

Brown Act and Conflicts of Interest Training

work2future Board

Presented by:

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AGENDA

- **Brown Act**
- **City Sunshine**
- **Political Reform Act**
- **Conflicts of Interest**
- **City's Revolving Door Ordinance**
- **Parliamentary Procedures**
- **Board Member / Chair Role & Responsibilities**
- **Form 700 & Family Gift Report**
- **Ethics & Sexual Harassment Training**

BROWN ACT

- General Rule: All meetings must be open to the public.
- The Ralph M. Brown Act, Government Code Sections 54950 - 54963, was enacted in 1953 to ensure local government meetings *were open and public*.
- Scope:
 - Applies to any “legislative body”, decision-making or advisory, *including boards, commissions and subcommittees*.
 - Exception: single purpose temporary (“*ad-hoc*”) subcommittees formed solely of less than a quorum of the legislative body. Sunshine Resolution § 2.3.1.2 limits an *ad hoc* committee term to less than 6 months.

BROWN ACT – MEETING

- Any congregation
- Of a *majority of the members* of a legislative body
- At the *same time and location*
- To *hear, discuss, deliberate, or take action*
- On any item within the *subject matter jurisdiction* of the legislative body or the local agency to which it pertains

BROWN ACT – NOT A MEETING

- **Individual contacts by members of the public**
- **Attending a conference**
- **Attending an open & publicized community meeting (e.g., an election debate)**
- **Attending an open and noticed meeting of another body (but, cf. serial meetings), or**
- **Attending a social function (e.g., a holiday party)**

BROWN ACT – PROHIBITED MEETINGS

- Use by
- *A majority of members*
- *Of a series of communications of any kind,*
- *Directly or through intermediaries*
- *To discuss, deliberate, or take action*
- *On any item of business within the subject matter jurisdiction of the board or commission*

BROWN ACT – PROHIBITED MEETINGS

- **Serial Meetings – Examples:**
- **“Daisy Chain”**
 - Member A talks to Member B, who then talks to Member C about the same topic.
- **“Hub And Spoke”**
 - Member A talks to Member B and then talks to Member D about the same topic
- **Email Reply to All**

BROWN ACT – PROHIBITED MEETINGS

- **Staff Briefings are allowed**
- **Staff may contact a Commissioner to answer questions or provide information if the Staff member does not communicate the comments or position of any other Commissioner.**

BROWN ACT – AGENDA ITEMS

- **Brief general description of each item of business to be transacted or discussed at the meeting and the proposed Commission action, if any.**
- **Need not exceed 20 words, but enough detail to allow a person who is not familiar with the Commission to determine whether they should attend the meeting.**

BROWN ACT – AGENDA ITEMS

- No discussion or action of items not on posted Agenda
- Comments by Commissioners regarding un-agendized items are only allowed as follows provided that *no discussion or action* occurs:
 - Briefly responding to public comment
 - Asking a question for clarification
 - Referring item to staff
 - Brief report by Commissioner on his or her activities
 - Brief announcement

BROWN ACT – PUBLIC COMMENT

- Limited to items within scope of Commission's subject matter jurisdiction
- Required for Regular Meetings
- Highly Recommended for Special Meetings
- City standard = 2 minutes, but Chair has discretion to limit time when appropriate
- Speakers using a translator get twice the time

BROWN ACT – PUBLIC COMMENT

Responding to Issues Not on the Agenda

- **Refer the speaker to staff**
- **Refer the speaker to appropriate reference material**
- **Request staff to report back at a future meeting**
- **Direct staff to place the matter on a future agenda**

BROWN ACT VS. CITY SUNSHINE

Boards, Committees & Commissions	City Sunshine	Brown Act Requirements
Regular Meeting Agenda	7 days, action items	72 hours
Special Meeting Agenda	4 days unless 2/3 of members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	24 hours
Minutes	Action minutes, post draft within 10 days after meeting	Minutes are not generally required
Recordings	Audio record meeting and maintain recording for 2 years	Recording is not required, but if made, must be retained for 30 days
Staff Reports	7 days (posted with Agenda)	Documents provided after agenda posting shall be made available to the public at the place indicated on the Agenda

POLITICAL REFORM ACT

- **Commissioner must recuse if there is a disqualifying financial interest.**
- **Commissioner has a disqualifying financial interest if the *decision* will have a *reasonably foreseeable material* financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any other listed *financial interest*.**

POLITICAL REFORM ACT

- **Decision** – Making or attempting to influence a decision includes making recommendations and reports to a decision-maker. Assume that all of your Commission’s actions will qualify.
- **Financial interest** – Includes sources of your family’s income or gifts; business entities; real property; and your family’s personal finances (including a mobile home).
- **Material** – Means significant; specific tests for each type of financial interest are located in the state regulations.
- **Reasonably Foreseeable** – Determined by state test.

POLITICAL REFORM ACT

Sources of income of \$500 or more

- Your own income
- Promised income
- Income of spouse / domestic partner / child
- Loans

POLITICAL REFORM ACT

Real property interests of \$2000 or more

- **Direct or Indirect**
- **Spouse / Domestic Partner / Child's Property**
- **Leasehold Interest (except month to month)**
- **500 Foot Rule**

POLITICAL REFORM ACT

Other kinds of Interest

- **Gifts**
- **Businesses**
- **Investments**
- **Contracts**
- **Personal bias or interests**
- **Personal finances**

POLITICAL REFORM ACT

If you think you have a conflict:

- Recuse yourself on the record from participation in discussion or voting and refrain from attempting to influence the decision.
- You are not required to leave the dais.
- You may leave the dais and speak as a member of the public with respect to interests that are solely your own.
- Note: recusal can pose voting and quorum issues.

CITY'S REVOLVING DOOR

work2future Board Members (Form 700 filers)

- For 2 years after leaving the Board
- Cannot represent anyone else
- Whether or not for compensation
- Before the work2future Board
- Includes Public Comment
- Exception: representing self
- San José Municipal Code § 12.10.040
- No waiver

PARLIAMENTARY PROCEDURES

- **Establish a Quorum**
 - Note Absences for the Record
 - Note Arrivals / Departures for the Record (affects vote)
- **Announce Agenda Item Number and Subject**
- **Invite staff / commissioner to present the item**
- **Ask members of the commission if they have questions of clarification**
- **Invite Public Comments**
- **Invite a motion**
 - Announce who made the motion
 - Announce who seconded
- **Vote**
 - Must be verbal or shown on public display screen
 - Announce vote result, and who voted no or abstained

ROLES & RESPONSIBILITIES **OF A BOARD MEMBER**

- **Attend Meetings**
 - At least 50% of the length of the entire meeting
 - Notify Commission Secretary in advance about excused absences
- **Abide by Code of Conduct & Code of Ethics***
 - Conduct meetings in dignified and courteous manner
 - Be professional, respectful and courteous to staff and public
 - Support Chair's effort to conduct meeting effectively and fairly

* Code of Ethics: Council Policy 0-15; City Policy 1.2.2

ROLE OF A CHAIR

- **Preside at meeting**
 - **Run meetings in an orderly, efficient manner**
 - **Manage conflicts that may arise**
 - **Keep discussion on topic**
 - **Stick to the agenda**
 - **Get through agenda items in a timely manner**
- **Conduct meetings in accordance with Robert Rules of Order, and approved Bylaws**
- **Reference Material: Institute of Local Government – Understanding the Role of Chair**

FORM 700 & FAMILY GIFT REPORT

- Airport Commission
- Appeals Hearing Board
- Arena Authority
- Arts Commission
- Civil Service Commission
- Deferred Compensation Advisory Committee (DCAC)
- Downtown Parking Board
- Board of Fair Campaign and Political Practices (formerly Ethics Commission)
- Federated and Police & Fire Retirement Boards
- Historic Landmarks Commission
- Housing & Community Development Commission
- **Work2future (SVWIB) Board**
- Planning Commission

FORM 700 & FAMILY GIFT REPORT

- **Due within 30 days of assuming or leaving office**
- **Due April 1 annually**
- **City mandatory \$10/day penalty for not filing (maximum \$100)**
- **State can fine up to \$5,000 for not filing**
- **Don't report your personal residence unless using it for rental income (use APN for privacy)**
- **Recommend listing City or business contact address since public record**

MORE REQUIRED TRAINING

AB 1234 Ethics Training & AB 1661 Sexual Harassment and Discrimination Training

- Appeals Hearing Board
- Civil Service Commission
- Deferred Compensation Advisory Committee
- Federated and Police & Fire Retirement Boards
- Board of Fair Campaign and Political Practices (formerly Ethics Commission)
- Planning Commission
- **Work2future (SVWIB) Board**

RESOURCES

- **City Clerk website:**
www.sanjoseca.gov/index.aspx?nid=145
- **Understanding the Role of Chair:**
http://www.ca-ilg.org/sites/main/files/file-attachments/understanding_the_role_of_chair_nov_2012_3.pdf

Questions & Answers

Thank you for participating
in this training.