

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 – WHAT IS A 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 – ALLOWABLE MEETINGS

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

BROWN ACT – AGENDA ITEMS

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

BROWN ACT – AGENDA ITEMS

- No discussion or action of items not on posted Agenda
- Comments by Members 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 the Member on his or her activities
 - Brief announcement

BROWN ACT – PUBLIC COMMENT

- Limited to items within scope of Board'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**

POLITICAL REFORM ACT

- A Member must recuse if there is a disqualifying financial interest.
- A Member 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 Board'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 / member to present the item**
- **Ask members of the Board 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 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.

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 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 Board**

RESOURCES

- **City Clerk:**
<https://www.sanjoseca.gov/your-government/appointees/city-clerk>
- **Boards & Commissions:**
<https://www.sanjoseca.gov/your-government/appointees/city-clerk/boards-commissions>
- **Understanding the Role of Chair:**
http://www.ca-ilq.org/sites/main/files/file-attachments/understanding_the_role_of_chair_nov_2012_3.pdf

Questions & Answers

Thank you for participating
in this training.