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BEAUFORT, SOUTH CAROLINA 29901-1228

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COUNTY ATTORNEY

SUZANNE M. RAINEY
CLERK TO COUNCIL

AGENDA
COMMUNITY SERVICES COMMITTEE

Monday, March 28, 2016

3:00 p.m.

Large Meeting Room, Hilton Head Island Branch Library
11 Beach City Road, Hilton Head Island

Committee Members:

William McBride, Chairman
Gerald Dawson, Vice Chairman
Rick Caporale
Steve Fobes
Alice Howard
Roberts "Tabor" Vaux

Staff Support:

Monica Spells, Assistant County Administrator
Civic Engagement and Outreach

1. CALL TO ORDER – 3:00 P.M.
2. DISCUSSION ONLY / AN ORDINANCE OF BEAUFORT COUNTY COUNCIL UPDATING THE BEAUFORT COUNTY SMOKING ORDINANCE ([backup](#))
3. UPDATE / DISABILITIES AND SPECIAL NEEDS DEPARTMENT
Mr. Bill Love, Executive Director
4. UPDATE / TOGETHER FOR BEAUFORT COUNTY DATA WEBSITE LAUNCH
Mr. Fred Leyda, Facilitator ([backup](#))
Collaborative Organization of Services for Youth/Human Services Alliance
5. DELEGATION OF APPOINTMENT OF BEAUFORT/JASPER ECONOMIC OPPORTUNITY COMMISSION PUBLIC SECTOR BOARD MEMBER FROM BEAUFORT COUNTY COUNCIL CHAIRMAN TO TO JOSEPH N. KLINE. ([backup](#))
6. ADJOURNMENT

2016 Strategic Plan Committee Assignments
Connectivity in Rural Areas / Wi-Fi Expansion
Smoke Free Campus
Residential Homes (2) (South)



ORDINANCE 2016/_____

AN ORDINANCE OF BEAUFORT COUNTY COUNCIL UPDATING THE BEAUFORT COUNTY SMOKING ORDINANCE

WHEREAS, numerous medical and scientific studies show substantial levels of exposure to secondhand smoke among the United States population, and over the last several decades, the health hazards resulting from exposure to secondhand smoke have been increasingly recognized; and

WHEREAS, prohibiting smoking in the workplace increases public awareness of the negative health effects of smoking, reduces the social acceptability of smoking, and reduces harm to children and other nonsmokers; and

WHEREAS, in 1982 Beaufort County codified its Code of Ordinance including Section 38-91 through Sec. 38-98; and

WHEREAS, in 2006 Beaufort County Council passed Ordinance 2006-28 adding Article V establishing the regulation and requirements relating to smoking tobacco products in the County of Beaufort and those additions were codified as Beaufort Code Section 38-101 through Sec. 38-112; and

WHEREAS, the South Carolina General Assembly passed the “Clean Indoor Air Act” in 1990 and codified as S.C. Code Secs. 44-95-10 through 44-95-60 which preempts some of the local ordinances; and

WHEREAS, the Council has determined that it is in the best interest of the residents of Beaufort County to designate County-owned property as smoke-free to protect the health and safety of its residents and employees; and

WHEREAS, text that is underscored shall be added text and text ~~lined through~~ shall be deleted text; and

NOW THEREFORE, BE IT HEREBY ORDAINED to protect the health and safety of Beaufort County residents that Beaufort County Code Article IV, Division I Sec 38- 91 through 38-98 and Article IV, Division II Sec. 38-101 through 38-112 is hereby amended and replaced with the following:

Sec. 38-91. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

County-owned and -operated facility means any building, facility, or ~~place~~ property used by any person, group of persons or agency that is funded in whole with public funds from the county council and operated by the county.

Public meeting means any meeting open to the public under the state Freedom of Information Act.

Public-supported facility means any building, facility or ~~place~~ property used by any person, group of persons or agency that is funded in part or in whole with public funds from the county council, but is not owned directly or operated directly by the county.

Smoking means the inhaling, exhaling, burning, lighting or carrying of a any lighted cigarette, cigar, pipe or any other lighted smoking material similar device or any other lighted tobacco product.
(Code 1982, § 8-57)

Cross reference— Definitions generally, § 1-2.

Sec. 38-91

Sec. 38-92. - Prohibitions.

- (a) Smoking shall specifically be prohibited in and on any county-owned and -operated facility and any public-supported facility. ~~buildings or facilities or property, public meetings, and public waiting rooms within the confines of any mode of public transportation in the county or other posted areas.~~
- (b) Smoking shall be prohibited in ~~any public-supported facility or in~~ a private-sector establishment at the option of its owner/operator in the unincorporated parts of the county pursuant to section 38-94, except in designated smoking areas.

(Code 1982, § 8-58)

Sec. 38-93. - Posting of signs.

- (a) Signs with the words "no smoking" in letters not less than four inches high and citing in smaller letters enabling Ordinance No. 92-24 shall be conspicuously posted in each room and public-supported place as defined in section 38-91. These signs shall be visible to any occupant of the restricted area. Public areas not posted shall be deemed to be nonsmoking areas unless specifically posted as smoking areas.
- (b) Posting of no smoking signs shall be the responsibility of the person directly in control of such county-owned or public-supported place.
- (c) Signs may be posted by any private citizen in his place of business. Standard signs may be obtained from the county purchasing agent. Inclusion under this article of a private-sector establishment is entirely voluntary. The proprietor, owner, or individual responsible for such establishment may disregard enforcement of this article if he so desires in his own place of business.

(Code 1982, § 8-59)

Sec.38-94. - Designated smoking areas.

- (a) ~~Each person directly in control of each public supported place may designate certain areas within these places for smoking by posting signs stating "smoking area" except~~

~~in places where smoking is prohibited by this article or by other law, ordinance, regulation or by a fire marshal.~~

~~(b) (a) If smoking areas are designated, they shall be selected using existing physical barriers and ventilation systems to minimize the toxic effects of smoke in adjacent nonsmoking areas.~~

~~(c) (b) Designated smoking areas, if any, shall not include the specific areas prohibited in section 38-92.~~

~~(d) No public supported place may be designated in its entirety as a smoking area except enclosed offices or rooms occupied exclusively by smokers, even though the offices or rooms may be visited by nonsmokers.~~

~~(Code 1982, § 8-60)~~

Sec.38-95. - Responsibility.

The County Administrator or his designated representative shall be responsible for informing each person directly in control of each public-supported facility of this article.

(Code 1982, § 8-61)

Sec. 38-96. - Enforcement effort.

It shall be the responsibility of a person having control of a public-supported facility to ensure that a reasonable and prudent effort to enforce this article is made by such person's staff. Any failure to make such effort may be considered a violation of this article.

(Code 1982, § 8-62)

Sec.38-97. - Violation of signs.

No person shall smoke in any properly posted place, nor shall any person remove any such sign erected by or under the authority of this article.

(Code 1982, § 8-63)

Sec. 38-98. - Penalties.

(a) Any person who violates any section of this article may be cited and, upon conviction in a court of law, be found guilty of a misdemeanor and subject to a fine not to exceed \$200.00 or 30 days imprisonment. found guilty of an infraction, punishable by a fine not less than ten dollars (\$10.00) nor more than twenty – five dollars (\$25.00).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by a fine of not less than ten (\$10.00) nor more than twenty – five dollars (\$25.00).

(c) In addition to the fines established by this section, repeated violations of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any occupancy permit or business license issued to the person for the premises on which the violation occurred.

(Code 1982, § 8-64)

Secs. 38-99, 38-100. - Reserved.

DIVISION 2. - IN THE WORKPLACE

Sec. 38 -101. - Intent.

The council finds that it is in the best interest of the people of the county to protect nonsmokers from involuntary exposure to secondhand smoke in the workplace. Therefore, the council declares that the purpose of this article is to preserve and improve the health, comfort and environment of the people of the county by limiting exposure to tobacco smoke in the workplace. (Ord. No. 2006/28, § 2, 12-11-2006)

Sec. 38-102. - Definitions.

- (a) *Employee* means any person who performs services for an employer in return for wages, profit or other valuable consideration.
- (b) *Employer* means any person, partnership, association, corporation, trust, school, college, university or other educational institution, nonprofit entity or other organization, including any public or private employer, any manager, supervisor, and all other persons charged with control, supervision, and operation of any work place, work space, or work spaces as defined herein, that employs one or more persons.
- (c) *Enclosed* means a space bounded by walls (with or without windows), and enclosed by doors, including but not limited to, offices, rooms, foyers, waiting areas and halls
- (d) *Secondhand smoke* is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as "sidestream smoke") and smoke exhaled by the smoker. Exposure to secondhand smoke is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking".
- (e) *Sheriff's office* means the Beaufort County Sheriff's Office.
- (f) *Public building* means any building owned, operated or leased by the county.
- (g) *Retail tobacco store* means any establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times.
- (h) *Smoking* means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.
- (i) *Smoking materials* includes cigars, cigarettes and all other manner of smoking devices intended to be used for the purpose of inhaling, burning, carrying or exhaling lighted tobacco products.
- (j) *Workplace* means any enclosed indoor area, structure, building or facility or any portion thereof at which one or more employee(s) perform services for their employer, including but not limited to: retail food stores; retail stores; restaurants; bars; cabarets, cafes; public or private clubs; pool halls and bowling alleys.
- (k) *Work space* or *work spaces* means any enclosed area occupied by an employee during the course of his or her employment, including but not limited to: offices, customer service areas; common areas; hallways; waiting areas; restrooms; lounges and eating areas.
- (l) *Person(s)* means a customer or other visitor on the premises regulated herein.

(Ord. No. 2006/28, § 3, 12-11-2006; Ord. No. 2008/23, 6-23-2008)

Sec. 38-103. - Prohibition of smoking in the workplace.

- (a) The employer shall provide a smoke free environment for all employees working in all work space, work spaces and work places as those terms are defined herein. Further, the employer and all employees shall prohibit any persons present in said work space, work spaces and work places from smoking tobacco products therein.
- (b) Smoking shall be prohibited in all work space, work spaces and work places in a workplace. This includes all common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms and all other enclosed areas in the workplace.

(Ord. No. 2006/28, § 4, 12-11-2006)

Sec. 38 -104. - Smoking restricted by state law: S.C. Code § 44-95-10 et seq.

It is unlawful for a person to smoke or possess lighted smoking material in any form in the following public indoor areas:

- (a) Public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries;
- (b) All other indoor facilities providing children's services to the extent that smoking is prohibited in the facility by federal law and all other child day care facilities, as defined in Section 20-7-2700, which are licensed pursuant to S.C. Code, § 20-7-13(11);
- (c) Health care facilities as defined in S. C. Code § 44-7-130;
- (d) Government buildings as defined in S. C. Code § 44-95-20(4), except to the extent regulation by the County is authorized therein;
- (e) Elevators;
- (f) Public transportation vehicles, except for taxicabs;
- (g) Arenas and auditoriums of public theaters or public performing art centers.

Sec. 38-105. - Exceptions.

Notwithstanding the provisions of section 38-103 herein, smoking may be permitted in the following places and/or circumstances:

- (a) Private residences, except when used as a licensed child care, adult day care or healthcare facility;
- (b) Hotel, motel, inn, bed and breakfast and lodging home rooms that are rented to guests, designated as "smoking rooms" (rooms) provided that the total percentage of such rooms does not exceed 25 percent in such establishment. A room so designated shall have signs posted indicating that smoking is allowed therein;
- (c) Retail tobacco stores as defined herein;
- (d) Religious ceremonies where smoking is part of the ritual.

(Ord. No. 2006/28, § 6, 12-11-2006)

Sec.38-106. - Posting of signs.

The owner, manager or person in control of an establishment or area in which smoking is prohibited pursuant to this section shall post a conspicuous sign at the main entrance to the establishment or area. The sign shall contain the words "No Smoking" and the universal symbol for no smoking.

(Ord. No. 2006/28, § 7, 12-11-2006)

Sec.38-107. - Reasonable distance.

Smoking is prohibited within a reasonable distance of 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

(Ord. No. 2006/28, § 8, 12-11-2006)

Sec.38-108. - ~~Jurisdiction~~, Enforcement and penalties.

~~(a) The Beaufort County Treasurer shall collect the penalties due hereunder for any infraction(s) of the provisions of this section.~~

~~(b) The Beaufort County Sheriff's Office and Fire Departments, as well as all code enforcement personnel of the county shall have the power to enforce the provisions of this section by issuing an infraction notice.~~

~~(c) Penalties for infractions:~~

~~1. A person, employee or employer who smokes in an area where smoking is prohibited by the provisions of this division shall be guilty of an infraction, punishable by a fine of \$500.00 for a first infraction, and an additional \$50.00 per additional infraction for each subsequent infraction within one year.~~

~~2. A person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space and who fails to comply with the provisions of this division shall be guilty of an infraction, punishable by a fine of \$500.00 for a first infraction, and an additional \$50.00 per additional infraction for each subsequent infraction within one year.~~

~~3. In addition to the fines established by this section, repeated violations of this article by a person, employee or employer who owns, manages, operates or otherwise controls a workplace or work space or the failure of a person, employee or employer who owns, manages, operates or otherwise controls a workplace or work space to timely pay the penalty for an infraction may result in the suspension or revocation of any occupancy permit or business license issued to the person, employee or employer for the premises on which the violation occurred.~~

~~4. Violation of this division is hereby declared to be a public nuisance, which may be abated by the county by restraining order, preliminary and permanent injunction, or other means provided for by law, and the county may take action to recover the costs of the nuisance abatement.~~

~~5. Each violation of this division shall be considered a separate and distinct infraction.~~

~~6. In addition to or in lieu of assessing a civil penalty, the county may institute an action in the Court of Common Pleas for Beaufort County for an injunction to require compliance with this division or pursue any other remedy as may be permitted by law.~~

~~(d) Any person, employee or employer cited for violation of this division may, within five days, Saturdays, Sundays and legal holidays excepted, of the date of the infraction notice, file an administrative appeal with the county administrator or his/her designee. Within 30 days of receiving an appeal, the county administrator or his/her designee shall conduct a hearing to determine if an infraction occurred. The rules of evidence shall not apply.~~

~~A person, employee or employer aggrieved by the determination of the county administrator or his/her designee may, within 30 days, Saturdays, Sundays and legal holidays excepted, of receipt of the decision, appeal to the Circuit Court of Beaufort County. Failure to timely file an administrative appeal or appeal to the circuit court shall be deemed a waiver to the right to appeal.~~

~~The filing of an administrative appeal or an appeal to the circuit court shall not act as a stay of the county's rights to institute civil proceedings to compel compliance with this division or to institute proceedings to suspend or revoke a certificate of occupancy or business license.~~

~~(e) A business license shall not be renewed if there are delinquent penalties owed by the employer.~~

(a) A person who violates any section of this article may be cited, and found guilty of an infraction, punishable by a fine not less than ten dollars (\$10.00) nor more than twenty – five dollars (\$25.00).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by a fine of not less than ten (\$10.00) nor more than twenty – five dollars (\$25.00).

(c) In addition to the fines established by this section, repeated violations of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any occupancy permit or business license issued to the person for the premises on which the violation occurred.

(Ord. No. 2006/28, § 9, 12-11-2006; Ord. No. 2008/23, 6-23-2008)

Sec.38-109. - Severability.

If any provision, clause, sentence or paragraph of this division or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this division are declared to be severable.

(Ord. No. 2006/28, § 10, 12-11-2006)

Sec. 38-110. - Nonretaliation.

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this section or exercises any right conferred by this section.

(Ord. No. 2006/28, § 11, 12-11-2006)

Sec.38-111. - Conflict with other laws, ordinances or regulations.

Nothing in this section shall be deemed to amend or repeal any applicable fire, health or other, law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such applicable fire, health or other law, ordinance or regulation.

(Ord. No. 2006/28, § 12, 12-11-2006)

~~Sec. 38-112. - Waivers.~~

- ~~(a) Any employer, owner, manager or other person having control of a workplace subject to this section may apply to the Beaufort County Administrator (administrator) or his/her designee for a waiver of any provision of this regulation for a period not to exceed 90 days.~~
- ~~(b) All waivers shall be submitted to the administrator or his/her designee, on an application form provided by the administrator along with a \$100.00 non-refundable filing fee.~~
- ~~(c) The decision to grant such a waiver shall be in the sole discretion of the administrator or his/her designee, based upon his/her determination that such waiver is in the public interest. In so determining, the administrator or his/her designee may take into account, but is not limited to the following:
 - ~~1. The efforts that the employer, owner, manager or other person having control of a workplace has made toward compliance with this section;~~
 - ~~2. Whether or not the workplace will be in compliance with all terms of this section within 90 days; and~~
 - ~~3. Whether or not the granting of the waiver will result in an appreciable danger to the health of the public.~~
 - ~~4. No employer, owner, manager or other person having control of a workplace shall be granted more than one waiver.~~~~

(Ord. No. 2006/28, § 13, 12-11-2006)

(d) Secs. 38-113- 38-150. - Reserved.

DONE this _____ day of _____, 2016.

BEAUFORT COUNTY COUNCIL

D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

Thomas J. Keaveny II, County Attorney

ATTEST:

Suzanne M. Rainey, Clerk to Council

C.O.S.Y./Human Services Alliance

Beaufort County Council
Community Services Committee
March 28, 2016



Collaborative Organization of Services for Youth

What is Together for Beaufort County?

- **Community-wide collaborative process** to identify and address issues specific to the community
- Series of indicators that identify and monitor progress as issues are addressed
- Data obtained from the records of various public and private organizations





 Social Wellbeing

 Health

 Economy

 Education

 Environment



Social Wellbeing

1 in 4 children (26.4%) in Beaufort County live at or below poverty level.



Health

The percentage of alcohol-impaired deaths in Beaufort County tripled from 2013 to 2014.



Economy

Total Personal Income exceeded the county's Gross Regional Product in 2011 and 2012.



Education

Average income is more than twice as high for individuals with both a high school and college degree.



Environment

The Savannah River's average sea level has risen by over one foot since the 1920s.

New Interactive Database: www.beaufortcountydata.org

Officially launches on March 30, 2016... *Join us!*

9:00 AM

Grace Coastal Church
15 Williams Drive
Okatie, SC 29909





Beaufort - Jasper

Economic Opportunity Commission, Inc.

Community Action
Partnership
"Helping People. Changing Lives"

Post Office Drawer 9 • 1905 Duke Street, Suite 250 • Beaufort, South Carolina 29901-0009 • 843-255-7220 • Fax 843-255-7231

beaufortjaspereoc@hotmail.com
info@beaufortjaspereoc.org

Agnes M. Garvin
Board Chairperson

Leroy H. Gilliard
Executive Director

January 26, 2016

County Council of Beaufort County
100 Ribaut Rd.
Post Office Drawer 1228
Beaufort, SC 29901-1228

Re: Appointing Beaufort-Jasper Economic Opportunity Commission Public Sector Board Members

Dear Council:

As a community action agency, Beaufort-Jasper EOC is subject to the rules governing a tripartite board under the Community Services Block Grant (CSBG) Act. As you are aware, one third of Beaufort-Jasper EOC Board membership shall be elected public officials or their representative. As such, we seek appointees from you for members who represent the public sector.

In the past, we have accepted your appointment of the public sector member as a representative of the entire County Council. However, the CSBG statute requires public sector members to be an elected official, holding office on the date of selection, or the delegate of said elected official. As such, instead of representing the entire County Council, our public sector Board Member is either on County Council or the representative of one County Council member.

In an effort to comply with the CSBG statute in the most efficient manner, we will designate the County Council Chair as the Beaufort-Jasper EOC public sector representative. The Chair may serve on the Beaufort-Jasper EOC Board as a public sector Board member, or the Chair may delegate the position to another Council member or citizen of the County.

We are grateful to our public officials for the dedicated services to the families and communities we serve. Should you have any questions, or wish to further discuss this matter, please do not hesitate to contact Mr. Leroy H. Gilliard, Executive Director, or myself.

Sincerely,

Agnes Garvin
Board Chairperson

"Our Business is Helping People"

Since 1966 People Helping People • An Equal Opportunity Employer

OFFICE OF COMMUNITY SERVICES

An Office of the Administration for Children & Families

CSBG IM #82 Tripartite Boards

Transmittal No. 82

Date: March 23, 2005

TO: State Community Services Block Grant Program Directors, Community Services Block Grant State Association Directors and Community Services Block Grant Eligible Entities

SUBJECT: Tripartite Boards

PURPOSE: This Information Memorandum addresses a number of policy questions that have arisen in recent years concerning the composition, role, and responsibilities of local community action agency tripartite boards. In addition, the Memorandum describes steps that may be taken by State CSBG lead agencies and State Community Action Associations to promote the continued viability and effectiveness of eligible entities through appropriately constituted and well-functioning tripartite boards.

This Information Memorandum is not intended to be definitive or binding on State or local agencies, but to serve as a guide on key issues.

BACKGROUND: Since 1968, local community action agencies have been required to have tripartite governing boards to gain and retain designation as eligible entities and to receive CSBG funding. Effective tripartite boards reflect and promote the unique anti-poverty leadership, action, and mobilization responsibilities assigned by law to community action agencies. Boards are responsible for assuring that agencies continue to assess and respond to the causes and conditions of poverty in their community, achieve anticipated family and community outcomes, and remain administratively and fiscally sound.

The nature of poverty and our nation's response to it continues to evolve. Many community action agencies are in the process of passing the baton to a new generation of leaders. This Information Memorandum restates and amplifies how tripartite boards help preserve community action focus, effectiveness, and accountability in these changing times.

Questions and Responses

The following questions and OCS responses convey important information about the roles and responsibilities of tripartite boards as required by statute and suggestions on how State CSBG authorities, State community action associations, and local agency officials can help assure that boards function effectively.

Question 1 - What does the law require?

Roles and Responsibilities of Tripartite Boards

Sections 676B of the Community Services Block Grant Reauthorization Act of 1998 requires that, as a condition of designation, private nonprofit entities and public organizations administer their CSBG program through tripartite boards that "fully participate in the development, planning, implementation, and evaluation of the program to serve low-income communities."

Board Composition

•Low-Income Individuals and Families

For private nonprofit entities, a minimum of one-third of tripartite board membership must be democratically selected representatives of low-income individuals and families who reside in the geographic area being served by the agency.

For public organizations, such as city, county, or town governments, the law also requires that a minimum of one-third of tripartite board membership be comprised of representatives of low income individuals and families who reside in areas served. The statute allows public organizations to utilize State-specified mechanisms other than tripartite boards that "assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs..."

OCS does not recommend including in this community representation category for either public or private agency boards individuals who provide services or supports to low-income residents but who are neither low-income or residents of the agency's service area. Such individuals may qualify for board membership as representatives of another board category -- "major groups or interests in the community."

•Elected Officials or Their Representatives

One-third must be elected officials, holding office at their time of selection, or their representatives. If a sufficient number of elected officials or their representatives are not available to serve, appointive public officials or their representatives may take the place of elected officials.

• Major Groups and Interests in the Community Served

The remaining board members must be chosen from "business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served."

Question 2 - Who appoints members to a tripartite board?

The law states that members of tripartite boards "shall be selected by the entity" in accord with the conditions described above. States must assure that local agencies comply with Federal statute and any applicable State statutes, and that the bylaws of tripartite boards reflect and advance statutory requirements.

Question 3 - Are term limits permissible?

The CSBG statute is silent on term limits. However, many CAAs find term limits helpful to keep boards revitalized and current. Community action agencies may impose such limits through their own bylaws if they wish.

To achieve the purposes intended by statute for each of the three components of agency boards, State and local agencies are encouraged to consider the following term limit considerations:

Representatives of Low-Income Individuals and Families

The statute requires that representatives of low-income individuals and families be "chosen in accordance with democratic selection procedures." The implicit intent of this requirement is to insure that those who *currently* live in areas served by the agency are represented so that they have a strong voice in agency governance and direction and are able to convey to those they represent the presence and significance of community action in their lives. And, because some programs within community action agencies, especially Head Start, also require governance involving families being served, overall agency coordination and communications across programs are further enhanced when a few (one or two) members of Head Start Policy Councils serve on agency tripartite boards. The Head Start regulations require that the Policy Council and the Board cannot have *identical membership*, so this must be observed.

Every effort should be made by eligible entities to assure that board members representing low-income individuals and families:

- Have been selected on the basis of some form of democratic procedure either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider;
- Are truly representative of *current* residents of the geographic area to be served, including racial and ethnic composition, as determined by periodic selection or reselection by the community. Being *current* should be based on the recent or annual demographics changes as documented in the needs/ community assessment. This does not preclude extended service of low-income community representatives on boards, but does suggest that continued board participation of longer term members be revalidated from and kept current through some form of democratic process and the assessment of community changes. Ultimately, it is the responsibility of the State to assure that agencies uphold both the letter and intent of the law governing appointment of low-income community representatives to tripartite boards. Particular attention should be paid to the two conditions described above.

Elected Public Officials or their Representatives

The overarching purposes for having elected officials serve on tripartite boards are to encourage awareness of poverty needs within the community and action by local governments, and to foster close coordination and partnership between public agencies and the eligible entities. State CSBG lead agencies, State community action associations, and local agency officials should ensure that the nature and number of public officials serving on each agency board supports and promotes these goals. The statute requires that elected public officials must be "holding office on the date of selection" to a tripartite board. The statute does not identify which public officials ought to

serve on the tripartite board. The statute allows public officials (elected, or if necessary, appointed) to name someone to represent them on the board. Again, while the statute does not set term limits for this category of board membership, the spirit of the law, that local governments participate in agency oversight and governance, suggests that:

- Elected officials serve on boards in this capacity only while they are in office.

Similarly, individuals designed by elected or appointed officials to represent them on boards serve only while their principals are in office or are re-designated by those in office. Agencies are responsible for making sure that this category of board membership remains current through such procedures as prompt notification of newly elected or currently elected public officials of the opportunity for board service or representation, and timely replacement of board members (or their representatives) who no longer hold public office.

Local agencies that wish to extend the board service of either formerly elected officials or their representatives may choose to appoint them as representatives of "major groups and interests in the community."

Representatives of Major Groups and Interests in the Community

While the statute does not set term limits for these board members, their role is to reflect and involve key interests and resources within the community to guide agency actions and outcomes. For this category, agencies should strive to assure that:

- Groups and interests with current influence or resources deemed critical to the success of the agency are represented.
- Members are empowered by their organizations to participate in board activities and play a role in agency outcomes.

Question 4 - What does "fully participate in the development, planning, implementation, and evaluation of the program" mean?

Tripartite boards are responsible for oversight and governance of community action agencies:

Development

As the designated anti-poverty-agencies within their community, both public and private eligible entities are required to conduct periodic needs assessments of the causes and conditions of poverty within their service area and to decide what role, or mission, the agency will assume relative to other community organizations and resources, in addressing those needs.

Tripartite boards are key players in the developmental processes described above:

- Needs Assessment -- Board members, especially those that live in communities to be served and that represent low-income people, ought to be a primary source of information and insight concerning the conditions in their neighborhoods. Representatives of low-income families can help fashion agency outreach and communication strategies, on an ongoing basis, to assure that agency staff and programs are responsive to changing community needs and conditions. Board members that represent elected officials, and other community groups and interests, all bring critical information and perspective to the needs assessment process. Elected officials or their representatives can commission or make available government-sponsored studies of local economic, social, educational, and key conditions that affect poverty. Business, labor, religious, and other community group representatives offer similar information from the private sector and access to short-term and longer-range service and resource assessments and/or development plans that may impact the nature or extent of poverty in the community.

- Clarifying Agency Mission -- The way each community action agency perceives its role, or mission, is central to what they do and how they assess their effectiveness. Tripartite boards, if correctly constituted, provide an agency with a broadly-based, in-house, panel of "experts" on most aspects of community need, resources, and opportunities. Their expertise should help inform agency leadership and staff concerning the role(s) community action should and could play to reduce poverty vis-a-vis other public and private programs and initiatives. Creating or reviewing mission statements can provide a focus for collaborative strategic planning among board members and agency leadership and staff, and a foundation for meaningful board oversight of agency operations and effectiveness.

Planning

Tripartite boards are important participants in agency annual and longer-range planning activities. Specifically, individual members of the board, and the board as a whole, ought to contribute to, and benefit from, various aspects of program planning:

- Long-range Strategic Planning- For those CSBG entities that are 501(c)(3) non-profit agencies, tripartite boards are ultimately responsible for the overall direction, conduct, and effectiveness of agency programs and activities. Public agency boards are "advisory" and are intended to guide public officials that manage their agencies, both elected and appointed, with information and advice on how to reduce poverty within the geographic area being served. As such, participation of boards is essential in strategic planning discussions of how the mission of the agency is to be accomplished through its programs and activities, and how the agency will determine what constitutes its "success." Tripartite boards should be encouraged to help the agency: a) identify broad goals and results it hopes to achieve through its work among low-income individuals and families, and within the community being served; b) mobilize and array programs and activities, both within and outside the agency, to achieve those goals and results; and c) establish and maintain procedures for gathering and presenting information on goals and results for agency and board use.

- Annual Planning - Tripartite boards of both public and private entities should participate in the identification of what the agency hopes to accomplish each year and to help the agency establish specific performance expectations, in terms of both the nature and number of improvements to be achieved among low-income people and within the community, to guide agency programs and activities. Milestones, or intermediate steps toward achieving the ultimate results, ought to be identified by agency staff so that board members will be able to track progress

throughout the year. In addition, boards are encouraged to identify possible ways to strengthen agency operations, including needed staff or facility enhancements, and to identify specific results it expects to be achieved. Boards may choose to utilize annual agency performance expectations, or anticipated program results, as important components of annual performance plans and compensation agreements they negotiate with the agency's executive director and other key staff.

Implementation

Because members of tripartite boards have "fiduciary" responsibility for the overall operation of private, non-profit community action agencies and statutorily described "advisory" responsibilities in public agencies, members are expected to carry out their duties as any "reasonably prudent person" would do. At a minimum, CAPLAW suggests that this would require:

1. Regular attendance at board and committee meetings;
2. Thorough familiarity with core agency information, such as the agency's bylaws, articles of incorporation, sources of funding, agency goals and programs, Federal and State CSBG statutes;
3. Careful review of materials provided to board members;
4. Decision-making based on sufficient information;
5. Ensuring that proper fiscal systems and controls, as well as a legal compliance system, are in place; and
6. Knowledge of all major actions taken by the agency.

Two aspects of the requirements described by CAPLAW above warrant further discussion –board oversight of agency programs and board oversight of fiscal controls:

- Agency Program Implementation - Boards are encouraged to stay informed of agency programs and activities throughout the year, and to receive periodic reports from agency staff that focus on progress toward achieving milestones and ultimate results among clients and communities being served. Timely board awareness of program implementation progress allows for possible reassessment of performance expectations or program realignments should the need arise.

Board members are also encouraged to help the agency establish and maintain working relationships, or partnerships, with other public and private agencies and programs in the community that can help achieve community action results. For example:

1. Members that are either elected officials or that represent elected officials may identify public resources and programs that could contribute to client or community outcomes and facilitate communication and coordination between the community action agency and the public program;

2. Members that represent critical community interests, such as commercial or financial institutions, may help identify possible sources of support for the agency's low-income clients, including employment opportunities, asset formation assistance, or access to other financial services;

3. All members of the tripartite board may be enlisted in an agency's advocacy efforts to increase or preserve needed services and programs in the community that support greater self-sufficiency among low-income families.

• Fiscal Controls - Because tripartite boards of private, non-profit agencies are ultimately responsible for assuring that agency funds are spent and accounted for in accord with all applicable Federal, State, and local statutes and regulations, boards must make sure that fiscal controls and procedures are put in place and maintained by the agency that provide for:

1. Trained and qualified staff to manage fiscal accounts and records of the agency on a day-to-day basis;
2. Commonly accepted financial procedures for transactions, recordkeeping, and reporting such as those required by the CSBG Act, Part 74 of the Code of Federal Regulations, and OMB Circular 133;
3. Frequent reports to the board by agency fiscal staff on overall agency fiscal status, procedures, practices, and transactions;
4. Required board review and prior approval of all "substantial" agency fiscal transactions or commitments, as defined by statute or agency bylaws; and
5. Audits and audit reports to the board by a CPA firm independent of board member or agency staff association.

Evaluation

As indicated, tripartite boards of both public and private agencies are encouraged to focus their attention on results in all phases of agency program activity, including program development, planning, implementation, and especially evaluation. Boards should request, and be provided with, information concerning actual changes or improvements that have occurred among clients and community as a result of agency assistance. To determine the relative "success" of the agency, its staff and programs, boards may compare the nature and level of these outcomes with performance expectations, or targets, which were developed during the agency's planning cycle. Outcome or performance-focused information from one year can inform and strengthen program planning by the agency and its board in subsequent years.

Question 5 - What kind of training should board members receive?

Board members need to be trained to carry out both the legal, or fiduciary, aspects of their service and their leadership responsibilities to help guide the agency toward "success."

At a minimum, it is recommended that board training cover the following topics:

• **Fiduciary Responsibilities**

1. Orientation to statutory and regulatory requirements (CSBG Act, other Federal, State or local statutes and regulations, including non-profit board requirements;
2. Agency articles of incorporation, bylaws, etc.
3. Overview of Board functioning - appointment, representation, meetings, committees, conflict of interest policy, relationship to executive director and staff, etc.
4. Role and Responsibilities of the Executive Director
5. Role and Responsibilities of the Board regarding the employment, retention, and compensation of the Executive Director and key agency staff
6. Overview of agency administration and financial management policies and procedures - oversight role and responsibilities of the board
7. Orientation to, and how to oversee, agency mission, long-range and annual plans
8. Orientation to, and how to oversee, agency programs and services
9. Orientation to, and how to oversee, agency evaluation and reporting policies and procedures - role of the board in program and personnel performance evaluation.

• **Agency Leadership - Board Roles and Responsibilities**

Results Oriented Management

1. Agency Development -Needs Assessment-Agency Mission determination
2. Agency Planning Strategic Long-Range Planning Annual Planning - performance expectations and targets
Forming Partnerships with other resources in the community
3. Program Implementation - Tracking of Milestones, interim performance results and reports
making mid-course corrections to improve performance

Results Oriented Accountability

4. Evaluation - (Results Oriented Accountability) Result-Focused Evaluation - clients and community
Results-Focused Evaluation - agency and staff Using Information for Planning Using Information for
Additional Funding and Advocacy

Note: In rural areas or where transportation is challenging, teleconference calls and other technological devices have assisted board communication.

Question 6 - What constitutes "conflicts of loyalty or interest" among board members and how best should they be avoided.

Individuals serve on tripartite boards first and foremost to advance the interests of the agency, its clients, and the community. They do not serve to advance their own interests and have a "duty of loyalty" to the agency. But, the very nature of the tripartite board, which calls for the representation of, and expected outreach to, various sectors of the community, creates possible situations in which distinctions of "loyalty" or "interest" need to be kept very clear and unambiguous.

To safeguard against situations in which the loyalty, interest, or intent, of board member action may be questionable, the following minimum conflict of interest practices are recommended:

- **Have a clear, written policy**

Each agency should have a clear, written policy concerning conflicts of loyalty or interest among board members and agency staff that describes in detail:

1. Full disclosure of financial interest requirements for all board members and staff;
2. Conditions and procedural requirements for board member and/or staff withdrawal from any action for which a real or potential conflict of interest might exist;
3. "Transparency" and full record keeping of all board or agency financial decisions or actions and the parties involved in the decisions or actions;
4. Policies and procedures for selective (i.e. meet a certain threshold of expenditure or financial commitment) "independent" prior review of actions or decisions that may pose potential conflict of interest issues.

- **Avoid situations that advantage board member interests or the appearance of advantage**

As indicated, the very nature of tripartite representation on boards creates potential conflict of loyalty or interest situations in which board members help the agency establish linkages with public and private community resources and services. Often, this outreach may result in financial arrangements or contracts involving expenditure of agency funds. In addition, board members have "inside" knowledge of agency activities and operations, including current and future employment opportunities within the agency. To avoid situations in which a conflict of interest or loyalty would occur, or the appearance of such a conflict, the following is recommended:

1. Competitive bidding procedures should be used for large financial transaction situations in which a board member or agency staff member has an interest in, or relationship to, one or more providers of the needed goods or services. If such a potential is unclear, the agency and its board should refer the issue to a pre-identified "independent"

conflict of interest consultant or group for a determination. For smaller transactions that may involve board or staff member interests, a process involving collection of comparable quotes, prices, or salaries may suffice.

2. If, after a competitive process, a provider with ties to a board member(s) or staff is selected to enter into a financial arrangement with the agency, the affected board member(s) and staff must disassociate themselves from participating in any decisions regarding the conduct of the financial relationship. Neither board member(s) nor staff may benefit personally, in any way, from the financial relationship between the agency and the provider with which they have a connection.

3. Board membership should not be used as a "stepping stone" to agency employment. Board members should not seek or receive employment from the agency in any part-time or full-time capacity during their service on the board. Board members wishing to be considered for employment ought to resign their position and wait a reasonable period of time before applying for a paid position within the agency. This waiting period is recommended to avoid both the actuality and appearance of undue advantage board membership affords in the hiring of agency management and staff.

4. Board members and their families should not enjoy any financial gain from their position, including receipt of salary, goods or special services for their board participation. Board members may be reimbursed for expenses associated with board service, such as incidental costs of supplies, or mileage, per diem, and lodging expenses incurred while attending out of town conferences or training approved by the entire board.

5. Agencies and boards should err on the side of caution in all matters that might create or appear to be a conflict of interest. They should use the proverbial "smell test" in all potentially questionable conflict of interest situations and call upon independent, outside counsel, both legal and ethical, to screen plans before action.

It should be noted that board members, especially those that represent low-income individuals or families, are not excluded from being clients of the agency and receiving program services for which they are eligible. These board members should not receive preferential treatment in the nature or timing of such services.

Question 7- What is the best relationship between a tripartite board and the agency executive director?

The best relationship between a tripartite board and the agency executive director is one that advances the work of the agency in achieving results, or improvements, in the lives of low-income people and the community in which they live.

That said, there are organizational and functional issues that have prompted this question from a number of locations around the country over the past few years. While situations vary from agency to agency, and community to community, the following general principles are offered to promote strong, focused, and effective working relationships between tripartite boards and agency executive directors:

- **Boards Establish Policy, Executive Directors Execute Policy**

Tripartite boards are responsible for establishing and approving policies that govern all aspects of agency operations, including agency and board bylaws, administrative and fiscal control policies, and personnel policies. Executive directors are responsible to assuring that the board established policies are carried out by the agency, and for providing information to the board on the execution of its policies as requested by the board. In many agencies, boards work with the executive director and agency staff collaboratively to develop agency policies and procedures, but the ultimate responsibility for promulgating such policies remains with the board.

- **Boards Set Agency Mission, Executive Directors Accomplish Agency Mission**

Boards are responsible for determining the overall mission, or direction, of the agency taking into account the needs of the community and the relative anti-poverty role played by the agency vis-à-vis other programs and resources in the community. Executive directors are responsible for providing the necessary information and assistance to the board that will help them determine the overall mission or direction of the agency, and for organizing the agency's programs and services in such a way that will best accomplish the mission. Again, in many communities, boards and executive directors (and agency staff) work collaboratively to both set the agency's mission and organize programs and services toward that end.

- **Boards Set Performance Targets, Executive Directors Guide Work to Achieve Targets**

Ideally, tripartite boards will officially approve annual performance targets, or outcomes they expect the agency to achieve among low-income families and the community. In most cases, these performance targets will be in the form of recommendations from the agency's executive director developed ideally in concert with the board, agency staff, and key community partners. How the agency organizes and operates services and programs to achieve these board-approved performance targets is the responsibility of the executive director and the staff of the agency. Boards, therefore, should not routinely be involved in the day-to-day manner in which services are provided, but should pay particular attention to following the consequences, or results of agency programs as they unfold and are reported throughout the year.

- **Boards and Executive Directors Evaluate Agency Performance, Both are Accountable**

Based on reports of results generated by the agency, boards are ultimately responsible for deciding whether or not the agency and the executive director have been "successful" in accomplishing the mission of the agency. Boards are encouraged to focus on client and community results as a major factor in evaluating the work of the agency, its executive director, and staff. Indeed, such results may point to institutional needs, such as staff enhancement and training or program revisions, which may improve performance in subsequent years.

- **Boards Supervise Directly Only One Employee - the Executive Director**

One of the most important concepts conveyed by agencies that have well-functioning relationships between their tripartite board and executive director is, "Boards supervise directly only one employee - the Executive Director."

This concept embodies the notion that board and agency staff functions are indeed separate, but they are joined through the relationship between the board and the one person they must hold accountable for the work of everyone

else -- the executive director. This clearly means the boards must hold the executive director responsible for the activities of the agency. The board should appraise the executive director's performance on an ongoing basis, but at a minimum, the board should have a complete appraisal annually. Adopting this concept of "one employee" enables boards to refrain from bypassing their agency's executive director to provide day-to-day instructions to agency staff (what many call "micromanaging"). But, it must be clear that the concept should not protect an executive director from gaining too much authority over all aspects of agency policy and operations by assuming roles and functions that clearly reside with the tripartite board.

The concept is not intended to diminish or distort the fiduciary responsibility of tripartite boards of private, non-profit agencies to oversee the overall functioning of their agency and the cumulative work of agency staff.

When a tripartite board is faced with the responsibility of recruiting and hiring a new executive director for their agency, members may set whatever criteria they deem appropriate. Boards are encouraged to seek out and employ a leader capable of:

1. Working cooperatively with the board to assure there is on-going consensus concerning the agency's antipoverty purpose, or mission, among board members, agency staff, and the broader community;
2. Mobilizing and coordinating programs and services both within and outside the agency toward accomplishing this mission;
3. Serving as a key community leader and advocate for the preservation and expansion of opportunities to assist low-income individuals and neighborhoods move out of poverty;
4. Achieving strong administration and fiscal control over agency resources; and
5. Employing performance-based management concepts embodied in Results Oriented Management and Accountability (ROMA) as the framework for relating to the board, and for all aspects of agency operations including program planning, resource allocation, service provision, program and staff evaluations.

Question 8 - How can State CSBG agencies and State Community Action Associations advance the effectiveness of tripartite boards?

At a minimum, OCS recommends that State CSBG agencies and State community action associations work together to assure that:

- **All board members receive timely and continuous training.**

OCS has funded the development of a number of board training curricula that are now available upon request and that contain many of the elements of effective training described in this Information Memorandum. For information on these training materials, please contact:

- Board representatives participate actively in statewide community action training and technical assistance meetings and conferences.

Board chairs or other members ought to be encouraged to participate in statewide community action meetings and conferences sponsored by both the State CSBG authority and the State CAA association. Such meetings will not only provide an opportunity for board members to contribute to discussions and training, but will also provide a means of conveying to all board members the status of community action in the State, information about the programs, services, and accomplishments of other agencies, and how their boards can continue to help improve the focus and outcomes in their own agencies.

- State CSBG monitoring or CAA association assessments focus on board functioning (both fiduciary and leadership responsibilities)

State CSBG officials should meet routinely with boards as part of their overall monitoring of local agencies to determine the extent to which the boards are aware of, and are carrying out, their responsibilities. Assessment should be made of agency compliance with statutory requirements for board composition and functioning. Similar assessments are encouraged in those States in which CAA associations have developed and are using agency self-assessment procedures in conjunction with State CSBG monitoring. State CSBG authorities and State community action associations are encouraged to provide technical assistance to agencies to help them achieve or maintain compliance with the law.

