



Contra
Costa
County

To: Board of Supervisors
From: David Twa, County Administrator
Date: March 12, 2019

Subject: Updated Procedures for Board of Supervisors Meetings and Remedial Action Under Government Code, sections 54960.1 and 54960.2

RECOMMENDATION(S):

1. RESCIND the portion of the Board's action of January 15, 2019 appointing a representative to the Metropolitan Transportation Commission (MTC); all other appointments made on that date are unchanged by this action;
2. ADOPT Resolution 2019/81 to update the operating procedures for the Board of Supervisors meetings to include processes for designating a nominee for Board Chair and appointing Board members to various committees, boards and commissions; and
3. AUTHORIZE the Chair to send the attached letter pursuant to Government Code section 54960.2(c)(1).

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **03/12/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I
Supervisor
Candace Andersen, District II
Supervisor
Karen Mitchoff, District IV
Supervisor
Federal D. Glover, District V
Supervisor

ABSENT: Diane Burgis, District III
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: March 12, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Jami Napier,
(925)335-1908

cc:

FISCAL IMPACT:

No negative fiscal impact.

BACKGROUND:

At the Board's reorganization meeting in January of each year the Board formally elects and swears in the Chair for that year. Absent unusual circumstances, the Board's longstanding practice is that the Vice Chair of the past year becomes the Chair of the current year. That is what happened on January 15, 2019, when the 2018 Vice-Chair, District I Supervisor John Gioia, was elected Chair.

At the same meeting, in accordance with the Board's usual custom, the Board also approved the incoming Chair's recommendations for Board member appointments to local, regional and statewide committees, boards and commissions. The committees, boards and commissions were shown as attachments to the Board Order, both alphabetically and by committee type. The Metropolitan Transportation Commission (MTC) was one of the listed regional commissions and Supervisor Federal Glover was appointed to the commission, with a term ending February 1, 2023.

Mr. Jason Bezis appeared before the Board on January 15, 2019, to comment on the Board member appointments. He expressed his belief that the Board must advertise the MTC position to the public and conduct public interviews before appointing anyone to the MTC. The Board of Supervisors follows the Maddy Local Appointive List Act of 1975 (Government Code section 54970, et seq.) when appointing public members to various boards, committees and commissions whose members serve at the pleasure of the Board, for example, advisory committees to the Board of Supervisors. The Maddy Act process involves a public notice and interview process. But the Maddy Act does not require that appointment of Board members to committees and commissions follow the same process.

Government Code sections 66503 and 66504 describe who may be appointed to the MTC. These statutes state that the MTC will include two members from Contra Costa County; one member appointed by the Board of Supervisors and one member appointed by the city selection committee. The statutes do not require that the position be advertised or offered to members of the public. As Supervisor Gioia explained to Mr. Bezis on January 15, the Board of Supervisors has not opened membership on the MTC to members of the public. Instead, the Board has determined that the MTC appointment should be filled by a member of the Board of Supervisors. It was within the prerogative of the Board of Supervisors to appoint Supervisor Glover to this MTC on January 15, and that is what the Board did.

On February 14, 2019, Jason Bezis sent an email to the County, alleging Brown Act violations in relation to the appointment of a representative to MTC, including the fact that the Board Order recommending the appointment was prepared by John Gioia as Board Chair before Mr. Gioia formally had been elected Chair. Mr. Bezis calls for the

Board to invalidate its January 15, 2019, action appointing a representative to MTC. He also demands that the Board “cease and desist in the future from allowing a supervisor to act as ‘chair’ at the time of Board reorganization before a chair has yet been designated to that post, absent a formal transition policy.”

The Government Code describes a process that may be used by a governing body to avoid litigating an alleged Brown Act violation. To address past actions, the legislative body may cure and correct the challenged action and inform the demanding party of the corrective action within thirty (30) calendar days of receipt of a Brown Act violation allegation. To address potential future Brown Act violations, a legislative body may approve an unconditional commitment letter within thirty (30) calendar days of receipt of a Brown Act violation allegation. The language of the letter, which is mandated by Government Code section 54960.2(c)(1), explicitly does not acknowledge the existence of a Brown Act violation but, instead, simply agrees to comply with the law.

To avoid unnecessary litigation of the complaint made by Mr. Bezis, it is recommended that the Board rescind the MTC appointment and inform Mr. Bezis in writing of the rescission by March 15, 2019. Following rescission of the appointment, the Board may reconsider appointing a representative to the MTC. The Board may reappoint Mr. Glover, if it chooses to do so by a separate action. In accordance with Board policy, the MTC representative will be a member of the Board of Supervisors.

To avoid future confusion by members of the public on this issue, it is recommended that the Board revise its procedural rules to specify that the Board will take public action(s) in December of each year to identify a nominee for Chair of the Board for the following year and to acknowledge receipt of the Board members’ preferences for serving on various boards, committees and commissions.

If the Board approves this action, an unconditional commitment letter addressing the demand that the County cease and desist “allowing a supervisor to act as ‘chair’ at the time of Board reorganization before a chair has yet been designated to that post, absent a formal transition policy” will be sent to the complainant by the Board Chair. (See attached draft unconditional commitment letter.)

CONSEQUENCE OF NEGATIVE ACTION:

Failure to take this action may lead to misunderstanding of the County’s practices and procedures

ATTACHMENTS

Resolution 2019/81

Draft Unconditional Commitment Letter

2019 Revised Rules of Procedure for Board of Supervisors Meetings - REDLINE

2019 Revised Rules of Procedure for Board of Supervisors Meetings - CLEAN