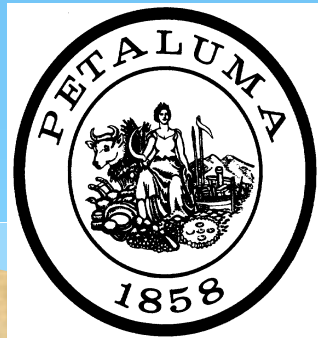


CCB Liaison Transparency Training

The Brown Act, and Brief Discussions on
Public Records Act & Conflicts of Interests



Ralph M. Brown Act



Open and Public

"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency..."

Government Code § 54953(a)

Topics

- * **What is a “meeting”?**
- * **What is a “legislative body”?**
- * **What rules apply to meetings?**
- * **What are the remedies for a violation?**

Who is subject to the Brown Act?

Legislative Bodies

- Legislative Bodies
 - Governing body (City Council)
 - Boards and commissions
 - Standing committees of CCB's
- Who is NOT a Legislative Body?
 - Temporary advisory committees or ad hoc sub-committees of less than quorum of the legislative body
 - A group of employees; a group of citizens that is not appointed by the legislative body.

What is a “meeting”?
Gov. Code section 54952.2(a)

Meetings

- * **Majority of Body**
- * **Collectively (same time and place)**
- * **Hear, Discuss, Deliberate or Take Action**
- * **Within Subject Matter Jurisdiction**



What is not a “meeting”?

Individual Contacts



Conferences and Seminars



Conferences and seminars must be open to the public and limited to issues of general interest.

Members of the body should not discuss City business.

Community Meetings



Need to be open to the public and publicized.

Recommended to avoid any direct participation or at the very least don't discuss items within your subject matter.

Social Events



A majority can attend social or ceremonial events, but don't talk about business within their purview.

Also, remember optics

Other Exceptions

- * Meetings of the governing board or other commissions of the Agency
- * Subcommittees (but don't speak)
- * Recommended only attend as observers

Illegal “meetings”

- Collective briefings (more than a quorum together with staff)
- Retreats or workshops on City business
- Serial meetings (Daisy chain and Hubcap)

Serial Meetings are Illegal

* Daisy Chain or Hub Cap



Staff Briefings ONLY OK IF

- * **Informational**
- * **No views of other members shared to other members.**



STAFF BRIEFINGS **NOT** OK IF

- * It's a Collective Briefing – majority present
- * Results in a 'discussion, deliberation, or a decision on a proposed action' between members

Remote Meetings

- * Requires location to be open to public and agenda to be posted at location
- * AB 2499 (2022) hybrid meetings without public access but requires majority at a single location and a “just cause” or “emergency”

Rules Governing Meeting Notice

Regular Meeting

- * Agenda: posted 72 hours in advance
- * Brief description
- * Freely accessible location



Non-Agenda Items



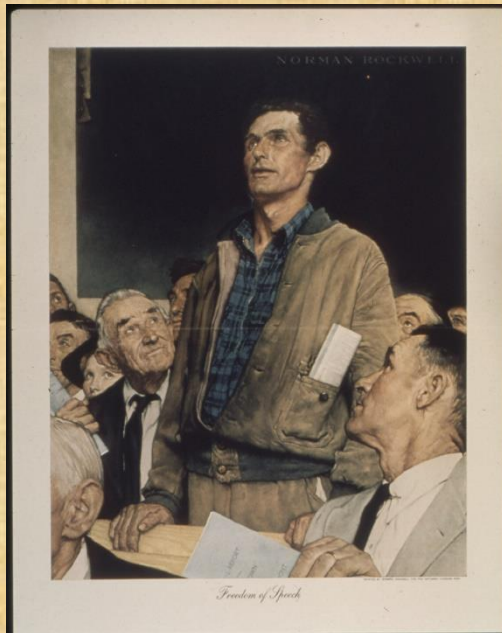
Don't discuss items not on the agenda.

Except ...

- * Brief response
- * Clarification
- * Brief announcements
- * Requests for future report
- * Placement of items on future agenda

Public Participation

Public Comments



- * Freedom of Speech
- * Criticism of agency or individuals allowed

Rules and Decorum



- * Speaker cards
- * Rules of decorum
- * Time limits
- * Recording

Removal of Disruptive Citizen

(Govt. Code Section 54957.95)

- * Allows presiding officer to remove if citizen is disruptive.
- * Must first warn about disruption and failure to cease will result in removal.

Enforcement

Enforcement & Consequences

- * Notice and opportunity to cure
- * Civil action for invalidation of actions
- * Attorneys fees and costs
- * Criminal prosecution:
 1. Action taken at a meeting
 2. In violation of the act
 3. With intent to deprive public of information

Further Resources

- * California League of Cities, Open Government Resources:
<http://www.cacities.org/Resources/Open-Government>

PUBLIC RECORDS Act

What to do if you receive a request?

- *Notify the Clerk, or City Attorney if any request is received by you.

City of San Jose v. Superior Court

- * Facts: Request for disclosure of 32 categories of records from city staff and elected officials, including emails and text messages sent or received on private electronic devices. City disclosed communications using City Phones but did not disclose communications using individual's personal device or personal accounts.
- * Held: a city employee's writings about public business are not excluded from disclosure simply because they have been sent, received or stored in a personal device or account.



CONFLICT OF INTEREST

May You Participate?

THE BASIC PROHIBITION

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know that he or she has a financial interest.

California Government Code Section 87100

FINANCIAL INTEREST

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally on the official, a member of his or her immediate family, or on any of the enumerated economic interests.

California Government Code Section 87103

5 TYPES OF FINANCIAL INTEREST

1. A decision affecting any business entity in which the CCB member investment worth \$2,000 or more. (Govt C §§87100, 87103(a))
1. A decision materially affecting any real property in which the public official has an interest worth \$2,000 or more. (Govt C §82033) Typically if the item is within 1000 feet of the CCM member's property you should inform the City Attorneys Office for them to do the analysis
2. A decision matter materially affecting any source of income) aggregating \$500 or more provided to, received by, or promised to the public official within 12 months before the time the decision is being made. Govt C §§82030, 87100, 87103(c).
3. An official will be disqualified from acting on any matter materially affecting any business entity in which the CCB member is a director, officer, partner, trustee, employee, or holds any position of management. Govt C §§87100, 87103(d).
4. A decision related to any source of a gift or gifts totaling \$520 or more provided to, received by, or promised to the CCB member within 12 months before the time when the decision is being made. (Govt C §§82028, 87100, 87103(e)).

So essentially, if a CCB member is involved in a decision which may affect a business entity that they are invested in, his real property, a source of income like employment, a business where they are employed or on the board, or a source of gift they may have a conflict and should inform the City Attorneys Office.

RECUSAL AND DECLARING THE CONFLICT

Whenever a financial conflict of interest exists, the public official shall recuse himself/herself from participation by announcing the specific nature of the conflict, stepping down from the dais and leaving the room.

Govt. Code Section 1090

- Public officials are prohibited from having financial interests in contacts made by them or any board of which they are members. (Self Dealing)
- “Making of a Contract” is broadly defined and includes “preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitations.
- Disclosing and recusing is not a cure.
- Severe consequences including disgorgement of profits, the contract is void, it’s a felony, and disqualified from holding future office.

Common Law: Conflicts

- Is the judicial expression of the public policy against public officials using their official positions for private benefit.
- Requires a public official to abstain from participation in cases when the public official's private financial interest may conflict with their official duties. As a public official a fiduciary for the public.
- A common law conflict usually can be avoided by the official's complete abstention from any official action on the matter, or any attempt to influence it. 92 Ops Cal Atty Gen 19 (2009).
- Violation of the common law duty to avoid conflicts of interest can constitute official misconduct and result in a loss of office. Govt C §§3060-3074; *Nussbaum*, 214 CA3d at 1598.

Incompatibility of Offices

- * A public officer who is appointed or elected to another public office and enters the duties of the second office automatically vacates the first office if the two offices are incompatible.
- * Two step analysis: 1.) are both seats “public offices” and 2.) are they incompatible.
- * Analysis is on the next slides.

Incompatibility of Offices

- * **“Public Office” Defined:** is a position in government:
 - * (1) which is created or authorized by the Constitution or some law;
 - * (2) the tenure of which is continuing and permanent, not occasional or temporary;
 - * (3) in which the incumbent performs a public function for the public benefit and exercises some of the sovereign powers of the state.

- * **“Incompatible”**
 - * 1. Whether there is any significant clash of duties or loyalty between the offices; or
 - * Whether considerations of public policy make it improper for one person to hold both offices; and, »
 - * Whether either office exercises a supervisory, auditory, appointive, or removal power over the other

Contacts/Questions