a continuing subject matter jurisdiction (e.g., permanent subcommittees such as the “Internal Operations” committee); 5) standing committees created by a Board appointed committee and composed solely of members of that body (e.g., a Mental Health Commission subcommittee). (Gov. Code, § 54952 (a), (b).)

The Better Government Ordinance applies to all County bodies subject to the Brown Act and to all other Board or committee created County bodies, including temporary, ad hoc advisory committees composed solely of Board members or committee members and appointed to deal with a single topic for only one meeting or a small number of unscheduled meetings. (Ord. § 25-2.202(a), 25-2.204(a), 25-2.205.) County bodies that are not subject to the Brown Act nevertheless must comply with comparable provisions under the Ordinance. (Ord. § 25-2.202(a), 25-2.204(a), 25-2.205.) We caution that very few committees will be exempt from both the Act
and the Ordinance and that the safer course of action is to assume that both open meeting laws apply.

Bodies subject to the Brown Act and the Ordinance do not include advisory committees to a single individual which are formed by the unilateral action of that individual, e.g., a committee to assist the County Administrator or a single Supervisor and do not include committees made up entirely of County staff. (56 Ops.Cal.Atty.Gen. 14 (1973); Ord. § 25-2.202.) However, unless composed entirely of County staff, a permanent advisory committee created by the County Administrator or a department head must permit the public to attend its meetings upon request to the extent possible consistent with the facilities and the purpose of the gathering. Meetings of these committees need not be formally noticed or provide for public comment. (Ord. § 25-2.204 (d), (e).)

C. **Definition of “Meeting”**. “Meetings” include:

* Any congregation of a majority of members of a County body at the same place and location (including teleconference locations) to hear, discuss, deliberate or take action on any item within the body’s subject matter jurisdiction. (Gov. Code, 54952.2 (a).)

* Any serial use of communication, personal intermediaries, or technological devices through which a majority of the body’s members discuss, deliberate, or take action on an item. (For example, for a five person body, such an illegal “serial” meeting could occur where committee member A e-mails committee member B about his position on a committee issue and B forwards A’s e-mail to committee member C.) A mere series of e-mails or telephone calls by a majority of the body about one of its business items violates the Brown Act. (Gov. Code, § 54952.2 (b).)

D. **Social and Ceremonial Occasions**. Meetings generally do not include social or ceremonial occasions, provided that a majority of the members do not discuss among themselves business within the subject matter jurisdiction of the legislative body of the local agency. (Gov. Code, § 54952.2(c)(5).) However, when a County body, as a body, sponsors a social, recreational or ceremonial occasion, such as a holiday party, and a majority of the body is invited to attend, the occasion must be accessible to the public upon request, to the extent possible consistent with the facilities and the purpose of the gathering. The occasion need not be noticed formally, conducted at a particular location or provide for public comment. (Ord. § 25-2.204 (d) (2), (e).)

E. **Regular Meetings- Agenda Posting Requirements and Related Provisions**.

1. **Enhanced Agenda Notice Requirement**. Under the Brown Act, agendas must be posted at least 72 hours before each scheduled regular meeting. (Gov. Code, § 54954.2
(a.) However, the Better Government Ordinance extends this posting period an additional day. (Ord. § 25.2-206 (a).) Thus, at least 96 hours before each scheduled regular meeting, an agenda containing a brief general description of each item of business to be transacted at the public body’s meeting, including items to be discussed in closed session, must be posted. The description generally need not exceed 20 words. The agenda must specify the time and location of the regular meeting and must be posted in a location freely accessible to members of the public during the entire 96 hour period. (Gov. Code, § 54954.2(a); Ord. § 25.2-206 (a); 78 Ops.Cal.Atty.Gen.328 (1995).)

If an item is not specified on the advanced notice agenda, the County body may not act on or discuss that item, or add that item to the agenda as an urgency item, except as set forth below in subsections 3 and 4. (Gov. Code, § 54954.2 (a), (b); Ord. § 25.2-205.)

2. Deadline for Staff Materials. At least 96 hours in advance of a regular scheduled meeting, all staff reports and other materials prepared or forwarded by staff that provide background information and recommendations on agenda items must be made available to the public and to members of the body. (Ord. § 25.2-206 (a).) In the case of items that are placed on the agenda for a scheduled meeting at a prior meeting occurring not more than seven days before the scheduled meeting, supporting written staff materials may be made available 24 hours before the scheduled meeting. (Ord. § 25.2-206 (a).)

3. Exceptions to the Better Government Ordinance 96 hour agenda notice and staff material deadline. Under limited circumstances, the County body may waive the requirement that an agenda and supporting staff reports must be made available to the public and to members of the body at least 96 hours before the meeting. Upon a determination by three-fourths vote of the body that it is essential to waive the time limits and after receiving from staff a written explanation as to why the agenda and/or staff reports could not be made available 96 hours in advance, the body may waive the time limits. (Ord. § 25.2-206 (a).) Notwithstanding a waiver of the Better Government Ordinance requirements, the 72 hour agenda notice requirements and exceptions thereto of the Brown Act continue to apply to all County bodies covered by the Act.

4. Exceptions to Brown Act 72 hour agenda notice.

a. “Brief Response” to Public Comment; Reference to Staff. (Gov. Code, § 54954.2 (a).) A County body may engage in certain limited activities that are not discussion of or action on, non-agenda items. If an item not on the agenda is raised by a member of the public during the “public comment” portion of the meeting, members of the County body may “briefly respond.” Until a court has construed “briefly respond,” we recommend that County bodies interpret the right to respond narrowly, and keep responses limited. On any matter, either in response to questions posed by members of the public or on their own initiative, members of
County bodies may ask questions for clarification. In addition, subject to the body’s rules or procedures, members of County bodies may provide a reference to staff or other resources for factual information, may request that staff report back at a subsequent meeting on a matter, or may request that staff place a matter on a future agenda. (Gov. Code, § 54954.2 (a.).)

b. **Limits on Discussion and Action on Non-Agenda Items.** (Gov. Code, § 54954.2 (b).) Discussion may occur and action may be taken on items which are not set forth on the posted agenda where, prior to discussion or action, the body publicly identifies the item and:

1. The majority of members of the body vote and find that an emergency exists which involves a work stoppage or other activity which severely impairs public health, safety or both or a crippling disaster which severely impairs public health and safety or both, or

2. Upon a determination by a two-thirds vote of the body (or, if less than two-thirds of the members are present, a unanimous vote of the members present) that there is a need to take immediate action and that the need for action came to the attention of the local agency after the agenda was posted, or

3. The item was posted for a prior meeting, but action on the item was continued to the present meeting, which is not more than five calendar days after the meeting for which the item was posted. (Gov. Code, § 54954.2 (b.).)

*We caution that these exceptions will rarely apply in the case of County advisory bodies.*

F. **Special Meeting Notice Requirements.** The Brown Act law requires that notice of a special meeting be provided by 24 hour advance written notice to each member of the public body (unless notice has been appropriately waived) and to each local newspaper, radio or television station which had requested notice in writing. Notice may be given by personal delivery or by any other means (i.e., facsimile or e-mail). In addition, the call and notice of the special meeting must be posted at least 24 hours prior to the meeting in a location that is freely accessible to members of the public. The notice must identify the time and place of the meeting and the business to be transacted. Only the business set forth in the notice may be transacted at the meeting. (Gov. Code, § 54956.)

1. **Public Input.** The notice for the special meeting must provide an opportunity for public comment on the item which is the subject of the special meeting before the public body acts on that item. (Gov. Code, § 54956.)

G. **Emergency Meeting Notice Requirements.** The Brown Act allows the calling of
emergency meetings in specified circumstances (work stoppages, crippling disasters, or other activities which will severely impair public health, safety or both, as determined by a majority of the public body) without complying with the special meeting 24 hour notice or 24 hour posting requirements. If telephone services are functioning, each newspaper and radio or television station that has filed a request for special notice must be noticed by telephone at least one hour prior to the emergency meeting. (Gov. Code, § 54956.5 (a) (1), (b).)

In the case of dire emergencies (crippling disaster, mass destruction, terrorist act, threatened terrorist act that poses immediate and significant peril as determined by a majority of the public body), even the one hour notice to media outlets is eliminated. If telephone services are functioning, telephone notice of the meeting must be given to the media outlets at or near the time that the chair notifies members of the body of the meeting. (Gov. Code, § 54956.5 (a) (2), (b).)

As to any emergency meeting, if telephone services are not functioning, as soon after the meeting as possible, newspapers and radio or television stations must be notified of the meeting, of its purpose, and of any action taken at it. In addition, as soon after the meeting as possible, the minutes of the emergency meeting must be posted for a minimum of 10 days in a public place. (Gov. Code, § 54956.5 (e).)

H. Public Input.

1. Provide Opportunity to Comment. Every agenda must provide an opportunity for members of the public to directly address the body on items on the agenda and on matters that are within the subject matter jurisdiction of the body. Such opportunity must be afforded before or during the body’s consideration of the item. (Gov. Code, § 54954.3(a); Ord. § 25-2.205 (c).) Thus, members of the public have the right to comment on any item on the agenda before or during the body’s consideration of the item and to comment on other items of public interest which are not on the agenda. To ensure that the public is not denied the opportunity to comment on specific items, and to enhance the flow of the meeting, we suggest that the public comment period as to all items usually be scheduled for the beginning of the meeting.

If a member of the public addresses an item not appearing on the posted agenda, no response, discussion, or action on that item may occur except as set forth in section E, subparts 3 and 4 above.

2. No Prohibition of Criticism. During a meeting, the County body may not abridge or prohibit public criticism of the County’s policies, procedures, programs, or services, and may not abridge or prohibit public criticism of acts or omissions of the body. However, the body may apply its adopted rules of procedure concerning time per speaker. (Ord. § 25-2.604.)
3. **Overflow Capacity.** If the number of spectators at a meeting of the Board of Supervisors, or of a permanent board or commission, or of a permanent subcommittee of the Board, exceeds the legal capacity of the meeting room, the public address system must broadcast into an adjacent area to permit the overflow audience to hear the meeting. If this is not possible, the meeting must be adjourned to a facility with sufficient capacity to accommodate the entire audience. (Ord. § 25-2.602.)

I. **Teleconferencing.** A body may hold meetings by “teleconference,” that is, a meeting of a body whose members are in different locations, connected electronically through audio and/or video. During the teleconference, at least a quorum of the members of the body must participate from locations within the boundaries of the body. Teleconferencing may be used for all purposes in connection with a public meeting, including voting. All votes taken during a teleconference meeting must be by roll call. Each teleconference location must be identified in the agenda for the meeting, and each teleconference location must be accessible to the public. The agenda must permit members of the public to address the body directly at each teleconference location. Agendas must be posted at all teleconference locations. (Gov. Code, § 54953 (b).)

J. **Record of Meetings.** Each County body must keep a record of its meetings. Though the record need not be verbatim, i.e., a tape-recording, it must accurately reflect the agenda and the decisions made in the meeting. (Ord. § 25-2.205 (d).)

K. **Assistance for Persons with Disabilities on Request.** Upon request, agendas, agenda packets, and other writings distributed to the public body must be made available in appropriate alternative formats to persons with disabilities as required by the federal Americans with Disabilities Act. In addition, every public body agenda, including all subcommittee agendas, must include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aides or services, may be made by a person with a disability who requires a modification or accommodation to participate in a meeting. (Gov. Code, §§ 54954.1; 54954.2 (a); 54957.5 (b).)

L. **Distributed Materials as Public Records.** Except for certain writings exempt from disclosure under the California Public Records Act, documents distributed to the County body by staff or any other person for consideration at a public meeting are public records. If presented during a meeting during discussion on an agenda item, such records must be immediately available for public inspection. If presented during a meeting prior to commencement of discussion on the agenda item to which the records relate, such non-exempt documents must be made available to the public for inspection before and during discussion on the agenda item. (Gov. Code, § 54957.5(a),(c); Ord. § 25-2.206 (c).)
Before a meeting, except for records that are exempt by law from disclosure, any county record that is intended for distribution to the body, even if not yet distributed to the body, must be available for public inspection and copying upon request. (Ord. § 25-2.206 (b).)

M. **Provision of Agenda Materials Required.**

1. **Written Request for Packet.** The Brown Act permits a member of the public to place a standing request that copies of the agenda or of the agenda packet be mailed to him. Such request must be made in writing and will apply for the entire calendar year in which it is filed. The body must mail the requested materials at the time the agenda is posted, or upon distribution to a majority of the members of the County body, whichever is first. Thus, if the agenda packet is mailed to members of the county body a week before the meeting, the packet must be mailed simultaneously to a requestor. (Gov. Code, § 54954.1.)

2. **Materials Distributed Less Than 72 Hours Before Meeting.** If a document related to an open session agenda item on a regular meeting agenda is distributed to a majority of the body less than 72 hours before the meeting, the document must be made available to the public at a specified location at the same time it is provided to the body. Each meeting agenda must specify the location where such documents will be available for public inspection. (Gov. Code, § 54957.5 (b) (2).) Inasmuch as the County’s Better Government Ordinance requires that the agenda and supporting staff reports be made available to the public and members of the body at least 96 hours before a regular meeting, there should be few occasions on which a document is distributed less than 72 hours before a meeting.

Please note that these two State law requirements apply, even if a legislative body subject to the Better Government Ordinance acts by a three-fourths vote to waive ordinance requirements that the agenda and supporting staff reports must be made available to the public 96 hours in advance of the meeting. (Ord. § 25-2.206 (a).)

2. **Fees for Provision of Packet.** The County body may establish a fee for provision of agenda packets. (Gov. Code, § 54954.1.) However, the Better Government Ordinance imposes a limitation on fees for duplication of agendas and related materials. Bodies considering establishment of a fee for mailing of the agenda or agenda packet should be sure such fee conforms to these limitations. While a body may charge actual mailing costs, a body may not charge for copying meeting agendas and related materials that are twenty or fewer pages per document. A fee of one cent per page may be charged for a copy of agendas and related materials that contain more than twenty pages per document. (Ord., §§ 25-2.206 (d); 25-4.610.)

N. **Closed Sessions.** There are a number of express grounds (to receive legal advice concerning threatened or pending litigation, etc.) authorizing adjournment of a County body from
a public meeting to a closed session. However, this office envisions only the rarest of situations arising in which the public bodies that it advises other than the Board of Supervisors or legislative special district bodies would be permitted to go into closed session. For this reason, we suggest that if the County body feels a closed session may be justified the body should authorize its chairperson or staff to contact this office to discuss whether a closed session is appropriate, how it should be noticed, and how action taken should be reported out.

1. **Agenda Notice Requirements.** Regular meeting agendas and special meeting notices must include a brief, general description of the matters to be discussed in closed session. (Gov. Code, §§ 54954.2, 54956.) The Brown Act provides agenda descriptions for each of the various closed session topics. While the Act does not require use of these descriptions, their use provides a “safe harbor” against challenges to the adequacy of the notice. (Gov. Code, § 54954.5.)

2. **Announcing and Reporting Out.** Before conducting a closed session, the body must announce in open session the items to be discussed. Disclosure may be made by reference to the agenda item number or letter. (Gov. Code, § 54957.7(a).) After completing closed session, the public body must reconvene in open session and make a public report of certain specified actions. The content of the report depends upon the nature of the closed session. Generally, in addition to other matters, where action is taken the County body must report out the vote or abstention of every member present. (Gov. Code, §§ 54957.1.)

3. **Closed Session Prohibited for Temporary Bodies.** A County body subject to the Better Government Ordinance, but not otherwise subject to the Brown Act, (i.e., a temporary ad hoc committee composed solely of members of the county body) may not hold a closed session. It must conduct all meetings in open session. (Ord., § 25-2.205 (a).)

**O. Procedure to Void Actions Taken in Violation of the Brown Act’s Requirements.** The Brown Act sets forth a procedure for invalidating actions of a covered public body taken in violation of that Act. (Gov. Code, § 54960.1.) The procedure provides that before any interested person may initiate legal action to obtain a judicial determination of whether the public body has violated the Act and that any action taken is null and void, the person must make a written demand on the public body to cure the alleged defect. If your body received such a demand, it immediately should be brought to the attention of the County Counsel’s Office.

Should the interested party file and succeed in litigation, the court can award costs and reasonable attorneys fees against the County body. (Gov. Code, § 54960.5.)

**P. Criminal Penalty for Unlawful Meeting.** Each member of a body who attends a meeting of that body where action is taken in violation of any provision of the Brown Act, and where the member intends to deprive the public of information to which the
member knows or has reason to know the public is entitled under the Brown Act, is guilty of a misdemeanor. (Gov. Code, § 54959.)

Conclusion. As can be seen from the foregoing, it is very important that your County body properly prepare agendas and provide required notice of its meetings. If these procedural matters are not done correctly, interested parties may use legal process to void actions taken at an improperly noticed meeting. If your body has any particular questions concerning these requirements, please have your chairperson or administrative staff contact this office for clarification.

MAM/am

cc: Members, Board of Supervisors, District Offices
    County Administrator
    Clerk of the Board
    Steven Bolen, Senior Deputy District Attorney
    County Department Heads
Can I Vote? Overview of the Conflicts Laws

"My home is near the proposed new shopping mall. Can I vote on the issue at next month’s Planning Commission meeting?"

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Stripped of legal jargon:

- You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests, and

- a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency’s legal counsel or from the California Fair Political Practices Commission. The Commission’s toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).

Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most, if not all, mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.

- Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.
• The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.

Here are the eight steps:

• **Step One:** Are you a "public official" within the meaning of the rules?

• **Step Two:** Are you making, participating in making, or influencing a governmental decision?

• **Step Three:** What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

• **Step Four:** Are your economic interests directly or indirectly involved in the governmental decision?

• **Step Five:** What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

• **Step Six:** The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

• **Step Seven:** If you have a conflict of interest, does the "public generally" exception apply?

• **Step Eight:** Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

**Public Official**

**Step One:** Are you a "public official," within the meaning of the rules?

The Act's conflict-of-interest rules apply to "public officials" as defined in the law. This first step in the analysis is usually a formality - you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict-of-interest code, you are a "public official." If you file a Statement of Economic Interests (Form 700) each year, you are a "public official" under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.
Governmental Decision

Step Two: Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- Make a governmental decision (for example, by voting or making an appointment).

- Participate in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).

- Influence a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising discretion or judgment with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict - Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Regulations section of the FPPC's website at http://www.fppc.ca.gov.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must publicly identify in detail the economic interest that creates the conflict, step down from the dais and must then leave the room. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.

A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

- The Arroyo City Council is considering widening the street in front of council member Smith’s personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.

- Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she may not sit in the public area and listen to the discussion.

- Supervisor Robertson rents a home to a county employee. The county employee is the subject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him. He may not attend the closed session or obtain any non-public information from the closed session.

Economic Interests

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act’s conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- Business Investment. You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more, and also in certain leaehold interests.

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) $500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income, a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent of more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.

- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has given you gifts which total $420 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by $250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.

**Directly or Indirectly Involved?**

**Step Four: Are your economic interests directly or indirectly involved in the governmental decision?**

An economic interest which is directly involved in a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.
Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations if you have questions as each case arises. Note also that the next step in the analysis "applying the right standard to determine whether an impact is material" depends in part on whether the interest is directly or indirectly involved. The regulations, Sections 18704 through 18704.5, and other helpful information can be found on the FPPC's web site, http://www.fppc.ca.gov.

Materiality (Importance)

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.

- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.

- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
• The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a $20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

"Public Generally" Exception

Step Seven: If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific segments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the "public generally" exception can be found on the FPPC website at http://www.fppc.ca.gov under regulations 18707-18707.10.

http://www.fppc.ca.gov/print.php?id=37

2/25/2011
Are you required to participate?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.

- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.

- Understand the "big picture" of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.

- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much, if not more, on the facts of your particular situation as it does on the law.

- Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the "big picture." You'll then be able to look up or ask about the particular rules you need to apply to any given case.

- Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.

An important note

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code ??81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, http://www.fppc.ca.gov. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line "1-866-ASK-FPPC" as far in advance as possible.

http://www.fppc.ca.gov/print.php?id=37

2/25/2011
How to Contact Us:

- **Mail:**
  Fair Political Practices Commission
  428 J Street, Suite 620
  Sacramento, CA 95814

- **Website:**
  www.fppc.ca.gov

- **Telephone:**
  Toll-free advice line: 1-866-ASK-FPPC (1-866-275-3772)
  Regular line: 1-916-322-5660
  Enforcement hot-line: 1-800-561-1861

(revised 7-27-05)
2011 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
Arsenio Escudero, Clerk of the Board
February 23, 2011

Advisory Body Handbook
1. Introduction: Scope, Roles, Responsibilities of members and staff
2. Fundamentals & Key Provisions of the Brown Act/Other Government Ordinance
3. Resolution of Board policies on "Conflict of Interest and Open Meetings"
4. FPPC's "Can I Vote" pamphlet
5. Training Certification Form
6. Advisory Body Application
7. Board Reso on Appointment procedures and Responsibilities of Advisory Bodies
8. Sample Press Release, Vacancy Board Order, and Appointment Board Order
9. Bylaws sample
10. Advisory Body webpage printouts
11. MAC Policies and info on fiscal procedures

Advisory Body Handbook Update

Available by June 2011
at: www.co.contra-cost.ca.us
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.

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 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.

- As individuals, advisory body members may communicate their opinions and advocate for legislation.
Brown Act Requirements
&
The County's
Better Government Ordinance

Permissible Closed Sessions

1. To receive legal advice on pending or threatened litigation;
2. To instruct labor negotiators or real property negotiators;
3. 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

1. Publish at least 96 hours before the meeting.
2. Must list name of body, time, date, and location of meeting.
3. Must provide an opportunity for public comment.
4. Must describe each item of business to be considered.
5. Must contain information about accessibility for the disabled.
6. Must contain information about public access to records.
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

1. Meeting notice shall be clearly posted at the meeting location.

2. Meeting space shall be open and accessible to the public.

3. 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

1. Commissioner A calls Commissioner B who calls Commissioner C, or

2. Commissioner A e-mails Commissioners B and C, or

3. 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:

1. to answer questions

2. 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

1. Publicly identify, orally, in detail the economic interest that creates the conflict.

2. Ask that recusal and reasons be recorded in the meeting minutes.

3. Leave the room before discussion of the item ensues.

4. The disqualified member may not be counted towards the quorum requirement while the item is being discussed.
Two Limited Exceptions on Recusal

1. Consent agenda item – after recusal, remain on the dais (or at the table), but do not participate in any way.

2. 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.

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Gift Limit

1. 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.

2. Exceptions include gifts from family members, equal gift exchanges with friends, and meals in the host's home.

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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

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

Training Requirements

& Training Opportunities
Brown Act / Ethics Training Certification

Within 3 months of appointment, all advisory board 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-cost.ca.us, under the Board of Supervisors' page.

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 annual training session is shown on CCTV every **first** and **third** Sunday at 3:00 pm.

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, 2006, 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.

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**AB 1234 Ethics Training**

- Advisory Council on Aging
- Advisory Housing Commission
- Assessment Appeals Board
- County Planning Commission
- Economic Opportunity Council
- IRC Public Authority Advisory Committee
- Mental Health Commission
- Rent Board
- Workforce Development Board

On-line ethics course available at:

http://localethics.fppe.ca.gov/ab1234/

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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 attract men and women of diverse racial, ethnic, economic backgrounds, and who are from different geographical areas of the County.

Recommended Recruitment Process

Undertake whatever additional recruitment needed to interest a diverse group of people.
Applications are on-line
Screen applications against eligibility criteria.
Interview applicants.
Formulate nominations and forward either to the Board of Supervisors (Board Order), appropriate Board Subcommittee(s) (memos), or Supervisors' District Office (memos).
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)
Website for
Advisory Body Information
http://contra.napanet.net/maddybook/

Or... go to
www.co.contra-cost.ca.us

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

Summary

Key Points to Remember...
1 With few exceptions, advisory bodies serve solely at the pleasure of the Board of Supervisors.

1 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.

1 Meetings must be adequately and publicly noticed, and open and accessible to the public.

1 Advisory bodies cannot hold closed sessions.

1 Appointees must recuse themselves if a conflict exists.
Question / Answer Session

For further assistance, contact:

Arsenio Escudero, 335-1907

Arsenio.Escudero@cao.cccounty.us