



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**

Board of Supervisors  
Finance and Operations SubCommittee

**DATE:** February 19, 2008

**BOARD MEETING DATE:** February 26, 2008

**SPECIAL NOTICE/HEARING:** No

**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Supervisor Rich Gordon <sup>N</sup> and Supervisor Mark Church <sup>mc</sup>  
Finance and Operations SubCommittee

**SUBJECT:** Form 700 Filing Requirements for Members of Advisory Boards  
and Commissions

**RECOMMENDATION:**

(1) Adopt a resolution amending the County of San Mateo's conflict-of-interest code as it pertains to members of County boards and commissions; and (2) Adopt a resolution specifying standing rules for County boards, commissions, and advisory committees.

**VISION ALIGNMENT:**

**Commitment:** Responsive, effective and collaborative government

**Goal 20:** Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.

**BACKGROUND:**

Government Code §87300 requires every California state and local government agency to adopt a conflict of interest code. This code designates the decision-making positions within the agency involving foreseeable conflicts of interest and requires the designated employees to file periodic financial disclosure statements. If a position is listed in the County's conflict of interest code, then the individual holding the position must make financial disclosures. These disclosures are made via completion of the Fair Political Practices Commission Form 700.

It has been the Board's policy to require all members of County advisory boards and commissions to complete the Form 700. This policy is currently reflected by Resolution 65019 (passed February 1, 2002) which requires that each body "comply with the disclosure requirements of the Political Reform Act of 1974, and must complete all necessary documents in connection therewith." More important, it is reflected by Resolution 68432 (passed December 12, 2006) which adopts a conflict of interest code that designates each member of every board or commission as holding a "decision-making position" pursuant to the Political Reform Act, requiring completion of the Form 700.

**DISCUSSION:**

The rationale supporting the Board's existing policy is grounded in the furtherance of open government. The requirement of financial disclosure by commission and board members fosters governmental transparency and protects both the County and the members from the consequences of governmental decisions touched by conflicts-of-interest. However, designating all board and commission members has had unintended consequences. Some members have resigned because they did not want to file a Form 700. In addition, certain advisory commissions have had difficulty recruiting new members for the same reason.

In light of these concerns, the County Counsel's office was requested to reexamine the requirements for designating members of boards and commissions as Form 700 filers. The Government Code, FPPC regulations and FPPC opinions set forth a test to be used to determine which individuals should be included as a "designated employee" in a conflict-of-interest code. The board or commission members should be designated if the members: (1) are compensated, (2) make final County decisions, (3) can compel a County decision, (4) can prevent a County decision or (5) make substantive recommendations that are regularly approved without significant modification by the County. The standard adopted by the FPPC seeks to balance the need for open government with the privacy rights of those citizens who wish to dedicate their time to public service. County Counsel has advised that the standard leaves much to the discretion of the Board of Supervisors when deciding which boards and commissions should be subject to the filing requirement, guided by the competing interests of disclosure and privacy.

Based upon the above, the Finance and Operations Subcommittee recommends that only the members on decision-making boards and commissions, including those serving on the Assessment Appeals Board, the Board of Building Permit Appeals, the Licensing Board, the Design Review Committee, the Parks and Recreation Commission, the Civil Service Commission, the Investment Advisory Committee, the TANF Planning Council, and the San Mateo County Workforce Investment Board should be listed as "designated employees" on the County's conflict of interest code. (The Workforce Investment Board is vested with the responsibility (by federal statute) to, among other tasks, develop a local plan to be approved by the Governor and award grants to service providers. In addition, the TANF Planning Council is directly involved in decisions regarding funding of programs. In regards to the

Investment Advisory Committee, the FPPC has opined that "Treasury Oversight Committees" are likely not purely advisory because "Government Code § 27134 expressly confers decision-making authority on the Treasury Oversight Committees.) It should be noted that Planning Commission members are not listed as "designated employees" because they are specifically mandated by state law to file Form 700.

The fact that a member of a board or commission is not required to file a Form 700, however, does not relieve that member from the obligation to comply with state conflict of interest laws when carrying out his or her duty. Filing a Form 700 reminds Board and Commission members that they should be aware of financial conflicts of interest during their tenure. If a member is no longer required to file, some substitute would be appropriate to serve as that reminder. Consequently, we further recommend that if the County's Conflict of Interest Code is amended, each member that is no longer designated as a filer be required to sign an acknowledgement that financial conflict laws do apply to them and that cautions these appointees against participating in decisions where they do have such a conflict. We have included a draft of such an acknowledgment. This requirement is contained in the proposed resolution specifying rules for County boards, commissions, and advisory committees.

**FISCAL IMPACT:**

None



## COUNTY OF SAN MATEO

### ACKNOWLEDGMENT OF FINANCIAL CONFLICT OF INTEREST LAWS

Advisory Board and Commission Members:

All members of boards and commissions are bound by Government Code §87100 which provides: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."<sup>1</sup> In general, a public official has a financial interest if "it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally." Govt Code §87103. These financial interests can be from various sources: income, investments, real property interests, or positions held in businesses. These financial interests are either of the member, spouse, or domestic partner. Public officials with a financial conflict of interest are required, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of a matter, to: (1) publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public; (2) recuse himself or herself from discussing and voting on the matter; and (3) leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. Govt Code §87105.

All members of boards and commissions are also subject to Government Code § 1090 which prohibits public officers from being "financially interested" in any contract made by them in their official capacity, or by any body or board of which they are members. It also prohibits members from being purchasers at any sale, or vendors at any purchase, made by them in their official capacity. Courts have interpreted §1090's "financially interested" element broadly as meaning any contract that could possibly result in a financial benefit to the member. *People v. Honig*, 48 Cal.App.4th 289 (1996).

Each board and commission member is urged to carefully consider the possibility of a conflict of interest before participating in a decision and to always err on the side of caution. If you need advice regarding a potential financial conflict of interest, call the County Counsel's Office at (650) 363-4250.

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Date

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Signature

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Name of Board and Commission

\_\_\_\_\_  
Print Name

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<sup>1</sup> "Public Official" is defined broadly to include member, officer, employee or consultant of the County of San Mateo. Govt Code § 82048.