



**HANDBOOK**

**for**

**COMMISSION**

**& COMMITTEE**

**MEMBERS**

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## **TABLE OF CONTENTS**

Introduction	2
City Government	3
Role, Authority and Staffing of City Commissions	5
General Provisions for City Commissions	9
Responsibilities of Commission Members	12
Purpose and Scope of Responsibility for Each City Commission	15
California's Conflict of Interest Law For Public Officials	18
A Brief Overview of the Ralph M. Brown Act	27

## **INTRODUCTION**

This "Handbook for Commission & Committee Members" has been prepared to provide a statement of the policies and guidelines of the City Council governing the role, authority and operation of City commission or committees and the responsibilities of commission and committee members.

The "Handbook" contains general operating guidelines for all City commission or committees and specific scopes of responsibility for each commission or committee. The most important sections of the "Handbook", which follow, deal with the role and authority of the commission or committee and the responsibilities of commission or committee members. Important guidelines are provided to aid commission or committee members to make the maximum contribution as members of City commission or committees.

It is hoped that this "Handbook" will provide the commission or committee member with the necessary information to understand the role of the commission or committee and his/her responsibilities as a member of a City commission or committee. It will be used as the foundation for training provided annually to assist commission or committee members in becoming effective members of the City of Pacifica citizen process.

## **CITY GOVERNMENT**

The City of Pacifica is governed by a five-member City Council elected at-large to four - year terms on a staggered biennial basis. The Mayor is selected from among the members of the City Council by majority vote of the Council. The Mayor serves a one-year term beginning in December of each year. Regular meetings of the City Council are held at 7:00 p.m. on the second and fourth Mondays of each month in the City Council Chambers, located at 2212 Beach Boulevard. The City Council also schedules special meetings on other evenings as required for City business.

The City Council is the governing body of the City. It is vested with all regulatory and corporate powers of a municipal corporation provided for by State law governing general law cities. Since the members of the City Council are selected directly by the electorate, they are held accountable to the people for their actions. The City Council is the policy-making body of the City of Pacifica.

Pacifica has the Council-Manager form of government. City Council members are not full-time City officials and retain their positions in private industry, business, other professions or personal enterprise. The Council appoints a City Manager to be responsible for carrying out the policies of the City Council and to manage the City's departments and program activities.

The City Manager is the City's chief executive and is responsible to the City Council for the proper and efficient management of all municipal activities. The Manager advises the Council on the City's planning and financial needs as well as other municipal matters, implements all laws and ordinances, manages City facilities, prepares and manages the budget, carries out the City's business and administers the policies of the Council. The Manager directs and coordinates the various departments and municipal services through appointed department directors who directly supervise and administer the various staff and operational elements of the City.

The City Council appoints the City Attorney to serve as the City's chief legal advisor. The City Attorney renders advice to the City Council, its commissions, and committees to ensure their actions fall within the framework of the law. She advises the legislative bodies on procedural and substantive legal issues, the possible ramifications of proposed actions, and on matters affecting the conduct of business of the City Council and its advisory bodies, such as open meeting and conflict of interest laws.

There are several documents which are important in the operation of the City. The City's Municipal Code sets forth the regulatory, penal and administrative laws of general application to the City pursuant to the authority granted in the State Government Code for general law cities. The General Plan, as adopted by the City Council and periodically updated, is a legally required land use document governing development in the City and contains the major elements of Land Use, Circulation, Open Space, Housing, Noise, Scenic Highways, Conservation and Safety. The General Plan is intended to guide the development and conservation of the community and serves as the policy statement upon which the City's Local Coastal Plan and Zoning Ordinance

are based. The City's Local Coastal Plan is required by State law and governs development in the City's Coastal Zone (generally all areas west of Highway One). The General Plan and Coastal Plan establish policies for permissible development. The Zoning Ordinance has more specific development requirements and implements these broader plans.

## **ROLE, AUTHORITY AND STAFFING OF CITY COMMISSION OR COMMITTEES**

The City Council is empowered to establish commissions and committees and to appoint their members in order to assist the Council in the conduct of City business. Members usually represent a cross-section of the community and are prohibited from being salaried employees of the City. Occasionally, exceptions to the residency requirement are made for individuals who could provide the City with certain expertise in a particular field. The City of Pacifica Municipal Code provides the general provisions under which the commissions and committees may operate.

### Commission/Committee Role

The primary role of City commission and committees is generally to provide advice, recommendations and assistance to the City Council and to promote increased public input and citizen participation in the determination of City policies and program implementation. It would be impractical and too burdensome for the City Council to review and consider all specific issues related to all program areas of the City, so the Council often relies on commission or committees to guide its decision making.

The specific role of City commission and committees is to review and make recommendations to the City Council on matters within their scope of responsibility as defined in the Pacifica Municipal Code and the Resolution which establishes the commission or committee. Commission and committees are basically a citizens' advisory arm of the City Council, focusing their attention on specific programs of the City, although certain commission and committees may take final actions in certain prescribed areas. More importantly, commission and committees serve as a vehicle to provide public input into City programs and policies in order to broaden public involvement and to streamline the amount of City Council review of these matters. On specific matters referred to it by the City Council, the commission or committee would normally serve as the initial reviewing body of the City. Most commission, committee or City staff decisions, are subject to call up and review by the City Council. Decisions made by commissions or committees may generally be appealed to the City Council if filed with the City Clerk within seven (7) days of the decision, unless another time period is specified in the Code. The City Council may hear and rule on the appeal during a public hearing or refer it back to the commission or committee, board or employee for reconsideration.

### Involvement in Administrative Matters

The duties of commission and committee members do not include commissioners or committee members becoming involved in the administrative or operational matters of City departments. Commission and committee members may not direct staff to initiate programs, conduct large studies or establish department policy without approval of the City Council. The commission or committee also does not become involved in the evaluation, appointment or dismissal of City employees. This role is reserved for the Department Directors and City Manager. City staff assigned to furnish staff services to commissions or committees shall be available to provide general staff assistance, such as preparation of commission or committee agenda materials and general review of department programs and activities, and to perform limited studies and program reviews

requested by the commission, and other services of a general staff nature. Commissions may not establish department work programs or determine department program priorities. The commission is not a substitute for the regularly constituted government, the City Council. The responsibility for setting policy and allocating scarce City resources properly rests with the City's duly elected representatives on the City Council, and cannot be delegated to an outside group, however capable and interested it might be.

#### Development and Review of Commission/Committee Goals and Department Policies

The City of Pacifica prepares its operating budget on an annual basis. Commissions and committees are encouraged to review and comment on department programs and capital projects that may be related to their scope of interest. This evaluation is intended to focus attention on the overall effectiveness of City programs and the capacity of the commission or committee to meet its objectives and is not intended to be an evaluation of the administration or operation of City departments or of the performance of any specific City staff member.

#### Legal Assistance

Some commission and committee meetings may require the presence of the City Attorney (generally, Planning Commission and in rare circumstances, Parks, Beaches and Recreation Commission). When a commissioner is in doubt concerning the legality of an issue, he or she should contact their staff liaison who will coordinate legal issues with the City Attorney. Records of the proceedings should be carefully kept because litigation may result from a commission or committee action.

Commissioners/committee members should remember the adage, "Discretion is the better part of valor." When in doubt about the legality of a procedure, wait until a legal opinion is rendered. If necessary, a hearing can be continued until legal matters are clarified. The City Attorney often needs input into the decision, since he or she may be required to defend the action in court. Commissioners/committee members should realize that they are representatives of the City, that their actions may have legal consequences and that they have a responsibility to insure that their actions are lawful, proper and will not expose the City unnecessarily to liability. Great care must be taken in the maintenance of records of the proceedings when litigation is a possibility. The direction of the City Attorney must be followed closely.

#### The Chairperson

The Chairperson is the key to the entire group process and is the hub of the action. The Chairperson must balance being strong enough to make certain that the meeting is run by the rules, but democratic enough to use the power and authority of the position wisely. The Chairperson's ability to handle meetings will have a significant impact on the legality, morale, operation and effectiveness of the commission or committee. The Chairperson must make certain that the commission or committee does not get sidetracked on minor issues and must have the ability to see the "whole picture."

The most important part of being Chairperson lies in the ability to find a common ground and in achieving a workable compromise, if appropriate.

Last, but far from least, the Chairperson must be able to represent the entire commission or committee to the City Council and to the public.

### Working with Other Members

Each commission or committee will undoubtedly have a group of individual members with diverse personalities. It is important that commissioners/committee members work together to accomplish common goals. The truly cohesive commission or committee is able to accomplish a great deal of work, despite external pressure or internal disagreement. Although each commissioner or committee member needs to be familiar with Roberts Rules of Order and Title 2, Chapter 2 of the Municipal Code which provisions govern operation of commissions or committees it is important to have agreed upon group meeting etiquette.

When members interact positively, the internal organization runs smoothly and the group is functional. The ideal commission/committee works toward consensus solutions after a good deal of technical study. It should clarify the various positions in order that its recommendations allow a rational decision on the part of the Council.

### Working with Staff

Commission and committee members are individually appointed by the City Council. The City staff assigned to work with the various commissions and committees report to the City Manager, who in turn reports to the City Council. Each commission or committee usually is aided by a particular department director or administrator who provides staff support. Staff support involves preparing and distributing the agenda, arranging meeting rooms, preparing staff reports for the commission/committee, conducting research, as well as arranging for minutes to be taken of the meeting.

Staff support also means facilitating the commission or committee's operation. Staff is aware of their responsibilities, and commissioners and committee members should be sensitive to the time involved on the part of staff in preparing studies and reports requested by the commission or committee, so that unnecessary or frivolous requests to staff are avoided. The City's staff resources are limited and must be used wisely and responsibly.

### Commission and Committee Minutes

It shall be the responsibility of staff to record and maintain minutes for all commission and committee meetings. These minutes will be summary and not verbatim minutes which briefly describe the issues and actions taken by the commission or committee. Minority opinions of commission or committee members may also be recorded in the minutes if desired by the commission or committee members. Comments by all members on every agenda item cannot practicably be included in the minutes. Also, commission or committee members abstaining for legal conflict of interest requirements are required to state their reason, for recording in the minutes. Certain issues reviewed by a commission or committee, such as a large or controversial development project,



may require more detailed minutes as considered necessary. Meetings also may be tape recorded.

#### Procedure for Handling Public or Appeal Hearing

On many occasions, commissions and committees will have to conduct a public hearing, perhaps on a major issue of concern to the community, on a permit application or on an appeal of a staff decision. In a public hearing where there is an applicant/appellant, or both an applicant and an appellant, it is recommended that the applicant be allowed to speak first with a ten (10) minute time limit, unless otherwise specified by the commission or committee. Any other individual appellant should also receive a ten (10) minute speaking limit. In cases where there is an appellant and an applicant, usually the appellant goes first, next the applicant, and finally members of the public who wish to express their opinion. Following the presentation by the applicant and/or appellant, the commission or committee can either divide the additional speakers based upon their stand on the issue, or allow them to speak in random order, depending upon the number of speakers and the degree of interest in the issue. It is often better for the speakers to be divided according to whether they are supportive or non-supportive of the applicant or appellant for a large public hearing. Under this procedure, it is customary for the speakers in support of the applicant or appellant to speak first. There should also be a uniform time limit for each speaker. Finally, the applicant and/or appellant should be provided the opportunity of rebuttal under the same uniform ten (10) minute time limit. It is also recommended that these rules of hearing procedure be clearly conveyed to the applicants, appellants and public prior to the beginning of the staff report.

## **GENERAL PROVISIONS FOR CITY COMMISSIONS**

(From Pacifica Municipal Code)

The following are the general provisions established by the City Council for City Commissions as contained in Title 2, Chapter 2, Article 1, of the Pacifica Municipal Code:

### Establishment

The Council shall establish commissions and committees as desired to assist and advise them in conduct of City business. The action establishing a commission or committee shall contain the charge for the body, setting forth its specific duties and responsibilities.

### Membership

The members of commissions and committees provided for in this chapter shall be appointed by the Council.

### Membership: Eligibility

- (a) Membership on the commissions provided for in this chapter shall represent a broad cross-section of the entire community.
- (b) To be eligible for appointment to any commission or committee, a person shall be a qualified elector of the City, except for the following persons:
  - (1) Members who are under the age of eighteen (18) years at the time of their appointment; provided, however, they shall be residents of the City; and
  - (2) Members of committees who are not qualified electors or residents of the City but who may be appointed by the Council where they are deemed to be able to provide expertise or where they may be representative of a section of the community (i.e., commercial).

### Membership: Majority Vote

The affirmative or negative vote of a majority of the members present at a commission or committee meeting shall be necessary for it to take action. A majority of the members of a commission or committee created pursuant to the provisions of this chapter shall constitute a quorum for the conduct of meetings.

### Membership: Terms and Limitations for Commissioners

Unless otherwise provided in this chapter, all commission member terms shall be four (4) years. The Council may, upon the expiration of the commission member's term, reappoint a commission member to the same commission for a successive, consecutive term.

### Membership: Terms for Committees

Committee member terms shall be four (4) years, which terms shall be staggered.

#### Membership: Council Removal

The Council may remove at any time by majority vote any commission or committee member.

#### Membership: Vacancies

Any vacancy in any commission or committee established pursuant to the provisions of this chapter, from whatever cause arising, shall be filled by appointment by the Council. Upon a vacancy occurring, leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of such term.

#### Membership: Compensation; Expense Reimbursements

The members of commissions or committees shall serve without compensation for their services as such; provided, however, such members shall receive reimbursement for necessary traveling expenses and other expenses incurred on official duty when such expenditures have been authorized by the Council.

#### Meetings: Notices

All meetings of any commission shall be duly agendized and held in accordance with the Ralph M. Brown Act.

#### Meetings: Staff Services

The City Manager shall authorize appropriate staff to serve each commission and committee as considered necessary.

#### Goals, Objectives, Work Programs

The Council shall establish and review on a periodic basis the goals, objectives, work programs, and procedural rules of commissions and committees.

#### Council Review of Actions

All actions and recommendations of commissions and committees are subject to Council review and approval.

#### Attendance

All commission and committee members are expected to attend all of their respective meetings and shall make every effort to do so. Absence from three (3) consecutive meetings or absence from more than one-third (1/3) of all meetings in one calendar year shall constitute a failure to discharge the duties of office and may subject the committee or commission member to removal by the Council.

#### Organization and Officers

All commissions, and to the extent applicable, all committees, shall reorganize annually by electing one of their members to serve as chairman and one of their members to serve as vice-chairman. The positions of chairman and vice-chairman shall be rotated among commission members on an annual basis.

### Leaves of Absence

The maximum term for any single leave of absence from service from any commission or committee shall be sixty (60) calendar days. If a longer period of absence is required, the member will be expected to submit his or her resignation. When the cause for absence is removed, the previous appointee will be eligible for reappointment or appointment to another commission or committee.

### Members Running for Elective Office

Members of commissions and committees shall be permitted to retain membership on such appointive bodies while seeking any elective office. Members of appointive bodies shall not, however, use the meetings, functions or activities of such bodies for the purposes of campaigning for elective office.

### Public Appearances of Members

When a commission or committee member appears in a non-official, non-representative capacity before any public or private body, the member shall not identify him or herself as a member of a commission or committee. If the question of his or her membership arises, the member shall indicate that he or she is appearing and speaking only as an individual.

### Length of Service by Commission and Committee Members

All commission and committee members shall serve until their replacement member has been appointed and seated.

## RESPONSIBILITIES OF COMMISSION MEMBERS

Although the specific duties of each of Pacifica's commissions vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all commission members. The following is a summary of the important responsibilities of commission members and some guidelines to assist commission members to maximize their contributions to the City and Commissions upon which they serve.

### A. Understand the Role and Scope of Responsibility of the Commission

One of the first responsibilities of a new commission member is to be informed of the commission's scope of responsibility and operating procedures. This information may be obtained by referring to this handbook. Commission members should also become acquainted with City programs within their commission's scope of interest by consulting with representative department directors responsible for these programs.

As mentioned previously, the role of the commission is to advise the City Council on specific City program areas and related policies and not to establish City policy or administer City programs. It is important that commission members understand fully the role and authority of City commissions outlined in the previous section of this handbook.

### B. Be Careful to Represent the Commission

Individual commission members must not represent their views or recommendations as those of the commission unless the majority of the commission has officially voted to approve the recommendation. Commission members making recommendations or expressing views not approved by a majority of the commission should indicate that they are representing themselves as individuals and not the commission. Public statements should contain no promises to the public that purport to be binding on the commission, staff or City Council. When making statements to the press, commission members should indicate if commission actions are recommendations and, if so, that final action will be taken by the City Council. Comments to the press and public should be factual. Individual "opinions" to the public and press are discouraged and, if given, should be identified as such.

### C. Be Representative of the Whole City

Each commission member should represent the public interest and not a special group or interest. The question, "What is best for the entire community?" should take precedence over, "What is best for my special interest group?".

### D. Keep the Lines of Communication Open

The commission member is in the unique position of serving as a liaison between the City and its citizens in helping to reconcile contradictory viewpoints and to build a consensus around common goals and objectives. The commission member must serve as a communication link between the community, staff and City, presenting City programs and recommendations and also providing a

channel for citizen expression. Commission members should explain and be encouraged to promote policies established by the City Council.

E. Do Your Homework and Be Thorough in Recommendations

In connection with their commission advisory role, commission members may often spend many hours in research in a particular problem area. Commission members should endeavor to maintain an objective attitude in this fact finding phase, even though their research may emphasize one approach to a problem. Commission members should view situations under consideration in the field prior to commission meetings in order to be fully prepared to discuss, evaluate and act on all matters scheduled for consideration at the commission meeting. Conclusions based on such practices will strengthen the value of a commission member's recommendations.

F. Be Conscious of the Relationship with the City Council and City Staff

Supportive relationships with the City Council and City staff are basic for successful operation of any commission. It is important that each commission member respect the authority of those who, in the end, will be charged with the final responsibility for actions taken by the City. To avoid placing the City staff in a compromising position, and to facilitate effective communication, it should be clear that a commission member's actions have the approval of the majority of the commission.

In contacting City personnel on commission business, the proper channel is through the designated City staff member providing staff support for the commission. As mentioned previously, City staff is encouraged by the City Council to make individual recommendations which may or may not agree with those of the commission. The staff is required, however, to fairly present the commission's recommendations and explain them.

G. Establish a Good Working Relationship with Other Commission Members

On many occasions the success or failure of the efforts of a commission member is largely dependent on the degree of cooperation among the individual members of the commission. To help build a consensus around common goals and objectives, commission members will often have to first reconcile contradictory viewpoints (which often are only different degrees of understanding) and show a willingness to objectively consider the real issues. Part of this cooperation can be produced by setting the time and place of meetings so that under normal conditions every member and interested citizen is able to attend.

Another way of developing this cooperation is for each commission member to insure that meetings proceed in an orderly and constructive manner. The chairperson is primarily responsible for seeing that consideration of agenda items moves along without delay, but with reasonable time allocated to each item. Each commission member can assist the chairperson by becoming familiar with the basic rules of parliamentary procedure and by adequate preparation of any presentations made to the commission.

Other important points which each commission member should consider in working with other commission members are as follows:

1. Always respect the other individual's viewpoint, even though it may be opposite of yours;
2. Allow other commission members adequate time to present their views fully before making comments;
3. Be open and honest at all times;
4. Recognize new commission members and see that they are made welcome and receive assistance in becoming acquainted with the commission; and

H. Participation in Political Activities

Local government elections in California are nonpartisan. Council appointments to City commissions and advisory committees are made without regard to political party affiliation. Acceptance of an appointment to a commission does not in any manner restrict citizen participation in political activities of an individual's choosing at any level of government, be it local, state or federal. However, commission members should not use or involve their commission membership in the conduct of political activities.

**PURPOSE AND SCOPE OF RESPONSIBILITY  
FOR EACH CITY COMMISSION**

(From the California Government Code and Pacifica Municipal Code)

The following is the membership, purpose, powers and duties for each City Commission as provided in the California Government Code and Pacifica Municipal Code.

**PLANNING COMMISSION**

Membership

The Planning Commission consists of seven (7) members.

Purpose

The purpose of the Planning Commission shall be to recommend and advise the Council in the preparation, adoption and amendment of the City's General Plan, Coastal Plan, Zoning Ordinance, and other specific and area development plans that provide for and control the future physical development and conservation of the City based upon geographic, social, economic and environmental characteristics of the community. The Planning Commission shall also advise the Council on private development plans for the City in accordance with State Planning Law and the City's established development review standards and processes.

Powers and Duties

The Planning Commission is authorized to perform the following functions:

- (a) Prepare, review, and revise, as necessary, the general plan;
- (b) Implement the general plan through administration of specific plans and zoning and subdivision ordinances;
- (c) Annually review the capital improvement program for consistency with the general plan;
- (d) Endeavor to promote public interest in, comment on, and understanding of the general plan;
- (e) Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan;
- (f) Promote the coordination of local plans and programs with the plans and programs of other public agencies;
- (g) Perform other functions as the City Council provides, including conducting studies and preparing plans



## **PARKS, BEACHES AND RECREATION COMMISSION**

### Membership

The Parks, Beaches and Recreation Commission consists of seven (7) members.

### Purpose

The purpose of the Parks, Beaches and Recreation Commission shall be to recommend and advise the Council in the acquisition, development and maintenance of parks, beaches and other recreational areas, and to encourage the planning and implementation of a comprehensive recreation and human service program which will serve the needs of residents of the City.

### Powers and Duties

The powers and duties of the Parks, Beaches and Recreation Commission shall be advisory only and include the following:

- (a) To assist in the preparation and adoption of, and review annually and revise as may be necessary, a long-range plan for parks, beaches and recreation;
- (b) To act in an advisory capacity to the Council, the City Manager and the Director of the Parks, Beaches and Recreation Department in all matters pertaining to public recreation and human service programs offered by the City;
- (c) To focus public attention upon the need for adequate parks and beaches, and healthful year-round supervised recreation for all;
- (d) To assist in promoting the public recreation program in public school buildings and grounds, public parks and buildings, public beaches, and such other locations as may be approved by the Council by identifying it with all public welfare, education, family relations, and constructive leisure time activities;
- (e) To make recommendations concerning the beautification development and improvement of parks, beaches and recreation services;
- (f) To aid in coordinating the recreation, park and human services with the programs of other governmental agencies, including school districts and voluntary organizations;
- (g) To encourage and review gifts and property for the parks, beaches and recreation program; and
- (h) To perform such other duties as may be prescribed by the Council.

## **DISASTER PREPAREDNESS COMMISSION**

### Membership

The Disaster Preparedness Commission shall consist of seven (7) members appointed by the City Council. The commission membership should, where possible, be representative of the City's neighborhood areas. In addition to the seven regular members, there shall be three (3) ex officio members who shall be representatives from the high school and elementary school districts, and from the American Red Cross.

### Purpose

The purpose of the Disaster Preparedness Commission shall be to recommend and advise the City Council on City programs, activities, plans and other related actions that assist the City in preparing for possible future disasters.

### Powers and Duties

The powers and duties of the Disaster Preparedness Commission shall be advisory only and include the following;

- (a) To assist in the preparation and review and make recommendations to the City Council on City disaster preparedness plans;
- (b) To increase community awareness of the possibility of future disasters and the need for disaster preparedness;
- (c) To develop and distribute disaster preparedness information in the City;
- (d) To develop, implement and promote, with City Council approval, disaster preparedness programs and activities in the City;
- (e) To promote and develop resources, volunteer and self-help groups to be utilized in the event of a local disaster;
- (f) To assist in the coordinating of disaster preparedness with other governmental agencies;
- (g) To perform such other related duties as may be prescribed by the City Council.

## **.CALIFORNIA'S CONFLICT OF INTEREST LAW FOR PUBLIC OFFICIALS**

The Political Reform Act (Government Code Section 87100 et seq) requires public officials at all levels of government to publicly disclose their private economic interests and to disqualify themselves from participating in decisions in which they have a financial interest. The following summary is intended to help public officials understand and abide by the laws concerning disclosure and disqualification. The discussion is necessarily general.

The rules on what constitutes a conflict of interest are broad and the City Attorney should always be consulted in any case where a commission or committee member has any concern that a potential conflict exists. Keep in mind that violations of the Political Reform Act not only could invalidate any action taken by the commission or committee, but it could also expose the individual commissioner or committee member to potential investigation and fines imposed by the Fair Political Practices Commission.

### **FAIR POLITICAL PRACTICES COMMISSION**

The Fair Political Practices Commission ("FPPC") has primary responsibility for the impartial, effective administration of the Political Reform Act. The FPPC adopts regulations to implement and clarify the Political Reform Act. These regulations are found in Title 2 of the California Administrative Code, Section 18000, et seq. The FPPC also issues opinions and advice letters, conducts seminars, prescribes forms, publishes manuals, issues reports, and enforces the requirements of the Political Reform Act.

The Political Reform Act was enacted by the people of the State of California by an initiative, known as Proposition 9, in 1974. This initiative statute was enacted to accomplish the following purposes:

- a. Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- b. The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.
- c. Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.
- d. The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.
- e. Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.

- f. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.

### **HOW DOES THE POLITICAL REFORM ACT PREVENT CONFLICTS OF INTEREST?**

1. By Disclosure: The Political Reform Act requires every public official to disclose all economic interests, such as investments, interests in real estate (real property), or sources of income, which the official may possibly affect by the exercise of his or her official duties. Disclosure is made on a form called a "statement of economic interests."
2. By Disqualification: If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify himself or herself from making or participating in a governmental decision, or using his or her official position to influence or attempt to influence a government decision.

### **WHO MUST FILE STATEMENTS OF ECONOMIC INTERESTS UNDER THE POLITICAL REFORM ACT?**

The Governor, members of the Legislature, elected state and local officials, judges and commissioners of courts of the judicial branch of government, and all high ranking state and local officials must file statements of economic interests. Other officials or employees of state and local government agencies must also file statements of economic interests if they are "designated" in a conflict of interest code adopted by the agency for which they work. Each agency must adopt a conflict of interest code which designates all its officials or employees who make or participate in governmental decisions which could cause conflicts of interest. Unpaid members of boards and commissions and consultants to state or local government agencies also may be required to file statements of economic interests if they make or participate in making governmental decisions which could affect private financial interests.

The Government Code provides that the Mayor and members of the City Council, as well as members of the Planning Commission must file statements of economic interest. In addition, the City is required to adopt a local conflict-of-interest code which lists all agency officials and employees who must file statements of economic interests. A commission member should consult with the City Clerk to determine if he or she is required to file a statement of economic interest.

### **ARE STATEMENTS OF ECONOMIC INTERESTS AVAILABLE TO THE PUBLIC?**

Statements of economic interests are public records. Any member of the public must be permitted to inspect and copy any statement during normal business hours. The agency may charge for the reasonable costs of making copies. No other conditions may be imposed on inspection and copying. No one may be required to identify himself or herself or sign anything in order to be permitted to inspect or copy statements.

Statements of economic interest must be kept on file by the official's or employee's agency and made available upon request. Statements of certain officials, including elected state officials, members of the Legislature, judges, court commissioners, most high ranking state officials, many elected local officials, planning commissioners, city and county chief administrative officers, city managers, city attorneys and county counsel are also available at the offices of the Fair Political Practices Commission.

### **WHO MAY BE DISQUALIFIED UNDER THE POLITICAL REFORM ACT?**

The disqualification requirements of the Political Reform Act apply to all elected state and local government officials, to all appointed state or local government officials, and to all governmental agency employees, except judges and court commissioners. Unpaid members of boards or commissions and consultants to state or local government agencies who, on an ongoing basis, play a significant role in the decision-making process may also be required to disqualify themselves under the Act when faced with a decision that could affect their private economic interests.

### **WHAT IS A CONFLICT OF INTEREST?**

A public official or employee has a conflict of interest when all of the following occur:

1. The official makes, participates in, or uses his or her official position to influence a governmental decision;
2. It is foreseeable that the decision will affect the official's economic interest;
3. The effect of the decision on the official's economic interest will be material;
4. The effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.

Each of these four components of a conflict of interest is discussed below.

#### **1. Making, Participating In, or Using Official Position To Influence a Government Decision**

The first component of a conflict of interest is whether the official makes, participates in, or uses his or her official position to influence a governmental decision.

A governmental decision is any decision made by a government body or by a government official or employee in his or her official capacity. Governmental decisions include: decisions on ordinances, regulations and resolutions; decisions on contract awards, purchases and leases; decisions on hiring, firing and personnel actions; decisions on land use, zoning, redevelopment plans, permits and variances; and decisions on any other matter which may come before a state or local government

agency. Governmental decisions do not include purely private decisions made by a public official in his or her personal capacity.

A public official makes a governmental decision when he or she, acting within the authority of his or her office, does any of the following;

- Votes on a matter.
- Appoints a person.
- Obligates or commits his or her agency to any course of action.
- Enters into any contractual agreement on behalf of his or her agency.
- Determines not to act in any of the ways described above, unless that determination is made because the official has disqualified himself or herself due to a conflict of interest.

For example, a public official makes a governmental decision when he or she votes as a member of a board, commission or council on any governmental decision, regardless of the outcome of the vote. Whether the official votes for or against the action, or for or against his or her economic interest, the official makes a governmental decision when he or she votes on the decision.

## 2. Foreseeability

The second component of a conflict of interest is whether it is foreseeable that the decision will affect the official's economic interest.

An official's economic interest is affected whenever a governmental decision affects the official in one of the following ways:

- The decision affects the official's personal financial status, or that of his or her spouse or dependent children. This does not apply, however, to decisions which affect the official's own government salary. It applies to any decision which affects the government salary of an official's spouse only if the decision is to hire, fire, promote, demote or discipline the spouse, or to set a salary for the spouse that is different from salaries paid to other employees in the same job classification or position.
- The decision affects a business entity located in, doing business in, owning real property in, or planning to do business in the official's jurisdiction, in which the official, or his or her spouse or dependent child has an investment of \$2,000 or more. Investments in a business entity include: ownership of stock, bonds, or commercial paper; a general or limited partnership interest; or any other form of ownership interest in a business entity. Investments do not include: bank accounts; interests in

mutual funds, money market funds, or insurance policies; or government bonds or securities. Business entities include: corporations; partnerships; joint ventures; sole proprietorships; and any other type of enterprise operated for a profit. A nonprofit organization is not a business entity.

- The decision affects real estate (real property) located in the official's jurisdiction and the official, or his or her spouse or dependent child has an interest of \$2,000 or more in that real estate. Interests in real property include: ownership (equity); deeds of trust (mortgages); leaseholds; options to buy; and joint tenancies. A month-to-month lease is not an interest in real property.
- The decision affects a person or business entity located in, doing business in, owning real property in, or planning to do business in the official's jurisdiction, from which the official has received income of \$500 or more, or the official's spouse has received income of \$1,000 or more, in the past 12 months. With certain exceptions, income includes: salaries; commissions; rents; payments received for goods or services (including payments for sale of a home, automobile or investment); loans (including loans previously made but still outstanding); and all other types of payments. Income means gross income or payments received, rather than net income, profits or taxable income. Income does not include: government salaries; inheritances; dividends, interest or premiums from publicly traded stock, mutual funds, bank accounts, credit unions or insurance policies; alimony or child support; any loans from banks, credit unions, or credit cards on terms generally available to the public; mortgages on a principal residence on terms generally available to the public; loans from family members; or most pensions.
- The decision affects a person or business entity from whom the official has received gifts of \$420 or more in the past 12 months. This includes gifts from sources inside and outside the official's jurisdiction, except for gifts from specified family members. Gifts provided to the official's spouse or children, rather than to the official, are generally not considered gifts to the official.
- The decision affects a business entity, other than a nonprofit organization, in which the official is a director, officer, partner, trustee, employee or holds a position of management.

In order to create a conflict of interest, the effect of a governmental decision on an official's economic interest must be foreseeable. An effect on an official's economic interest is foreseeable when there is a substantial likelihood that it will ultimately occur as a result of a governmental decision. Even during the preliminary phases of a decision, an official must consider whether the end result of a decision is likely to affect his or her economic interests. An effect does not have to be certain to be foreseeable; however, if an effect is a mere possibility, it is not foreseeable.

### 3. Materiality

The third component of a conflict of interest is whether the effect of the decision on the official's economic interest will be material.

It is usually necessary to estimate the dollar value of the effect of a decision on the official's economic interest to determine whether the effect is material. Specific circumstances under which an effect is material are set forth in the FPPC's regulations.

An effect of \$250 or more on the income, assets, or out of pocket expenses of the official, or of his or her spouse or dependent children, is material. For purposes of determining whether there is a conflict of interest, it does not matter whether the financial effect increases or decreases the income; assets, or expenses.

When an official has an investment in, or receives income from, a business entity, it is necessary to consider how governmental decisions would affect the business entity. An official may be disqualified from participating in a decision even though the decision would not affect the value of his or her investment or the amount of income he or she receives.

Whether an effect on a business entity will be considered material depends on the financial *size* of the business entity. For example, an effect of only \$20,000 on the gross revenues or assets of a small business is material, while a \$10 million effect on the gross revenues or assets of a Fortune 500 company is material.

The materiality standard for real property in which the official has an economic interest depends on whether the property is directly or indirectly related to the decision. Real property which is the subject of the decision or which is located within 500 feet of the real property which is the subject of the commission decision is directly involved and is presumed material. Property which is beyond 500 feet of the property which is the subject of the decision is considered to be indirectly involved and is not presumed to be material. Both presumptions may be rebutted.

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, it is necessary to consider whether the decision could significantly affect the official's economic interests. For example, the effect may be material if the decision significantly affects the use or enjoyment of land or other interests, or if the official's receipt of income from a private source is directly related to the decision.

In special situations, an effect is considered material regardless of its dollar value. These situations include the following:

- A person or business entity in which the official has an investment interest worth \$2,000 or more, or which is a source of income of \$500 or more to the official in the last 12 months, "appears before" the official in connection with the decision. A person or business entity "appears before" an official



if it is a named party to the proceeding or initiates the proceeding by filing an application, claim, appeal or similar request.

- The decision would affect the zoning, annexation, sale, lease, actual or permitted use of, or taxes or fees imposed on real property in which the official has an interest of \$2,000 or more.

#### 4. Distinguishable from the Public Generally

The fourth component of a conflict of interest is whether the effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.

An official does not have a conflict of interest if the effect of a governmental decision on the official's economic interest is no different from its effect on most other persons or interests in the jurisdiction. For example, a decision to impose a city sales tax, which will affect all residents of the city, does not affect any individual city councilmember (no matter how much he or she pays in sales taxes) in a different manner than it affects the public generally, and, as a result, does not create a conflict of interest for any city councilmember. By way of contrast, a decision concerning a zoning variance for an official's business or home, which has a different effect on the official's economic interest than on other members of the general public, does constitute a conflict of interest for the official.

#### 5. Summary

In summary, there are four questions to ask in determining whether an official has a conflict of interest:

1. Will the official make, participate in, or use his or her official position to influence a governmental decision?
2. Is it reasonably foreseeable that the decision will affect the official's economic interest?
3. Will the effect of the decision on the official's economic interest be material?
4. Will the effect of the decision on the official's economic interest be distinguishable from its effect on the public generally?

An official should direct any inquiries about possible conflicts to the City Attorney as soon as possible.

## **WHAT SHOULD A PUBLIC OFFICIAL WHO HAS A CONFLICT OF INTEREST DO?**

When a public official determines that it is reasonably foreseeable that a particular governmental decision will have a material effect on his or her economic interest, the official has a conflict of interest. The official must not vote on, make, participate in any way in, or attempt to influence the decision. This is called disqualification. When an official disqualifies himself or herself from a governmental decision because of a conflict of interest, the reason for the disqualification must be announced, and except for limited circumstances, the official must leave the meeting room. An official with a disqualifying conflict may, after announcing the conflict, remain in the meeting hall and address the agency in the same manner as any other member of the general public to represent himself or herself on a matter affecting the personal residence or a business entity wholly owned by the official, his or her spouse, or dependent children.

If a public official is unsure of the legal responsibilities on any matter coming before his or her commission, he or she should seek the advice of the City Attorney as soon as possible before the commission meeting, since it is difficult to provide the best legal advice on the spur of the moment at a public meeting. Conflict of interest questions should be resolved as far in advance of any decision as possible.

## **WHAT ARE THE PENALTIES FOR VIOLATION OF THE CONFLICT OF INTEREST PROVISIONS OF THE POLITICAL REFORM ACT?**

The Fair Political Practices Commission can bring an administrative action against an official who has violated the disclosure or disqualification requirements of the Political Reform Act, and may impose administrative penalties for each violation. An official who violates the Act may be subject to a civil lawsuit, in which a court may impose a fine. A willful violation of the Act is also a misdemeanor, punishable by a fine and/or by imprisonment; it also may result in the official being ineligible to run for public office for four years.

These penalties apply to violations of the disclosure requirements of the Act by any public official. However, they do not apply to violations of the disqualification provisions of the Act by the Governor, other constitutional officers or members of the legislature. They do not apply to disqualification violations by all other public officials.

## **HOW CAN A PUBLIC OFFICIAL FIND OUT IF HE OR SHE HAS A CONFLICT OF INTEREST?**

When a public official suspects that he or she may have a conflict of interest in an upcoming decision, the official should consult with the City Attorney as soon as possible. Conflict of interest questions should be resolved as far in advance as possible. The official can also ask the Legal Division of the Fair Political Practices commission for advice. If an official poses a question which is unusually complex, significant or unique, the full FPPC may issue an opinion, although this process takes longer. The FPPC provides advice only about the Political Reform Act; the FPPC will

not answer questions about Government Code Section 1090 or other laws which are not part of the Political Reform Act.

## BRIEF OVERVIEW OF THE BROWN ACT

The Ralph M. Brown Act (“Brown Act”), is found beginning at section 54950 of the California Government Code. The opening line of the Brown Act is one of the most powerful and distinct declarations of intent in all of California law:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. *It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.*” (Government Code section 54950).

The purpose behind the Brown Act, as originally adopted and as it remains today, is to make sure that actions of public agencies—including their deliberations—are taken in open and public meetings where all persons are permitted to attend. The courts have construed the Brown Act liberally, in favor of openness. Violations of the Brown Act can result in the action taken being invalidated and the imposition of criminal penalties upon members of the legislative body taking part in an improper meeting.

The Brown Act governs the manner in which a legislative body conducts business. A body may only conduct business at a public meeting which has been properly noticed and agendaized. Only items listed on the agenda may be considered at a meeting of the legislative body, except in certain circumstances. With narrow exceptions, all deliberations by the legislative body must be conducted in an open meeting in which the public is allowed to hear the discussion and comment on the item of business.

“Serial” meetings among commission members is prohibited. A serial meeting occurs when commission members communicate among themselves or through a common intermediary regarding commission business outside of a noticed public meeting, such that a majority of the members develop a collective concurrence as to action to be taken on an item. Serial meetings may occur in either a “daisy-chain” or “hub-and-spoke” sequences. Serial meetings deprive the public of the right to hear the deliberations and to participate in the decision-making process.

The public has the right to attend the meetings of a legislative body and speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on any specific item of business before the body. For further advice on Brown Act requirements, please consult the City Attorney.