

OFFICE OF THE COUNTY COUNSEL
COUNTY OF NEVADA

ALISON A. BARRATT-GREEN, COUNTY COUNSEL
AMANDA S. UHRHAMMER, ASSISTANT COUNTY COUNSEL
JAMIE L. HOGENSON, DEPUTY COUNTY COUNSEL
KATHRYN E. JACOBS, DEPUTY COUNTY COUNSEL
SCOTT A. MCLERAN, DEPUTY COUNTY COUNSEL
RHETTA K. VANDER PLOEG, DEPUTY COUNTY COUNSEL



ERIC ROOD ADMINISTRATIVE CENTER
950 MAIDU AVENUE, SUITE 240
NEVADA CITY, CA 95959
TELEPHONE (530) 265-1319
FACSIMILE (530) 265-9840
county.counsel@co.nevada.ca.us

NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo

MEETING DATE: March 14, 2017

TO: Board of Supervisors

FROM: Alison A. Barratt-Green, County Counsel

SUBJECT: Introduce and Waive Further Reading of An Ordinance Amending Appendix I to Section A-II 22.3 of Article 22 of Chapter II of the Nevada County Administrative Code Regarding the County's Conflict of Interest Code.

RECOMMENDATION: Introduce and waive further reading of the attached Ordinance Amending Appendix I to Section A-II 22.3 of Article 22 of Chapter II of the Nevada County Administrative Code regarding the County's Conflict of Interest Code.

FUNDING: Not applicable.

BACKGROUND:

Under the California Political Reform Act (the "Act"), all public agencies are required to adopt a conflict-of-interest code. This Code lists County positions that make or participate in making governmental decisions and are therefore required to file annual Statements of Economic Interests (Form 700s). The Code also determines which financial interests must be disclosed. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests (including investments, interests in real property, sources of income and business positions) that may create conflicts of interests or otherwise affect a public official's decision-making. The Act applies to both paid and volunteer positions.

State law requires the County to review, update and make corrections to this Code every two years, in even numbered years. This review is required to determine whether certain job classifications should be added or deleted from the list of covered positions, and whether the categories of disclosure for each position should be defined or assigned differently. Any changes must be approved and become effective by December 31, 2016.

The current Conflict of Interest Code was updated in November of 2016 as required; however, because there was an outstanding concern with regard to whether the Historical Landmarks Commission board members should be included, their inclusion in the code was postponed until a Fair Political Practices Commission (FPPC) Advisory Opinion could be obtained. The history of the events is detailed below.

Historical Landmarks Commission

During the 2014 review, staff from the Clerk of the Board's office attended an FPPC training where the Historical Landmarks Commission was used as an example of a governmental body that is required to have a conflict of interest code. The Clerk then checked our Code and determined that, for unknown reasons, this Commission was not listed in the County's Conflict of Interest Code. She also confirmed that all other Board-appointed Commissions are listed in the Code and do file Form 700s as required.

Staff notified the Commission in late August of 2014 and again on August 29, 2016 of its recommendation that this Commission be added to the County's Conflict of Interest Code because it makes governmental decisions and recommendations directly to the Board regarding the designation of historical landmark sites. These governmental designations can have significant financial impacts to the property in question as well as the surrounding neighborhoods and businesses that specialize in renovating historical properties. The Commission was assigned Disclosure Category 1, which is the same category to which all other land-use related County Commissions are assigned.

The Commission expressed concern about being required to comply with this annual disclosure requirement in 2014 and again in 2016. The Commission's initial objections to being added to the County's Conflict of Interest Code were that (a) they are volunteers; and (b) the Historical Landmark Commission is not specifically listed in Government Code section 87200.

As noted above, volunteers are not exempt from the FPPC's requirements. The focus of the inquiry is on the nature of the position and its role and influence in making government decisions. As also noted above, the Historical Landmarks Commission correctly states that Section 87200 does not apply to it. The issue is whether or not the Commission should be included in the County's Conflict of Interest Code pursuant to Government Code section 87300 and applicable FPPC regulations.

At the time the code was amended as required in 2016, the positions of the County and Historical Landmarks Commission remained unchanged; it was decided to post-pone the addition of the Historical Landmarks Commission to the Conflict of Interest Code while we awaited a response to the County's Request for Advice to the Fair Political Practices Commission (FPPC). This request was made in September of 2016. The Historical Landmarks Commission was copied on that request and later submitted additional information to the FPPC for consideration with no objection

by the County. On November 18, 2016, the FPPC provided a response to our Request for Advice, finding as follows: “The Historical Landmarks Commission members must file SEIs and comply with the Act’s conflict-of-interest provisions, and the Commission must adopt a conflict-of-interest code or be included within the County’s Code, because the Commission members are “public officials” engaged in decisionmaking under the Act.” A copy of this opinion is attached hereto for your reference. Members of the Historical Landmarks Commission were notified of the FPPC’s opinion on February 3, 2017.

Based on the opinion of the FPPC, we are recommending that the Board of Supervisors introduce the attached Ordinance amending the County’s Conflict of Interest code to add the Historical Landmarks Commission under Disclosure Category I.

Item Initiated and Approved by: Alison A. Barratt-Green, County Counsel

Attachments:

1. Proposed Ordinance Amending and Updating Appendix I
2. Letter from the Fair Political Practices Commission to County Counsel dated November 18, 2016.
3. Sample Letter from the County Counsel to Historical Landmarks Commission members, dated February 3, 2017

Submittal Date: March 2, 2017

Revision Date: March 3, 2017