



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Liza Tamura, City Clerk *Liz*
Lindy Coe-Juell, Assistant to the City Manager *LCJ*

DATE: May 20, 2008

SUBJECT: Consideration to Approve the Revised Boards and Commissions Handbook

RECOMMENDATION:

The City Council Sub-Committee and Staff recommend that the City Council approve the revised Boards and Commissions Handbook.

FISCAL IMPLICATION:

There are minimal costs associated with the printing of the revised handbook due to the fact that the printing and collating will be done in-house by staff.

DISCUSSION:

At the City Council meeting of May 6, 2008, the City Council directed staff to make the following modifications to the Boards and Commissions Handbook:

- Define language regarding the process whereby a Commissioner(s) could initiate an issue
- Clarify the language regarding the expectations of those Commissioners seeking reappointment
- Amend the language regarding Ethics Training

The modifications were added to the attached handbook. The yellow highlights indicate the areas that were changed along with the "strikethrough" to identify the language being deleted.

CONCLUSION:

The Council Sub-committee and Staff recommend that the City Council approve the revised Boards and Commissions Handbook tonight so that the Handbook can be printed and distributed at the upcoming Boards and Commissions Orientation.

Attachments: Boards & Commissions Handbook

CITY OF MANHATTAN BEACH BOARDS AND COMMISSIONS HANDBOOK



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CITIZENS OF MANHATTAN BEACH



Nicholas W. Tell, Jr.
City Councilmember



Richard Montgomery
Mayor Pro Tem



Jim Aldinger
Mayor



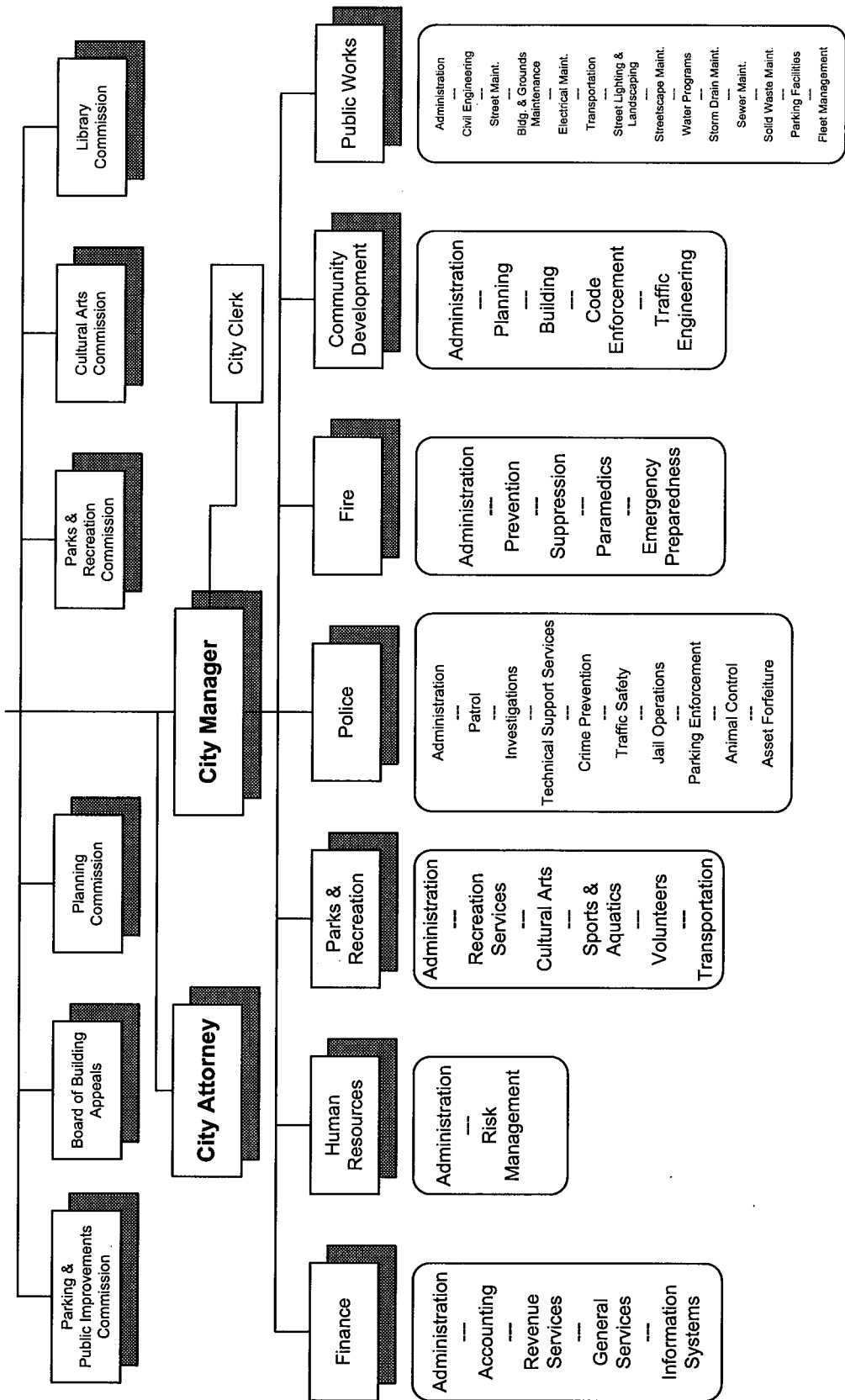
Portia P. Cohen
City Councilmember



Mitch Ward
City Councilmember



Tim Lilligren
City Treasurer



Cover Page

Chart of Elected Officials, Appointed Officials and Boards & Commissions

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Brief History of the City of Manhattan Beach

Cities such as this don't just appear -- yet, comparatively speaking, the history of Manhattan Beach covers a relatively short span. In its earliest days, Manhattan Beach was part of the ten-mile ocean frontage of Rancho Sausal Redondo, which means "Round Clump of Willows." At one time the area was called "Shore Acres" by George Peck, who owned a section of the north end of town.

In 1901, Stewart Merrill bought the south portion and called his section Manhattan after his old home, New York City. Peck and Merrill, unable to agree on a city name, flipped a coin and Manhattan won.

The first downtown building was built by Merrill in approximately 1901, a small frame building later used for city offices. The official date of incorporation was December 7, 1912. Planks were laid in the sand on Manhattan Avenue for vehicles, and along the Strand and side streets for pedestrians.

Two wooden piers were built in 1901, one at Center Street and one at Marine Avenue. The Center Street pier supported a wave motor to generate power for the Strand lighting system. Purportedly, part of the wave motor lies buried in the sands at the shore end of the present pier.

The next pier was built on the same site and extended about 922 feet into the ocean. Engineer A.L. Harris developed the concept of the circular-end shape to minimize exposure and damage to the pilings by the waves. The pier was completed and dedicated on July 5, 1920.

After World War II a large influx of people came as a result of the desirability of the area for year-round living. Servicemen visiting during the war returned to live here. The development of the defense industry brought many people to the South Bay to reside and work. Much of the land east of Sepulveda was developed to house the influx of people.

For more information on the history of Manhattan Beach, contact the Manhattan Beach Historical Society at:

The Manhattan Beach Historical Society
Located in the Red Cottage at Polliwog Park
1601 Manhattan Beach Boulevard
Manhattan Beach, CA 90266
(310) 374-7575
<http://history90266.org>.

Basic City Organization

City Council

Manhattan Beach is a General Law City operating under the City Council-City Manager form of government. The Council-Manager form is the primary form of local government in California.

In Manhattan Beach, there are five City Councilmember's elected at-large, in contrast to some cities where City Councilmembers are elected by specified districts. Councilmembers in Manhattan Beach are elected to four-year terms. The Mayor's office is rotated among each of the Councilmembers, providing approximately nine months of service as Mayor during each Councilmember's four-year term of office.

In 1996, Manhattan Beach voters overwhelmingly decided to limit members of the City Council to two terms in office [for a total of eight years], with the provision that allows a councilmember to hold office again after being out of office for a period of at least two years.

The City Council is the policy-making body for the City. The City Council is responsible for establishing local laws, setting public policy, approving City programs, appropriating funds, and, in general, representing the residents of Manhattan Beach.

City Manager

While the authority and responsibility for public policy rests with the City Council, the City Manager has responsibility and authority for the administration and operation of the City.

The City Council appoints the City Manager, who is responsible for the efficient administration and day to day operation of the City. The primary responsibilities of the City Manager, as stated in Municipal Code Section 2.04.070, include ensuring that all laws and ordinances are properly enforced; exercising control over all public buildings, parks, property, departments and divisions of the City and over all appointed officers and employees; recommending adoption of measures and ordinances deemed necessary and expedient; and preparing and implementing the City's operating budget.

The City Manager is either directly or indirectly responsible for the appointment of all City employees. All Department heads (see Cover Page – Organizational Chart) report to the City Manager, except for the City Attorney and the City Treasurer.

City Attorney

The City Attorney is appointed by and serves at the pleasure of the City Council. The City Attorney acts as the legal advisor to the City Council, City Manager and Commissions. The City Attorney represents the City in civil cases and in lawsuits where the City is a party to the lawsuit. In addition, the City Attorney prosecutes state law misdemeanors and municipal code violations within the City of Manhattan Beach.

City Treasurer

The City Treasurer oversees the investment of the City's idle cash funds, serves as Chairman of the Council's Finance Subcommittee and serves as Treasurer of the South Bay Regional Public Communications Authority emergency dispatch center.

The portfolio of approximately \$55 million is invested in high grade corporate bonds, United States Treasury notes, Federal Agencies and the State's Local Agency Investment Fund. The goals of the portfolio management are to maximize safety, assure sufficient liquidity for the City's cash flow needs, while also striving to obtain appropriate yields. The City Treasurer communicates the activities of the portfolio through monthly reports to the City Council.

The City Treasurer is elected at large by the residents of Manhattan Beach for a four-year term. There are no term limits for this elected position.

Boards & Commissions

Roles, Duties and Limitations

Boards and Commissions are officially appointed bodies of a semi-permanent nature, as opposed to Committees, which are established for specific purposes and for limited time periods. Commissions may form Committees of less than a majority of its membership to conduct studies and to develop recommendations to be considered by the Commission.

On occasion, the City Council may appoint an "Ad Hoc" Committee or Commission. They are generally assigned a specific purpose and time frame within which to work. Their mission is defined by Council at the time of appointment.

The purpose of Boards and Commissions is to advise and provide recommendations to the City Council regarding policy issues that are presented to the Commission from either the City Council, City Staff, or initiated by the Commission itself and approved by the City Council for study. Staff will generally recommend solutions to the issue at hand. Commissioners are welcome to suggest additional solutions, as well. Both Staff and Commission solutions will be reported to Council in a Staff Report.

Commission and Board members' general responsibilities are to attend their Board and Commission meetings, review in advance the Agenda Packet, take public testimony, evaluate and deliberate with their colleagues and Staff, and make Commission recommendations to Council that are in the best interest of the community.

Depending on the issue before the Commission, it is permissible and may be helpful for Commissioners/Board members to make site visits and/or attend neighborhood meetings. Ask your Staff Liaison to advise you.

Commissions may on occasion be asked to reach out to the community to inform the general public about various issues and events that are relevant to their Commission work. In these cases, City Staff and Council will create an outreach plan with the Commission/Board.

A Commission may also initiate an issue with the approval of City Council. ~~If a majority of Commissioners want to undertake a new initiative, they should raise it at a regularly scheduled meeting. The Staff Liaison will include the Commissions initiative in the Staff Report to City Council. The City Manager will work with the Mayor to agendaize the initiative before City Council. The City Council will then determine if the new initiative is one that Council wants to undertake~~ There are several routes available to Commissions to seek City Council review and approval of the Commission undertaking a new initiative. During the "Commission Items" portion of a Commission meeting, any Commissioner may raise the idea of a new initiative for potential future consideration. If a majority of the Commission desires to seek Council approval for the Commission to investigate the new initiative, the Commission may forward the request to the City Council through a letter addressed to the entire City Council or through a summary included in the Commission minutes.

- If the Commission wishes to forward the request in a letter, the Commission should select a member to draft the letter. Staff will attach the letter to the Commission minutes, which will be delivered to the City Council for their review. Upon receipt of the letter, a Councilmember may raise the issue for consideration at a regularly scheduled City Council meeting. If a majority of the City Council approves of the Commission pursuing the issue, the Commission may discuss that issue as an agenda item during a regularly scheduled Commission meeting.
- If the Commission wishes to forward the request as a part of the Commission minutes, the Staff liaison will include a summary of the request in the next Commission minutes. These minutes are considered by the City Council during the "Consent Calendar" portion of the City Council meeting. A Councilmember may pull the minutes and ask that the full City Council consider the Commission requested new initiative. If a majority of the City Council approves of the Commission pursuing the issue, the Commission may discuss that issue as an agenda item during a regularly scheduled Commission meeting.

If none of the City Council decides to raise the new initiative, forwarded either by letter attached to the Commission minutes or summarized within the minutes, with the full City Council then that issue should not be considered by the Commission.

As an individual, Commission members also have the option of raising the idea of a new initiative by personally contacting a Councilmember via phone, in-person or by email. If the Councilmember believes that the suggested new initiative should be addressed by the Commission, that Councilmember may raise the issue for consideration by the entire Council at a regularly scheduled City Council meeting. Similarly to the options discussed above, if the majority of the Council approves of the Commission pursuing the issue, the Commission may discuss that issue as an agenda item during a regularly scheduled Commission meeting.

Board & Commission members should not be offended if the City Council rejects or modifies their recommendations. The City Council must consider all facets of an issue, some of which may be unknown to Board & Commission members, including budgetary implications, staffing issues, internal relationships, the overall merits of the program, and other projects/programs competing for available resources.

Limitations: Board/Commissions do not:

- Make law or policy (See Planning Commission exception)
- Direct Staff or Council
- Authorize City expenditures
- Do anything not authorized by law or herein

Current Boards and Commissions

Commissions and Boards are composed of qualified Manhattan Beach residents, business owners and students, appointed by City Council to assist in specific areas. Currently, there is one (1) Board and five (5) Commissions in the City of Manhattan Beach.

Board of Building Appeals

The Board of Building Appeals hears requests for interpretation of Uniform Code provisions, alternative materials and methods of construction. The Board's interpretations and recommendations to the City Council are advisory. Members must be qualified by experience and training. If there are insufficient applicants, the City Council may appoint qualified members serving concurrently on a Commission.

- Consists of five (5) members
- Meets in the City Council Chambers on an as-needed basis.

Cultural Arts Commission

The Cultural Arts Commission helps the City Council develop the master plan for cultural arts in the City, encouraging and supporting art education programs in the community and schools, and visual and performing arts and Art in Public Places.

- Consists of five (5) members: Four (4) members selected at-large and one (1) member selected with art related experience.
- Meets in the City Council Chambers the 2nd Tuesday of every month at 6:00 p.m.

Library Commission

The Library Commission advises the City Council regarding library services provided by the Los Angeles County Library System to the citizens of Manhattan Beach. This Commission also serves as a liaison between the County, City and public/private community groups supportive of library services.

- Consists of five (5) members.
- Meets in the City Council Chambers the 2nd Monday of each month at 6:30 p.m.

Parks & Recreation Commission

The Parks & Recreation Commission advises Council on recreational and park needs of our residents, and promotes use of open space as well as supervised public recreation within the City.

- Consists of seven (7) members: Five (5) members selected at-large, one (1) representative appointed by the Manhattan Beach Unified School District, and one (1) student representative appointed by Mira Costa High School.
- Meets the 4th Monday of every month at 6:30 p.m. in the City Council Chambers.

Parking & Public Improvements Commission

The Parking & Public Improvements Commission advises the City Council on public parking issues, capital improvement projects, traffic management and activities within the public right-of-way including encroachment permits.

- Consists of five (5) members: Three (3) members selected at-large, and two (2) members owning and/or operating businesses located in the City, excluding home based businesses.
- Meets in the City Council Chambers the 4th Thursday of each month at 6:30 p.m.

Planning Commission

Pursuant to California Planning and Zoning Law, the Planning Commission is responsible for making official determinations on land use permits, commercial planned development permits, zone changes, code amendments, and modifications to long-range planning documents, including the City's General Plan and Local Coastal Plan. It is the only existing Commission that makes official determinations. Planning Commission decisions may be appealed to the City Council.

- Consists of five (5) members
- Meets in the City Council Chambers on the 2nd and 4th Wednesdays of each month at 6:30 p.m.

Qualifications, Interviews & Terms

Qualifications

Commissioners are appointed by the City Council. Each year, the City accepts applications for open Board and Commission seats. Notice is published in the City's adjudicated newspaper, on the City's website, and on the City's posting boards. Applications are available in the City Clerk's office and may also be downloaded from the City's website.

In order to serve on a Board or Commission, an applicant must be a registered voter and reside in the City of Manhattan Beach. Per Municipal Code Section 2.44.040 (Appointment Procedures) all applications from non-appointed applicants shall remain eligible and on record in the City Clerk's office for a three (3) year period in the event the applicant re-applies within that time period.

All Board and Commission candidates are required to acknowledge (on their application) that they have read the Boards & Commissions Handbook. The Boards & Commissions Handbook is available on the City's web site.

Interview Process

Commission applicants are **strongly** encouraged to interview with City Council. The City Clerk is responsible for the annual interview process and will make the necessary arrangements once per year during the Spring.

Terms

The term of office for each Commission is three (3) years, starting June 1st. The only exception is the student member of the Parks & Recreation Commission, who serves a one-year term.

Commissioners may serve a maximum of two consecutive full terms (6 years) on the same Commission. Partial term appointment (as a result of filling an unscheduled vacancy, see below) to any term is not applied to the term limit. Commissioners should not expect to be automatically reappointed to their Commission seat. At the end of their initial term, those Commissioners seeking reappointment must reapply and submit an updated application. ~~and re-interview. Their initial term will then be reviewed based upon their contributions made during their initial term and any unique skills they possess.~~ An interview with Council is **strongly** recommended.

After serving two terms, Commissioners must wait one year before serving on the same Commission again. Commissioners may be appointed to a different Commission at any time, but may not serve concurrently on more than one Commission. Members of the Board of Building Appeals are not subject to any term limits.

Filling Unscheduled Vacancies (18 Month Rule)

From time to time, Board & Commission vacancies occur prior to the expiration of the term for various reasons such as voluntary resignation and removal. When such a vacancy occurs, a new member will be appointed by Council during a public meeting. The City shall publish the vacancy and applications will be accepted.

If a vacant seat has 18 months or less remaining in its term, the new member will complete the original term of office and automatically be re-appointed to a three-year term without further ceremony. Following the three-year term, the member will be eligible for re-appointment by the City Council to another three-year term. Again, it is ~~strongly~~ recommended that the Commissioner re-apply and re-interview.

Conversely, if a vacant seat has 18 months or more remaining in its term, the new member will complete the original term of office and then be eligible for re-appointment for only one succeeding three-year term.

Resignations & Removals

A member of a Commission may be removed from office by a vote of the majority of the City Council. A Commissioner may also resign with a formal letter of resignation submitted to the City Clerk and City Council.

A maximum of two (2) unexcused absences are permitted within a twelve month time period. This includes all meetings, i.e., Regular, Adjourned, Joint and Special. However, up to two (2) additional medical emergency absences are permitted within the same twelve month period.

Any member who exceeds the above absence allowance will automatically forfeit their Board or Commission seat, and will be allowed 14 days after they have been notified by the City Clerk to submit a resignation letter. If no letter is submitted, the seat will be deemed vacant.

Orientation Training

At the October 16, 2007 City Council Meeting, the City Council made mandatory an Orientation Training process for all new Board/Commissioner members. Newly appointed members are required to attend one training session provided by the City prior to attending their first Board/Commission meeting. Training is held once per year after appointments are made in the Summer.

Orientation Training will focus on the content of this Handbook, and will be provided by the City Manager, City Attorney, City Clerk, City Staff, a City Councilmember and a current Commissioner chairperson. Attendees will have an opportunity to ask questions and discuss concerns during the training.

If appointed to fill a vacancy outside the normal appointment time-period (when training is not available), newly appointed Commissioners shall review an Orientation Training video and sign an affirmation with the City Clerk prior to attending their first Commission meeting.

Legal Requirements

Assuming Office

The Political Reform Act of 1974 requires that public officials must file Statements of Economic Interests on an annual basis.

The Act also requires public officials to disqualify themselves from participating in decisions which may affect their financial interests annually.

The Fair Political Practices Commission (FPPC) is the agency with the primary responsibility for interpreting and enforcing the Act. The Act requires local agencies, such as the City of Manhattan Beach, to administer the processing of Statements of Economic Interests.

After your appointment by the City Council, the City Clerk will provide Commissioners with the necessary forms to be completed, as required by the State of California. Questions regarding economic interests should be made with the Fair Political Practices Commission in Sacramento at (916) 322-5660 or toll free at (866) 275-3772.

Conflict of Interest

Because Boards and Commissions address a wide range of issues, it is likely that matters will be discussed which directly or indirectly impact Board and Commission members. The proper operation of local government requires that public officials, including Board & Commission members, are independent, impartial, and responsible to the people. State law prohibits certain conflicts of interest. Some conflicts are treated as criminal acts. If you or a member of your family has a financial interest in a matter that is about to be discussed, you should disclose that during the meeting, prior to the discussion of the item, leave the dais and refrain from participating in the discussion or vote. If you have a question about what may or may not be a conflict of interest you may consult the City Attorney for clarification prior to the meeting. However, there is no attorney client privilege for this type of discussion. (See Appendix)

The Ralph M. Brown Act

The Ralph M. Brown Act (The Brown Act) (California Code Section 54950 through 54962), described as the strictest open meeting law in the United States, requires that all Board and Commission business be conducted in public. The Act further requires that all meetings of Boards & Commissions be open to the public, without any restriction on the right of the public to attend, and that all actions to be considered be set forth on the Boards and Commission's written agenda. (See Appendix)

Board & Commission members should not discuss Board/Commission business with a quorum of other Board/Commission members outside of a public meeting. A quorum is defined as a majority of the members of the official body.

Off-agenda discussions (in person, on phone, in e-mail or otherwise) of agenda items or Commission business among a quorum of Commissioners are prohibited even if serial in nature. For example, if Commissioner X e-mails Commissioner Y regarding Commission business and forwards Commission Y's response to Commissioner Z, a Brown Act violation may have occurred. If a citizen or staff member e-mails Commissioners X, Y and Z soliciting their opinions about an agenda item and each replies, a Brown Act violation has probably occurred. Commissioners should be careful what they put in, and to whom they send e-mails.

Should you have questions regarding the Brown Act, please contact the City Attorney.

Ethics Training

~~State law requires~~ The City Council has requested that City Board and Commission members attend ethics training every two years. A member has one year from the time of appointment to complete the training. The training must be repeated every two years while serving. Your City Staff Liaison and/or City Clerk will keep Board/Commission members notified of upcoming training. ~~(See Appendix).~~

Agenda Packets, Minutes & Meetings

Agenda Packets

Prior to each Commission meeting, City Staff prepares an Agenda, a Staff Report, and accompanying documentation (Agenda Packet). This information is posted 72 hours before the meeting on the City's website, the City's posting boards, and is available via hard copy at City Hall. Board & Commission members will receive their Agenda Packet delivered to their home or other specified location the Friday prior to the week of their meeting.

Commissioners who have questions after reviewing the Agenda Packet are encouraged to call their City Staff Liaison prior to the meeting. This way, Staff can prepare additional information for the meeting, if necessary. While it is appropriate to discuss the issues with Staff, it is equally important to refrain from making a decision prior to the meeting. As mentioned, the Brown Act requires decisions to be made during the public meeting. Thus, if you learn information from your discussion with Staff prior to the public meeting, it is important that you state so on the record during the public meeting. The same holds true with respect to any discussions you have with the stakeholders or public before the meeting.

Minutes

Minutes are taken by City Staff at each meeting. Minutes contain a record of the proceedings, motions and actions, date, time location, staff and Commissioners present, adjournment time, and date, time and location of next meeting.

Minutes are not verbatim, but rather summarize accurately the position, vote and reasoning of each Commissioner. While minutes may reflect statements, positions and the vote of each member, the recommendation to Council will be by the collective body as opposed to individual members. Where the Commissions recommendations are different from Staff's, Staff will present both positions. The minutes shall identify all individuals who comment on issues.

Minutes become an official record once they are approved by the majority of the Commission members at the following meeting. Corrections to the minutes may be made during public meetings with the approval of the majority of Commissioners.

Meetings & Quorum

A quorum (a majority of the members of the body) is essential to conduct an official meeting.

Regular Meetings

The Brown Act requires that the time and place of the scheduled meetings be set forth in rules and regulations of the Commission and that an agenda be published 72 hours in advance.

Adjourned Meetings

City Staff may cancel a meeting for lack of a quorum by posting a notice in advance of the meeting time.

Special Meetings

Pursuant to the Brown Act, the Chair of a Commission may call a special meeting at any time with 24 hours advanced written notice. Written notice must be sent and received by each member of the Commission and then posted for the general public. The notice must state the time and place of the meeting, and all agenda items to be transacted or discussed. The agenda must be posted at least 24 hours prior to the special meeting at all City posting locations.

Joint Meetings

Once per year, Council and Staff will schedule a Joint Meeting with each Board and Commission. This is an informal meeting at which Commissioners, Staff and Councilmembers can discuss issues of mutual interest and concern in a non-agendized forum. Its dual purpose is to serve as a venue for attendees to get to know each other better, and for City Council to express appreciation for the service of the Commissioners. Joint meetings are public meetings and are noticed accordingly.

Rules, Regulations & Decorum

Running the Meeting

The Chairperson presides and conducts the meetings in accordance with the law, polices and procedures as set forth in the Roberts Rules of Order (See Appendix).

The Commission Chair is a one year term (June to May) and is rotated amongst the Commissioners in order of their seniority on the Commission.

Relationship Between the Commission & City Staff

The City Manager appoints a Staff Liaison for each Board and Commission. He or she becomes the primary contact between the Commission and the City Council. The Staff Liaison is the Commissioner's primary staff contact. If a Commissioner sends a letter or e-mail message to the City Council and or City Manager concerning Commission related issues, a copy should be sent to the Staff Liaison as well.

The role of the Staff Liaison is to provide information to the Commissioners and Board members to assist them in making a recommendation to the City Council. The Staff Liaison prepares the Agenda Packet and ensures that all public notices are made. He or she also attends each meeting, and prepares the Staff Report and Minutes that go to City Council with the Commissions' recommendations. Commissioners may request any changes to the meeting minutes during the meeting at which the minutes are being presented for approval.

Communication with the Public & Stakeholders

Commissioners are often contacted by the public or other stakeholders with regard to matters before them. It is appropriate to engage in this communication in order to learn more about the issue. However, it is important that Commissioners refrain from making decisions on the pending issue prior to the meeting. Keeping an open mind will make it easier for Commissioners to understand all sides of an issue once it is presented at the public meeting.

Commissioners may encourage those who take an interest to attend and participate in the Commission meeting. Commissioners should keep in mind, however, that many people who may be impacted will not be in attendance. Commissioners should endeavor to represent the interests of all the residents of Manhattan Beach, not just the individuals present at a meeting. Commissioners should use their best judgment to make the decision that is best for the entire community.

As mentioned earlier, the disclosure of site visits, as well as prior contact with applicants, opponents or other stakeholders (known as "Ex Parte Communications") is required prior to discussing and acting on a matter.

Communication with Council

It is the Staff Liaison's role to communicate to Council the findings of Commissions. Where the Commission recommendations are different from those of the Staff, Staff will present both positions to Council in the Staff Report and presentation.

Commissioners are not permitted to speak during City Council meetings on topics that have come before their Commission. They may, however, make phone calls or send e-mails to the full City Council, with copies to their Staff Liaison.

As mentioned, Commissioners will have the opportunity to meet directly with City Council at least once per year during the Joint Meeting, where informal discussion on all issues is appropriate.

Public Agency Requirements

The cost and time it takes to complete a public project often surprises people. As a member of a Board or Commission, you may hear people complain that the cost of a City project is much more than they have paid for similar work. What many people don't know is that, as a public agency, the City must require contractors to pay prevailing wages to all their employees as defined by state or federal guidelines. In addition, the selected contractors must meet the City's insurance requirements as well as provide a performance bond. All of these requirements add to the overall cost of the project but help ensure a high quality of work by a reputable company

Competitive bidding is a method used to ensure that the City receives a fair price commensurate with the quality required. Purchase of supplies, equipment or services of an estimated value less than \$20,000 are informally bid by the General Services Manager. Requirements equal to or in excess of \$20,000 requires formal, sealed bidding with the Council awarding the contract (Council can waive this requirement if deemed in the City's best interest). The City awards bids to the lowest responsible bidder. This means the bidder who best responds to price, quality, service, fitness or capacity to the particular requirements of the City; price alone is not the determining factor. The bid process can be very time consuming including a Request for Proposal that must be developed, advertised, and distributed. Then proposals must be received, evaluated, and presented to the City Council for approval. This process can easily take 3 - 4 months. Of course, these legal requirements are in place to ensure that contracts are awarded fairly and in a manner that safeguards public funds.

Keep in Mind ☺

Teamwork

We are honored to have you as part of our team. Your appointment places you among others who share your commitment to the community and your fellow citizens of Manhattan Beach. You will realize that in order for a local governmental agency to effectively serve the needs of its residents and businesses, there must be cooperation and teamwork at every level including the City Council, Board & Commission members and City Staff.

Different Opinions Are Welcome

Everyone sees the world in a slightly different way, and the five or more individuals serving on a Board or Commission are no different. You will have your own opinions and views with respect to certain issues, as will your colleagues. You should respect the opinions and views of others whether they are Staff, other Board/Commission members, or individuals speaking before your Board or Commission.

As a Board or Commission member, you invest a great deal of time and energy to arrive at a meaningful recommendation for the City Council's consideration. Don't be upset or frustrated if Staff members disagree with the Board/Commission's recommendation. City Staff is motivated by the same goals as the Board or Commission members – namely, the best interests of the City. They too have an obligation to present their best recommendations to City Council. The ultimate decision rests with the City Council and it is incumbent upon City Staff to provide the City Council with all the relevant information to make the best decision. At times this may include positions that conflict with Commissioner's positions or the Commission's recommendation.

It is possible that the Commission and Staff may present to Council opposing recommendations. Should this occur, Staff will objectively present both recommendations in its Staff Report to Council.

We Value Your Service

As a member of a City Board or Commission, you play a very important role in making Manhattan Beach a great place to live and work. As a City Board or Commission member, you are asked to make recommendations on a number of issues, many of which have an equal number of supporters and opponents. You may find that making these recommendations is not always an easy task.

You will soon realize that the services the City provides, many of which require careful thought and planning, ensure the highest quality service while remaining cost efficient. You will learn that there are different rules and/or procedures required to accomplish goals and/or complete projects for a public agency than for a private company. Many of these requirements and regulations are unfamiliar to the average citizen. Finally, you will learn that it is much easier to criticize the decisions made by you and other appointed or elected officials than it is to actually make the decision.

However, you should take comfort in knowing that you are making a positive difference in your community. Without you and your fellow Board/Commission members' help and personal insight, the City of Manhattan Beach would not be the great place that it is!

Enjoy the Experience ... knowing that you are making a positive contribution to our community!

APPENDIX

THE BROWN ACT

CITY OF MANHATTAN BEACH
MEMORANDUM
CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE

TO: Mayor and City Council
FROM: Robert V. Wadden Jr., City Attorney
DATE: March 9, 2007
SUBJECT: Brown Act Update

On the occasion of the municipal election this memo will provide new council members with an introduction to the Brown act and continuing members with a refresher on the basic requirements of the Brown Act as well as updates to any revisions enacted in the last two years.

SUMMARY OF THE BROWN ACT

The Ralph M. Brown Act (the "Brown Act"; Government Code Sections 54950-54962.)¹ was enacted by the Legislature to ensure that the deliberations as well as the actions of local public agencies are performed at meetings open to the public and free from any veil of secrecy. (Section 54950.)

In furtherance of this goal, the Brown Act generally requires that meetings of the legislative bodies of local agencies be open to the public and properly publicly noticed.

The definition of "legislative body" is very broad, including City Councils, commissions, certain committees and even the boards of directors of some nonprofit corporations or LLC's. "Meetings" are also broadly defined to include any gathering, whether formal or informal, of a quorum of the legislative body where business is heard, discussed or deliberated upon.

Under the Brown Act, the legislative body is generally prohibited from taking action on any item not included on an agenda which was posted at least 72 hours before the time of a regular meeting. An "action taken" is defined as a collective decision or commitment by a majority of the members or an actual vote of the members. The Brown Act prohibits a majority of a legislative body from using direct communication among the members, even if done in serial fashion, through personal intermediaries such as a city manager, staff person or members of the public, or through communications by technological devices such as computers or e-mail, to reach a collective concurrence on actions to be taken. A quorum of the legislative body is prohibited from holding a meeting by similar means, even if a collective decision is not reached.

¹Unless otherwise noted, all statutory citations are to the Government Code.

Every agenda must contain a description of each item to be transacted or discussed, including items to be discussed in closed session. Exceptions to the agenda rule may be made in cases of emergency situations or subsequent need items when the required vote is made.

The Brown Act guarantees the public a right to participate by allowing communication with the legislative body on matters that are within the jurisdiction of the legislative body. Additionally, the Brown Act provides that the public must be allowed to address the legislative body on any agenda item prior to the time that a decision is made.

Closed sessions are an exception to the open and public requirements of the Brown Act. However, it must be remembered that closed sessions must also be listed on the agenda by specific matter and that such sessions are only authorized for specific subject matters. Once in a closed session the legislative body may not discuss other matters. The legislative body is required to reconvene after a closed session and if certain actions have been taken is required to make a public report.

Violation of the Brown Act is a misdemeanor if action is taken where a member of a legislative body intends to deprive the public of information to which the member knows or has reason to know the public is entitled. In addition to criminal penalties the public has a right to seek to cure violations of the Brown Act through civil actions.

I. APPLICATION OF THE ACT.

Section 54953 requires that all meetings of "legislative bodies" be open and public. "Legislative body" is defined to include the City Council as well as any board or commission whether permanent or temporary, decision making or advisory, created by formal action of the City Council. (Section 54952.) While the Act specifically exempts from its coverage any advisory committee composed of less than a quorum (i.e., less than a majority of the total voting members) of the members of the legislative body, such committees are included if there is continuing subject matter jurisdiction or a meeting schedule fixed by action of the City Council or if a non-council member is included on the committee. (Section 54952.)

A legislative body also includes a board, commission, committee or other multimember body that governs a private corporation (Including a nonprofit or LLC) if: 1) it is created by the City Council to exercise authority that may lawfully be delegated by the City Council; or 2) it receives funds from the City and the membership of the private corporation's governing body includes a member of the City Council who was appointed to the governing body by the City Council. (Section 54952(c).)

Under the Brown Act once a person is elected to the City Council, he or she is required to follow the Brown Act as though that person had already assumed office. (Section 54952.1.)

II. WHAT IS A MEETING?

A "meeting" is any gathering of a quorum of a legislative body, no matter how informal, where business of the legislative body is heard, discussed or deliberated upon. Meetings may not be held in circumvention of the Brown Act among a majority of the members by any means, including direct communication, personal intermediaries such as a City Manager or other staff person, or technological devices such as computers or telephones. (Section 54952.2.) Video teleconferencing and teleconferencing are allowed to be used in the conduct of meetings so long as a quorum of the legislative body is participating from within the jurisdictional territory of the public agency. (Section 54953(b).)

Meetings do not include:

A. Individual contacts/conversations between a member of the legislative body and any other person.

B. The attendance of a majority of the members of a legislative body at any of the following provided that a majority of the members do not discuss business that is within the jurisdiction of the local agency, unless such discussion is part of the scheduled program:

- 1) a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body; or
- 2) at an open and publicized meeting organized to address a topic of local concern by a person or organization other than the local agency; or
- 3) at an open and noticed meeting of another body of the local agency.

C. The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion provided that a majority do not discuss business of a specific nature that is within the subject matter jurisdiction of the legislative body.

While the Brown Act makes it clear that a quorum of council members may attend functions of other organizations (e.g., community meetings) the Attorney General has cautioned that asking questions, making statements or special seating arrangements at such meetings may transform them into meetings of the legislative body for Brown Act purposes. (81 Ops.Cal.Att.Gen. 156 (1998).)

III. WHEN IS ACTION TAKEN?

For the purposes of the Act, "action taken" is defined as:

- A. A collective decision by a majority of the members of a legislative body;
- or
- B. A collective commitment or promise by a majority of the members to make a positive or negative decision, this may be considered to have occurred without an actual vote; or
- C. An actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance. (Section 54952.6.)

IV. TIME AND PLACE OF MEETINGS.

- A. Regular meetings shall be held at the time and place set by ordinance, resolution or by-laws. (Section 54954(a).)
- B. Regular and special meetings must be held within the City's boundaries with limited exceptions. (Section 54954(b).)
- C. Meetings of Joint Powers Authorities must take place within the boundaries of at least one member agency. (Section 54954(d).)
- D. Meetings may not take place in any facility that discriminates or where persons may not be present without making a payment or purchase. (Section 54961.)

V. NOTICE REQUIREMENTS.

- A. Regular Meetings. Mailed notice of every regular meeting must be given to any person who has filed a written request for such notice at least one week prior to the meeting. Agendas must be posted at least 72 hours prior to the start of the regular meeting. (Section 54954.1.)

B. Special Meetings. The Act permits special meetings to be called at any time either by the presiding officer or a majority of the members of a legislative body. The meeting can be called by delivering written notice personally, by mail or "other means" to each member of the legislative body, as well as to each local newspaper of general circulation, radio, and/or television station requesting notice. (Section 54956.) The notice must be received at least 24 hours before the time of the meeting. The notice must also be posted 24 hours before the meeting in a location which is freely accessible to the public. The notice must include the time and place of the meeting, and identify the business to be transacted or discussed. Only the business set forth in the notice may be considered at the meeting. Notice is not required for those members of the legislative body who have waived it or who attend the meeting despite the absence of formal notice. Notice is required even if no action is taken at the special meeting. (Section 54956.) If a special meeting is called at least one week prior to the date of the meeting, mailed notice must be given at least one week prior to the meeting to any person who has filed a written request for such notice. (Section 54954.1.)

C. Adjourned Meetings. Regular or special meetings may be adjourned or continued to a specific date, time and place. Less than a quorum can adjourn a meeting. No notice is required, unless a meeting is adjourned to a new time and date because all the members are absent, in which case the Clerk must give the same notice as is required for a special meeting. A copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the meeting is to be held. A copy of the notice of the continued meeting must be immediately posted if the hearing is continued for less than 24 hours. (Sections 54955, 54955.1.)

D. Emergency Meetings. An exception to the 24 hour notice and posting requirements for special meetings is allowed in the case of an emergency situation involving matters which require prompt action due to the disruption or threatened disruption of public facilities. The Act defines an "emergency situation" as follows:

- (1) A work stoppage or other activity which, by a determination of a majority of the city council, severely impairs public health or safety or both, and/or.
- (2) A crippling disaster or other activity which, by a determination of a majority of the city council, severely impairs the public health or safety or both.
- (3) A "dire emergency" such as a terrorist act or other act of mass destruction or other act or threatened act which is so imminent that a regularly noticed meeting is impractical.

In these circumstances, the presiding officer, or his or her designee, must notify each local newspaper of general circulation and radio or television station which has requested notice of special meetings by telephone one hour prior to the emergency meeting. A closed session on an appropriate subject is permitted during an emergency meeting if authorized by a two thirds vote of the legislative body. The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll-call vote, and any action taken at the meeting must be posted in a public place for a minimum of 10 days as soon after the meeting as possible. (Section 54956.5.)

E. New or Increased Taxes or Assessments: Actions to adopt or increase taxes and assessments (unless the assessments are subject to the notice and hearing requirements of Proposition 218) require both a public meeting and public hearing. The legislative body must provide a joint notice of both the public meeting and public hearing at least 45 days before the public hearing at which the tax or assessment is considered. The public meeting must be held prior to the public hearing. In addition to the meeting and hearing there are also specific notice requirements. (Section 54954.6.)

VI. AGENDA REQUIREMENTS.

Section 54954.2 of the Act requires the preparation of a written agenda for each regular or regular adjourned meeting of each legislative body. The agenda must be posted at least 72 hours in advance of the meeting to which it relates. The agenda must contain a description of each item of business to be "transacted or discussed", including items to be discussed in closed session. 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 that is freely accessible to members of the public. (Section 54954.2(a).) Merely posting an agenda inside of City Hall is not sufficient as City Hall is locked evenings and weekends. If requested the agenda must be made available in appropriate alternative formats to persons with disabilities. (Section 54954.1.)

VII. PROHIBITED ACTIONS/EXCEPTIONS.

The legislative body cannot take action on any item which does not appear on the posted agenda. The prohibition does not prohibit members of a legislative body from briefly responding to public comments, asking questions of staff, making a brief announcement or report, or requesting staff to bring back a matter on a future agenda. (Section 54954.2(a).) There are, however, exceptions to this general rule. Before a non-agendized item may be discussed, the legislative body must publicly identify the item and it must fall under one of the following categories:

A. "Emergency Situation". An "emergency situation" is defined as a "work stoppage or other activity which severely impairs public health, safety or both" or a "crippling disaster which severely impairs public health, safety, or both." (Section 54956.5.) Before proceeding to act upon an emergency item not appearing on the agenda, the legislative body must by a majority vote determine that an emergency situation exists. The legislative body should include in the minutes of its meeting the facts upon which it relied in finding the existence of an emergency situation. (Section 54954.2(b)(1).)

B. "Subsequent Need" Items. The legislative body may act upon an item not appearing on the agenda if it finds by a two-thirds vote, or by a unanimous vote if less than two-thirds are present, that there is a need to take immediate action and that the need to take action arose after the posting of the agenda. Again, if such a determination is made, a statement of facts upon which the determination is based should be included in the minutes to support the action taken. (Section 54954.2(b)(2).)

C. Held Over Items. Items may be acted upon at a meeting if:

- (1) The item appeared on a properly posted agenda for a previous meeting; and
- (2) The previous meeting occurred not more than five calendar days prior to the date of the meeting at which the item is proposed to be considered; and
- (3) The item was continued from the previous meeting to the meeting at which action is proposed to be taken. (Section 54954.2(b)(3).)

VIII. PUBLIC PARTICIPATION. Each agenda for a regular public meeting (but not for special meetings) must provide the public with an opportunity to address the legislative body on matters not on the agenda but which are within the jurisdiction of the legislative body. (Section 54954.3(a).)

Every agenda for regular meetings of a legislative body must also provide the public the right to comment on agenda items before or during the time in which the legislative body is considering the issue. The only exception to this rule is if the public already had the right to address a committee composed entirely of members of the legislative body on that topic before or during the time in which the committee hears the item and the item being considered has not substantially changed since it was last considered by the legislative body. Similarly, notices for special meetings must also provide for an opportunity for the public to address the legislative body on any item described in the notice. (Section 54954.3(a).) The policy determinations to be made in terms of compliance with this provision are:

- (1) At what point on the agenda will the public discussion be permitted?
- (2) How much time should be permitted for each speaker?
- (3) Should there be an overall time limit for all public participation on specific items?

The legislative body may either allow public comment on agenda items at the time the items are called for discussion or at a predetermined time at the beginning of the meeting prior to the consideration of the matter by the Council. Reasonable time limits may be imposed on both the total amount of time allocated for public participation on particular items and on the time permitted to each individual speaker. (Section 54954.3(b).) However, as a general rule the time limit should not apply to an applicant for an item involving property rights (e.g.: a conditional use permit or variance application) or to any one who has a clearly identifiable property interest in the subject matter being considered. Due process requirements of both the U.S. and California constitutions require a fair hearing be afforded to such matters which could, in some cases, preclude or affect the length of time limits. At noticed public hearings the public should be permitted to speak only within the context of the opened hearing. While it is proper to request that individuals identify themselves before they speak a person who refuses to give an address or residence location cannot be prohibited from speaking.

When a public hearing has been held at a prior meeting and closed at that meeting but a resolution or other document is brought back for approval at a subsequent meeting without a continuance of the public hearing no public comment is required. In fact allowing public discussion on such an item might well violate the due process of the applicant or other interested party and violate the State Planning law.

IX. PUBLIC CONDUCT.

Subject only to those exceptions listed in the Act, all persons are permitted to attend any meeting of a legislative body. (Section 54953.) No member of the public wishing to attend may be required to register his or her name, provide addresses or other information, complete a questionnaire or otherwise fulfill any other requirement as a condition to his or her attendance at the meeting. (Section 54953.3.) A person speaking to the legislative body, however, may be required to identify him or herself.

Section 54953.5 of the Act allows any person who attends a public meeting of a legislative body to record the proceedings on a tape recorder unless the legislative body makes a reasonable finding that such recording constitutes or would constitute a disruption of the proceedings. This provision does not, however, permit secret recordings of "closed sessions." If it is the local agency that directs a recording be made, the recording is subject to public inspection at no charge. (Section 54953.5(b).) The

recording may be erased or destroyed 30 days after the recording is made. (Id.)

The legislative body may not prohibit or restrict the broadcast of its open and public meetings absent a reasonable finding that the broadcast would be disruptive. (Section 54953.6.)

The legislative body may adopt rules for decorum at meetings. Any conduct (such as yelling, clapping or demonstrations) which disrupts, disturbs or otherwise impedes the orderly conduct of the meeting may be prohibited and the individuals engaged in such conduct may be removed from a meeting. Expressions of support or opposition to matters before the legislative body, even if rude or inconsiderate, are constitutionally protected under the First Amendment to the United States Constitution and under the California Constitution as well. It is only when the conduct of an individual substantially "disrupts, disturbs or otherwise impedes" the conduct of the meeting that it can be prohibited and the person removed from the meeting. (White v. City of Norwalk (9th Cir. 1990) 900 F.2d 1421.)

Statements made at a Council meeting are subject to an absolute privilege from civil liability for defamation. (Civil Code section 47; *Cayley v. Nunn* (1987) 190 Cal.App.3d 300, 303; *Long v. Pinto* (1981) 126 Cal.App.3d 946, 948.) A statement made subject to absolute privilege is immune from civil liability even if made with actual malice. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 771.) Thus the statements made by any speaker at a City Council meeting (including Council members and staff), however virulent, unfounded and maliciously intended may not serve as the basis for a defamation action.

Additionally, the legislative body may clear the room and continue the meeting only on listed agenda items if the meeting is "willfully interrupted" by a group so that the orderly conduct thereof is "unfeasible and order cannot be restored by the removal" of the disruptive individuals. The media may remain if it is not part of the disruptive group. The legislative body may adopt rules to readmit nondisruptive persons. (Section 54957.9.) The legislative body may not adopt rules which prohibit public criticism of the City or the legislative body. (Section 54954.3(c).) Nothing prohibits a legislative body from taking a recess at any time during a meeting. A recess is frequently an effective way for a legislative body to defuse a disruption.

X. CLOSED SESSIONS.

The Act provides certain exceptions to the requirement that meetings be open. These exceptions are termed "closed sessions." (Section 54957.) The Legislature has specified the closed session descriptions which should be included on agendas in order to comply with the provisions of the Brown Act. (Section 54954.5.) Prior to holding a closed session the legislative body shall disclose the items to be discussed in

the open meeting; disclosure may be by reference to the agenda item. (Section 54957.7.) Closed sessions specifically authorized by the Act include the following:

A. Grand Jury. The members of a legislative body may give testimony in private before a grand jury, either as individuals or as a group. (Section 54953.1.)

B. License Applications. Closed sessions may be used to determine whether an applicant for a license who has a criminal record is sufficiently rehabilitated to obtain the license. (Section 54956.7.)

C. Security of Public Buildings. Closed sessions may be held with the Attorney General, the District Attorney, the Sheriff, the Chief of Police or any of their Deputies to discuss threats to the security of a public building or to the public's right of access to essential public services (such as water or electricity) or public facilities. (Section 54957.)

D. Personnel. A closed session may be held to consider the appointment, employment, evaluation, discipline or dismissal of a public employee, or to hear complaints or charges brought against an employee by another person or employee, unless the employee requests that the matter be conducted publicly. The employee must be given at least 24 hours written notice of his or her right to have the matter heard in open session. (Section 54957.) For the purposes of the personnel exception to the open meeting requirements, the term "employee" does not include any person elected to office, or appointed to an office by the legislative body of a local agency. However, the non-elective positions of the City Manager, City Attorney, department heads or other "similar administrative offices" of the City are considered employee positions. (Section 54957.)

The effect of this provision is to require that the appointment or removal of any public officer who is not an "employee" -- including councilmembers or members of a City Board or Commission -- be considered during a meeting open to the public. It also means that the presiding officer of each body must be selected during an open session.

The California Attorney General has stated that the question of which non-elective officers fall within the category of "other administrative officers" for the purposes of the exception must be determined on a case-by-case basis. However, it would appear that in no event would an officer holding an elective office, whether elected by the people or appointed to fill a vacancy in an elective position, be found to fall within the scope of this exception.

The Act also requires that the legislative body report on the record any roll call vote and any action taken during the closed session to appoint, employ, evaluate or dismiss a public employee at either the public meeting during which the closed session is held or at its next public meeting. (Section 54957.1.) However, care should be taken that information concerning a termination or a disciplinary matter is not disclosed which may

violate the employee's rights of privacy and subject the City to a lawsuit for damages on this basis.

The purpose of the personnel exception is to allow candid discussion on the performance of an appointed employee. "Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation" (Section 54957.) Since, as a practical matter evaluation and compensation are usually irrevocably linked one way of handling the compensation aspect of the evaluation is to appoint a committee of the City Council to negotiate compensation adjustments making recommendations to the Council which can be acted upon in open session. (See: *San Diego Union v. City Council of San Diego* (1983) 146 Cal.App.3d 947.)

E. Labor Relations Matters. Section 54957.6 provides for closed sessions to permit the legislative body to review its position and to discuss with and instruct its designated representative(s) regarding the salaries, salary schedule, or compensation paid in the form of fringe benefits, of its represented or unrepresented employees. Closed sessions for this purpose may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. These discussions may include discussion of available funds and funding priorities, but only as they are relevant to providing instructions to the City's representative. The City may not take final action on the proposed compensation of one or more unrepresented employees in closed session. The Council may appoint less than a quorum of its members to act as its representative regarding negotiations with an unrepresented appointed employee such as a city manager.

F. Real Property Negotiations. Section 54956.8 of the Act authorizes closed sessions to discuss specific real property transactions and to direct actions of the City's negotiators in negotiating the terms of the sale, acquisition, lease or lease renewal of property. A legislative body may meet in closed session with its property negotiator(s) concerning the purchase, sale, exchange or lease of real property in order to discuss negotiations and provide instructions to the negotiator. Prior to the closed session, the body must identify in open session or place on the agenda a description of the property involved, the owner of the property involved and the party negotiating on behalf of the City.

G. Pending Litigation. Section 54956.9 provides for a closed session for purposes of discussing "pending litigation". Litigation is considered pending when:

- (1) A proceeding has been formally initiated against the City in court, before an administrative body, hearing officer or arbitrator;
- (2) (a) When the City faces significant exposure to litigation; or

(b) The body is meeting to determine whether a significant exposure to litigation exists; or

(3) When the City has decided or is deciding to initiate litigation.

Prior to going into closed session to discuss litigation, the legislative body must state on the agenda or publicly announce the Government Code section subdivision which authorizes the closed session.

Under Section 54957.2, the legislative body may, but is not required to, designate someone to attend the closed sessions and keep minutes. If such a minute book is made, it is not subject to disclosure under the California Public Records Act. It may, however, be subject to discovery in litigation, particularly if the litigation alleges Brown Act violations or other impropriety by the Council. Manhattan Beach did once keep closed session minutes. However that practice ended many years ago and we have consisted recommended against closed session minutes.

XI. PUBLIC REPORT OF CLOSED SESSIONS.

After closed session, the legislative body is required to reconvene in open session prior to adjournment. (Section 54957.7.) The legislative body of a local agency is required in certain specific circumstances to publicly report on specified actions taken in closed session and the vote or abstention of every member thereon. Reports may be made orally or in writing. Copies of contracts, settlement agreements or other documents finally approved or adopted in closed session must be released to those who timely request them on the next business day. (Section 54957.1.)

XII. DISCLOSURE OF CONFIDENTIAL INFORMATION ACQUIRED IN CLOSED SESSION.

No person present at a closed session may disclose confidential information acquired in a closed session to a person not entitled to the information without the consent of a majority of the legislative body. (Section 54963.) Employees may be disciplined for doing so and members of the legislative body may be referred by the body to the grand jury for such a violation. Injunctive relief against such violations is also authorized. However, no action may be taken against someone who makes statements to a grand jury regarding matters discussed in closed session, or someone expressing opinions regarding the propriety or legality of actions taken in closed session or making statements protected under state "whistleblower" statutes.

XIII. AGENDA AND WRITTEN MATERIALS AS PUBLIC RECORDS.

The Brown Act provides that agendas of a public meeting of the legislative body, as well as any other "writings," currently defined by law as public records, must be available for

inspection when distributed to all, or a majority of all, of the members of the legislative body by one of its members, officers, or employees. These writings are currently required to be available for inspection at the time that they are distributed to the members of the body. In addition, copies of these documents must be made available to the public upon request without delay pursuant to the Public Records Act. (Section 54957.5.) Writings which are distributed during a public meeting shall be made available at the meeting if it was prepared by the City and after the meeting if prepared by someone else. (Section 54957.5.) These documents are required to be made available in alternate formats (e.g., Braille) at cost if requested by a person with a disability. (Section 54957.5.)

XIV. REMEDIES/PENALTIES.

It is a misdemeanor for any member of a legislative body to attend a meeting where action is taken in violation of the Brown Act where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.

The district attorney or any interested person may bring an action by mandamus, injunction or declaratory relief to stop or prevent violations, or threatened violations, of the Brown Act by members of a legislative body or to determine whether the actions or threatened actions come under the purview of the Act. (Section 54960.) As a practical matter no elected official has ever been prosecuted in Los Angeles County

No litigation may be commenced, however, unless and until the aggrieved party has filed with the legislative body a "written demand" to cure or correct the action alleged to be taken in violation within 30 days after the action was taken (90 days if the action taken was in closed session). The written demand must clearly describe the challenged action and the nature of the alleged violation. Within 30 days of receipt of a written demand, the legislative body must cure or correct any defect in the action taken and inform the demanding party of the actions taken to cure or correct. Alternatively, the legislative body may, within this 30-day time period, advise the demanding party that the action was validly taken and decline to take any corrective action. If the legislative body takes no action, the inaction is deemed a decision not to cure or correct.

Thereafter, the challenging party must, within 15 days following the receipt of the written notice of the legislative body's decision with reference to cure or correction, or, if no action is taken 15 days following the expiration of the 30-day period to cure, file the lawsuit or thereafter be barred from commencing the same.

Where a lawsuit is timely filed, the action taken by the legislative body cannot be found to be null and void if any of the following circumstances are found by the court to exist:

- A. The legislative body acted in substantial compliance with the provisions of

the Act; or

- B. The action taken was in connection with the sale or issuance of bonds, notes or other evidences of indebtedness or other contract relating thereto; or
- C. The action gave rise to a contractual obligation such as a competitive bid upon which some party has in good faith relied to its detriment; or
- D. The action taken was in connection with the collection of any tax.

If the court in any such action determines that the legislative body took action which cured or corrected the defect, then the action must be dismissed with prejudice. The fact that a legislative body took action to cure or correct an action will not be admitted as evidence of a violation.

Where the court finds in such an action that the legislative body has violated the Act, it may award costs and attorneys' fees to the party bringing the action. The court may also award costs and attorneys' fees to a public entity where it is found that the public entity prevailed in the case and that the lawsuit was "clearly frivolously and totally lacking in merit." (Section 54960.5.) As a practical matter defendants in Brown Act lawsuits seldom are awarded attorneys' fees.

cc: Geoff Dolan, City Manager
Liza Tamura, City Clerk
Department Heads

**CONFLICT
OF
INTEREST**

**CITY OF MANHATTAN BEACH
MEMORANDUM
CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE**

TO: Mayor and City Council

FROM: Robert V. Wadden Jr., City Attorney

DATE: March 9, 2007

SUBJECT: Conflict of Interest Orientation

This is a brief overview of conflict of interest law provided as an orientation to the entire Council on the occasion of the recent Municipal election.

I. The City Attorney's Role

The city attorney does not and cannot anticipate a potential conflict of interest on the part of City officials. To do so would require being fully aware of the financial details of each official's personal life. The city attorney is available to advise any council, commission or staff member any time they have a question about conflict law in general or their own particular potential conflict. However, council members, commissioners and staff are ultimately responsible for deciding when and whether or not a potential conflict exists and how to respond.

The City Attorney's role regarding conflicts of interest is somewhat different than with other legal matters. Recent case law has clarified that the attorney/client privilege, which normally protects most communications between elected officials and the public agency's attorneys, does *not* cover communications regarding conflicts. That is because the primary duty owed by a public attorney is to the public entity they represent, not to individual elected or appointed officials. A public attorney has an obligation to insure that the agency's actions are lawful. When an official with a conflict participates in a decision that decision may be invalidated. Thus it would be a breach of duty and professional ethics for a public agency attorney to permit or protect a public official whose actions have rendered an act of the agency unlawful. The attorney is obligated, where his or her advice has been ignored, to advise the rest of the Council regarding the legal implications of a member voting with a conflict. While a city attorney is available to provide technical advice regarding conflicts, the attorney is not representing the inquiring official in an attorney/client relationship as he or she would be regarding other City matters.

Nevertheless, Council and commission members should feel free to ask about conflict situations. It is far better to be told ahead of time that you have a conflict and take the appropriate action to recuse yourself, than to have someone else bring it up at a public meeting. It is best to consult the city attorney as early as possible. If the situation is complex it gives the attorney time to consult legal authority and provide the most

accurate answer. Most conflict situations can be quickly and readily analyzed but occasionally may be complex or involve areas where the law is unclear. In addition the attorney will often have questions about the specifics of relevant property ownership or financial interests which may be preferable to have answered in private rather than at a public meeting.

Once the attorney has advised whether or not there is a legal conflict and whether or not a vote is legally permissible the final decision is up to affected official. However, if conflict advice is disregarded the city attorney may be obliged to report the conflict to the rest of the Council or Commission to ensure that whatever action they take is legally valid. In addition in a prosecution for violating the conflict of interest laws the fact that an individual ignored advice not to vote would make it easier to establish criminal intent. However, it is important to remember that an opinion from the city attorney is only guidance, not a guarantee that no conflict exists.

II. The FPPC

The Fair Political Practices Commission ("FPPC") is the State agency empowered to administratively enforce, interpret and formulate regulations and procedures to implement the Political Reform Act. The FPPC will give advice both formally, in the form of letter opinions, and informally over the telephone.

Letter opinions require a written request (usually through the City Attorney but the FPPC will accept requests directly from elected officials) and a response may take six to nine weeks. The responses are printed in the FPPC's monthly bulletin and copies are available to anyone desiring them. Although the FPPC will disclaim these letter opinions as binding authority, in practice the Agency does not often reverse the opinions expressed in them.

FPPC staff is available to give advice over the telephone. This advice is less reliable than that published in the opinion letters occasionally representing only the opinion of a single staff member. However, it is ordinarily available instantly and if it is a commonly asked question the answer you receive should accurately represent the FPPC's position on the issue.

Caution should be used in dealing with the FPPC since contacts with them have been known to initiate investigations. This is why most opinion letter requests are done through the city attorney who will usually pose the question as a hypothetical without names or specific facts being mentioned.

III. What To Do If You Have A Conflict

If you have been advised that you have a conflict of interest and decide to follow the advice you must abstain from any discussion or action on the item which involves the conflict. The regulations now require a council member or commissioner with a conflict to leave the dais. However, the regulations no longer require that a conflict be announced and that the conflicted official explain the specific reasons for the conflict.

Does your status as a public office holder mean that you lose your First Amendment freedom of speech to speak out on the issues that matter most to you? This is not the case but the law is tricky here. State law provides that an official with a conflict of interest may appear "...as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests. . . ." (2 Cal.Code of Regs sect. 18702.4(2).) In order to do this the official should step down from the dais and appear at the podium used by the public. The official should preface his or her remarks to explain that they are speaking out as a concerned citizen with an interest in the decision and should be subject to the same time and other limitations as other public speakers. At no time should the official enter into a dialogue with members of the presiding body. The subject matter of the comments made should relate directly to the specific interest of the conflicted official and should not be general or policy oriented in nature. An official with a conflict of interest may not participate in any capacity in a closed session, the subject matter of which is related to the conflict. (2 Cal.Code of Regs sect. 18702.1(c).)

IV. What Is A Conflict of Interest?

Discussion in this memo is limited to legal conflicts. State law provides a number of situations where officials are legally prohibited from participating in the decision making process. These legal conflicts are based entirely on financial relationships and do not factor in friendships, or family relationships (other than marriage). In circumstances where the law does not recognize a conflict and there is no legal prohibition on participation but there is the appearance of a conflict, or common sense or the official's personal morality might dictate that a moral or ethical conflict exists (e.g.: a sibling with whom a public official has no financial relationship and thus no legal conflict, is involved in a decision on which public official is to vote), the public official may desire to abstain from participating in a decision even though the law does not require it.

A. Conflicts under The Political Reform Act

Government Code sections 87100 et seq. contain the conflict of interest provisions of the Political Reform Act. These sections are enforced administratively by the Fair Political Practices Commission ("FPPC") which has adopted detailed regulations regarding conflicts contained in the California Code of Regulations. (2 Cal.Code of Regs

sections 18700, et seq.) The FPPC may impose administrative fines on violators. The district attorney also has the right to criminally prosecute violations of these sections.

Government Code section 87100 states: "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."

(a) Participation

When does an official participate in making a decision? The courts have construed this concept broadly so that any participation in discussion, even where the official does not vote, may constitute sufficient participation to create a legal conflict.

The one exception to the prohibition against participation is when an official's "...participation is legally required for the action or decision to be made." (Government Code section 87101.) This is known as the "rule of necessity." It does not apply to use of the conflicted official's vote as a tie breaker but applies in situations where a minimum number of votes is legally required to take an action and a unanimous vote with the abstention of the conflicted official would be insufficient to satisfy the minimum vote requirement. For example an approval of a monetary expenditure normally requires three votes on a five member council. If only the quorum of three were present and one of those three had a conflict the rule of necessity would allow the conflicted member to cast a vote to allow approval of the expenditure. However if there were four members present and the non-conflicted members voted 2 to 1 to approve the expenditure the conflicted member would not be allowed to vote since the three votes were potentially available to pass the action. The rule of necessity should never be invoked without obtaining a legal opinion about its appropriateness.

(b) Financial Interest

What is a financial interest? The answer to this question is complex and will vary depending on the source of the income, the nature of the income, the decision which involves the financial interest and other relevant facts. We will endeavor to provide some rough guidelines in this memo but they should not be construed as an exhaustive analysis nor as a substitute for obtaining a legal opinion on the particular facts of a potential conflict situation.

Government code section 87103 provides the basic guidelines. If a decision in which the public official participates will have a "material financial effect" of \$500 dollars or more in any one year period on certain financial interests of the official a conflict of interest exists. These interests are: (a) any business entity (corporation, partnership, limited partnership, sole proprietorship) in which the official has a direct or

indirect¹ interest of \$2,000 or more; (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more; (c) any source of income generating a cumulative amount of \$500 or more (either received or promised) in the 12 months prior to the decision (this would include income generated by employers, clients, or customers); (d) any business entity for which the official is a director, officer, partner, trustee, or manager (this does not include public entities or nonprofit corporations); any donor of a gift or gifts in a cumulative amount of \$250 in the twelve months prior to the decision. Ownership of stock in Fortune 500 companies is subject to a separate analysis based in part on the number of outstanding shares, the percent owned by the decision maker and the directness of the impact of the decision on the corporation.

(c) Material Financial Effect

Determining whether or not an official has a financial interest in the subject matter of a decision is relatively simple. However, having a financial interest does not preclude an official from voting. It is only where the particular decision to be made has a “material financial effect” on the interest that a conflict arises. Determining whether or not a particular decision has a “material financial effect” on a financial interest of the official is anything but simple. An attempt at a complete analysis in this memo would probably only be an oversimplification and misleading. However a few general comments may be helpful.

Perhaps the most common situation creating conflict questions is property ownership. The law establishes a presumption that any decision the impacts of which will occur within 500 feet of property owned by an official will have a “material financial effect.” This is true whether the net effect is positive or negative. However, unless the property itself is the subject of the decision (e.g., a conditional use permit for development of the property) this is a refutable presumption and the official can vote if it can be shown that no effect will occur or that the “public generally” exception (see below) applies. If the effects of a decision occur outside the 500 foot area there may still be a conflict of interest if the decision will have a direct effect on the property. In jurisdictions with populations over 25,000 the fact that the property is the primary residence of the official is irrelevant to the analysis.

A public official who leases property may find that a decision has a “material financial effect” on the property if the use, rental value, or lease term of the property is directly affected by the decision.

The “public generally” exception provides that no conflict exists where the benefit from the decision is substantially the same as it is on a “significant segment” (usually

¹ An indirect interest is one owned by a spouse, dependent child, trust, or agent

10% of the jurisdiction's population).

Decisions regarding a significant financial effect on business entities involve a complex analysis of the effect of the decision and the size and significance of the ownership interest of the public official.

In most situations the analysis regarding "material financial effect" of decisions should be made with the assistance of the city attorney or the FPPC.

B. Conflicts Under Government Code Section 1090

Government Code section 1090 prohibits a public entity from entering into a contract in which a decision maker for the agency has a financial interest. This section is not in the Political Reform Act. It is not enforced by the FPPC but by the Attorney General and district attorneys. Where an official has a financial interest in a contract (e.g. has an ownership interest in or has received income from the contracting entity) it is not sufficient for the official with the conflict to abstain from participating in the decision, the decision itself is prohibited. The courts have determined that participation in a decision may extend beyond voting on a contract and includes making recommendations regarding or indirectly influencing the decision (e.g., this could include a city manager, department head or purchasing officer's role in a transaction).

Government Code section 1091 has a laundry list of exceptions to the scope of 1090 conflicts but the law is complex and does not have the benefit of detailed regulations as does the Political Reform Act. Questions about 1090 violations are best addressed by the city attorney. Unfortunately the FPPC will not address any 1090 issues and the Attorney Generals' office does not have a hot-line to address questions from the public.

cc: Geoff Dolan, City Manager
Liza Tamura, City Clerk
Department Heads