

Ethics Training for Public Meetings

Presented to the San Francisco County Transportation Authority
Community Advisory Committee

September 1, 2021

Presented by Amber Maltbie



Why Are You Here?

- Not a “public official” under the Political Reform Act (no AB 1234 required and no Form 700 disclosure), but;
- Steward of public trust (i.e. subject to ethics principles and legal ethics in public contracts) *and*
- Could become a public official.

Trap for the Unwary – CAC Members May Become Public Officials

“Public official” – Salaried or unsalaried members of boards with “decision-making authority.”

- Makes final government decisions
- May compel a government decision
- Makes substantive recommendations that, over time, are regularly approved without significant amendment or modification by another public official or government agency

Fair Political Practices Commission Guidance



“You are cautioned that if, over time, recommendations by the advisory committee are essentially rubberstamped by the government agency (i.e., regularly approved without significant amendment or modification), a new analysis should be constructed to determine whether the members have become public officials.”

Source: FPPC Kenny Advice Letter (1993) A-93-087.



Goals for this Training

- Spot issues/Know when to ask questions
- Avoid actual or the appearance of conflicts
- Process for voting or not voting if a conflict exists

OVERVIEW OF ETHICS PRINCIPLES

Ethics vs. The Law



- Ethics – What we ought to do
- The Law – What we must do

- The law is a floor for behavior

Big Picture – Responsibility to the Public

Responsibility – Fairness – Trustworthiness - Respect

- Decision-making criteria should focus only on what's in the public's best interest
- The public needs to trust that its interests are indeed being placed first and foremost in governmental decision-making
- Public officials are expected to be careful stewards of taxpayer resources
- Level playing field – no taking political or personal advantage of public resources

Big Picture – Responsibility to the Public (Continued)

Responsibility – Fairness – Trustworthiness - Respect

- Public trusts a process it can observe
- All perspectives have a right to be heard and considered in public decision-making process
- Government decisions must be made based on merits, not personal biases or loyalties
- Decision-makers are stewards of the public's perception of the fairness of the process

What is a Conflict of Interest?



Personal interests vs. public interests

- Financial
- Personal
- Prejudicial

Some Conflicts are Obvious...

Former Upland Mayor John Pomierski pleaded guilty to a federal bribery charge, admitting to accepting a \$5,000 bribe in return for helping a business obtain a conditional use permit from the city.

Texted to the business: “Where’s the beef?”

THE SUN 4/25/2012

Financial Interests

- Sources of income
- Business positions
- Real property
- Spouse/domestic partner's source of income
- Gifts

Scenario #1

Committee member Jones routinely works as a consultant to transportation consulting firms for specific projects.

- If Jones' recommended firm is selected by the SFCTA, Jones knows it is likely that he will be hired to assist with the project.
- One firm has offered to pay Jones a "finder's fee" if the SFCTA selects it.

Now that you've identified a potential conflict....

Recommended Procedure:

- Notify Britney Milton at least 24 hours prior to relevant vote
- If you will recuse yourself from participating in the vote, state “abstain” when the vote is called
- Do not participate in the agenda item discussion

Britney Milton – Clerk of the Transportation Authority

Britney.Milton@sfcta.org

415.522.4800

Gifts - Best Practices

- Not expressly prohibited
- Avoid gifts from persons or entities seeking business/contracts with SFCTA
- Pay own cost for lavish meals (i.e. \$50 or more) with persons or entities seeking business/contracts with SFCTA
- Gifts unrelated to position on SFCTA may be ok (long term personal friendship, private business relationship)

Brown Act Overview

- Basic rule: Meetings of the public body and of any of its standing subcommittees are subject to the Brown Act
 - “Meeting” includes a quorum of the legislative body – not just “filled” seats
- A “meeting” covers more territory than you might think
 - Regular public meetings
 - An informal gathering of a majority of members
 - Conference call of a majority of members to discuss public business
 - Email exchanges between a majority on a matter of public business
- What is NOT a meeting: individual meetings between two members; attending an educational conference on general issues; purely social or ceremonial gatherings (do not discuss public business)
 - Ad hoc committees of less than a majority: not subject to the Brown Act

Trap for the unwary! “Serial meetings”





“The St. Helena City Council violated state law by drafting a memo to a subcommittee outside of a public meeting, according to an attorney specializing in California’s open meeting law.”

“The council violated the Ralph M. Brown Act by conducting a “serial meeting” when city councilmembers commented via email on a memo containing instructions for its Housing Subcommittee...”

“...serial meetings are hard to prove because they usually involve verbal communications. But the emails released by the city are clear proof that the council committed “a very flagrant violation of state law...”

Open Meeting Requirements

- Can only discuss items on the agenda at meetings
- Can only take action if the item is phrased as an action item
 - Exception: emergency as determined by body (subject to strict interpretation, not common)
- Have to notice meetings
 - Regular meetings: 72 hour notice
 - Special meetings: 24 hour notice
- Meetings must be open to the public, and the public must be given opportunity to speak
- Meeting must generally be held within jurisdiction of agency

New for 2021! Brown Act and Social Media

- AB 992 provides direction on the social media interactions of public officials that do and do not constitute an impermissible meeting.
- Members may post on “internet-based social media platform” provided a majority do not “discuss among themselves” business of legislative body.
 - E.g., Answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body.
- Members may not respond directly to postings by another member.
 - Includes digital icons that express reactions

Sanctions for Non-compliance

- Criminal
- Civil
 - Injunction by public or District Attorney against future violations
 - Invalidation of action taken in violation of Brown Act
 - Attorneys fees to prevailing plaintiff