

CITY OF SOLANA BEACH



Handbook for Boards, Commissions and Committees

*Prepared by the City Clerk's Office
Revised September 2010*

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A. INTRODUCTION

"Never doubt that a small group of thoughtful committed citizens can change the world; indeed, it's the only thing that ever has."

-- Margaret Mead

Thank you for contributing to your community by serving on a Board, Commission or Committee. The City Council appreciates your willingness to work in this capacity and hopes your experience will be inspiring, enjoyable and satisfying.

Individuals who serve in this capacity are considered public officials of a legislative body. As such there are basic laws and procedures you must comply with as you serve out your term. This Handbook is intended to be used as a reference for the basic protocols that apply generally to all advisory bodies. This Handbook is also designed to clarify the role of Board, Commission and Committee members in relation to other citizens, City Staff and to the City Council.

In assuming a role as a public official on a Citizen Board, Commission or Committee you are making a commitment to actively participate in the local government process and act in the best interest of the City. As a member on a legislative body you act in an advisory capacity to the City Council to assist them in addressing community needs and concerns. This role is one of great responsibility and integrity in which you must always represent your commission and City in a respectful ethical manner.

B. Requirements to be a Member of a Board, Commission, or Committee

Member requirements may vary for each Board, Commission, and Committee and are determined by the Solana Beach Municipal Code commencing with Chapter 2.60 and/or by City Council resolution. The following requirements shall be followed by all Citizen Board, Commission, and Committee members:

- Submit fingerprints for a background check (Council Policy No. 19)
- Take an oath of office (SBMC 2.60.05)
- Complete the Statement of Economic Interest Form 700 (SBMC 2.60.05)
- Complete Online Ethics Training (SBMC 2.60.05)

C. Scope of Authority

Boards, commissions and committees act in an advisory capacity to the City Council and thus are referred to collectively as “advisory bodies.” Advisory bodies may formulate recommendations and function as a forum for discussion of various issues and should function as a group. The advisory role includes expressing views on programs and policies within the authorized scope of interest. Advisory groups will also focus on issues for the City Council by identifying pros, cons and possible actions.

Advisory bodies are not involved in administration or operation of City departments. They may not direct Staff to initiate programs and may not conduct major studies or establish policy. Advisory bodies also may not determine departmental work programs or Staff priorities. They may not take unilateral action as an official representative and they can not serve as advocates for departmental budgets, programs or policies.

D. Attendance

For advisory bodies to function effectively and accomplish their goals, all members must be active participants. The attendance policy for advisory body members is outlined in SBMC Chapter 2.60.010 and what follows is a summary of this section.

Attendance is critical for advisory bodies to function as intended. Therefore, if any member misses two meetings in a row without notice or cause, the member’s position will be vacated in order to be filled with someone who is able to attend the meetings for that term. Just cause for absences includes illness, family emergency, or schedule conflicts directly related to the business and interest of the City.

Also, a member who misses three meetings in one year will be referred to the City Manager for further review and determination of cause. Three unexcused absence is grounds for dismissal.

E. Legal

As a member of a Council advisory group you are considered a public official. As such, there are various Federal, State and local laws with which you must comply. City Staff will offer as much guidance as possible to ensure compliance with the laws, but it is ultimately your responsibility to abide by all requirements.

In general, there are two laws with which you should become very familiar. They are the Brown Act and the Political Reform Act. These Acts were in part created to ensure a transparent Government with no behind-the-scenes dealings and to ensure that actions taken by Government are in the public interest and not for the undue benefit of private individuals.

The Brown Act

The Brown Act (California Government Code, Sections 54950-54963) is a state law that governs meetings conducted by local legislative bodies to facilitate public participation and to curb misuse of the democratic process by secret legislation by public bodies. Advisory bodies must comply with the Brown Act by ensuring public access to their meetings. The Brown Act generally requires local legislative bodies to conduct meetings in open public sessions and to post meeting agendas in advance.

Criminal violations of the Brown Act are misdemeanors punishable by up to one year in jail and/or fines. For these reasons, the City's business must be carried out in a manner that prevents any actual or perceived Brown Act violations. Some more specific requirements of the Brown Act are described below.

Quorum

At any meeting of an advisory body, a majority of those members currently appointed shall constitute a quorum for purposes of conducting business, and unless otherwise posted, a majority vote of those present and voting shall be sufficient to adopt motions.

A "meeting" is considered to take place *anytime* that a quorum of the advisory body gathers to discuss that body's business. The Brown Act prohibits a quorum from meeting privately.



Scenarios:

- A. Four members of a seven-member art commission meet at an art gallery to evaluate the art for a proposed gallery exhibit at City Hall. OR
- B. Four members of a seven-member recreation commission meet at a store to buy decorations for a city event.

Outcome: Violation of the Brown Act

Both of these interactions are considered to be private "meetings" since there was no public notice posted of the agenda and a quorum met without providing the public an opportunity to participate. If only three of the seven members got together to buy decorations or evaluate the art (as directed by the entire commission) and later reported back to the commission about their activities, then this would not be a violation of the Brown Act.

Agendas

State law requires that an agenda for each regular advisory meeting be posted at least 72 hours prior to the meeting. The agenda shall state the time and place of the meeting and a brief description of matters to be heard. The agenda shall also provide an opportunity for

members of the public to be heard at the meeting regarding matters within the jurisdiction of the advisory body. The Staff liaison assigned to each advisory body is responsible for preparation of the meeting agenda. All agendas shall contain a section titled “Next Meeting Agenda” that allows for members to request agenda topics for consideration at the next meeting. The final approval of the agenda is under the authority of the City Manager’s Staff. No matter may be considered by the Commission other than those matters listed on the agenda, as per the Brown Act. The liaison must provide the agenda to the City Clerk’s Office for official posting during regular City business hours and prior to the 72-hour posting deadline.

Meeting Types

City advisory bodies may hold two types of meetings: ***regular and special meetings***. The Staff liaison to the advisory body is responsible for noticing the advisory members and the City Clerk’s office of meeting cancellations, adjournments, and/or change of locations.

The Brown Act requires advisory bodies to conduct public meetings. Therefore, both regular and special meetings should be conducted with doors to the room open in order to facilitate public involvement. The public should have the opportunity to speak at the meetings by being called upon.

Regular Meetings

Regular meetings are held at the time and place as determined by the majority vote of the legislative body.

Special Meetings

Special meetings may be held at a different time or place to discuss specific issues as noted on the meeting agenda, as long as the meeting has been properly noticed.

Serial Meetings – Violation of the Brown Act

The Brown Act specifically prohibits “any use of direct communication, personal intermediaries or technological device employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on any item by the members of the legislative body.” This type of meeting occurs through a series of communications by individual members or groups smaller than a quorum that ultimately involve a majority of the members. The problem with serial meetings is in the process, which deprives the public of an opportunity for meaningful participation in advisory body decision-making. Except for teleconferencing discussed below, the Brown Act specifically prohibits “any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members to develop a collective concurrence as to action to be taken on an item by the members.

The serial meeting may occur by either a “daisy chain” or a “hub-and-spoke” sequence. In the daisy-chain scenario Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. The hub-and-spoke process involves, for example, a staff member (the hub) communicating with members of the advisory body (the spokes) one-by-one for a

decision on a proposed action, or a staff members briefing a majority of members prior to a formal meeting and, in the process information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

An advisory body member has the right, if not the duty, to meeting with constituents to address their concerns. That member also has the right to confer with a colleague or appropriate staff about local agency business. However, if several one-on-one meetings or conferences leads to a "collective concurrence as to action to be taken" among a majority, the Brown Act has been violated. Members should always be vigilant when discussing local agency business with anyone to avoid conversation that could lead to a collective concurrence among the majority of the advisory body.

Example

Scenario:

There are five members on a commission. Member #1 sends an email to Member #2 asking whether he thinks they should put an item on the agenda for the next meeting. Member #2 gives an opinion, but then has some doubts, so he forwards the email to Member #3. As soon as the third member received the email the Brown Act considers that a quorum "met" to discuss an issue, because information was ultimately exchanged among a quorum of members. This is considered to have been a serial meeting and is a violation of the Brown Act.

Gatherings That Are Not Meetings

There are six types of gatherings that are not subject to the Brown Act. If a gathering does not fall within any of the six exceptions listed below, a majority of members in the same room who are merely listening to a discussion of the body's business will be participating in a meeting that requires notice, an agenda, and for public comment. The six exceptions are as follows:

1. Individual Contacts: Conversations between a member of the body and any other person, that does not serve to "poll" members of the body does not constitute a meeting for the purposes of the Brown Act.
2. Conferences: Attendance of a majority of the members of the body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the body, provided by a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.
3. Community Meetings: Attendance of a majority of members of the body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

4. Other Legislative Bodies: This exception allows a majority of legislative body to attend an open and publicized meeting of the local agency, provided that the majority of members do not discuss among themselves specific business within the body's subject matter jurisdiction.
5. Standing Committees: Attendance by a majority of the members of the body at an open and noticed meeting of a standing committee of that body, provided that the members of the body who are not members of the standing committee attend only as observers.
6. Social or Ceremonial Events: Attendance of a majority of the members of the body at a purely social or ceremonial occasion, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

Conflicts of Interest

Members serving on Citizen Boards, Commissions and Committees and similar bodies are public officers and subject to the conflict of interest laws. Advisory bodies are required to comply since they have the ability to compel a governmental decision and make substantive recommendations to other bodies and the City Council. The purpose of such laws is to promote public confidence in the conduct of public officers.

It is the duty of the individual member to contact the local agency's advisor if the member believes he or she has a conflict of interest. Deciding whether a member has a conflict of interest is fact intense and may require some analysis or research. Therefore, in matters involving potential conflicts, advance preparation to determine conflicts should be done as far in advance of meeting participation as is possible. Any last minute conflict of interest questions may result in giving conservative advice, that the member should announce his or her conflict and disqualify him or herself from the matter.

Political Reform Act

The Fair Political Practices Commission (FPPC) administers and enforces the Political Reform act and issues regulations to carry out its purpose.

The purpose of the Political Reform Act is to prohibit a public official from participating in a decision that will impact his or her economic interests. Conflicts of interest are prevented in two ways: by disclosure and disqualification. This section of the Handbooks is intended to provide a "big picture" of the conflict of interest provisions of the Political Reform Act. A public official should not rely solely on this Handbook to decide whether they have a conflict of interest since making this determination will depend heavily on the facts specific to the decision being made and a detailed application of the laws. The Fair Political Practices Commission (FPPC) provides the guidelines for determining conflict of interest issues. If you have any concerns regarding conflict of interest please contact the FPPC, City Staff or the City Attorney for guidance prior to participating in any discussion on the subject matter.

Disclosure of Financial Interests

The purpose of disclosing financial interests is to alert public officials of personal interests that might be affected while performing their official duties, i.e. making governmental

decisions. All members of City advisory bodies should avoid the appearance of bias in pending City matters at all times.

Public officials disclose their financial interests on a form entitled “**Statement of Economic Interests**” or “**Form 700**” issued by the FPPC. The Form 700 is filed within 30 days of taking office, annually, and within 30 days of leaving office. Form 700s submitted by public officials are public records and are made available for public inspection upon request.

There are six kinds of economic interests from which a conflict of interest may arise. Those economic interests are the following:

- **Business investment.** An economic interest in a business entity in which the public official, his or her spouse/domestic partner, dependent children, or anyone acting on the public official’s behalf has invested \$2,000 or more.
- **Business employment or management.** A business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management, paid or unpaid.
- **Real property.** An economic interest in real property in which the public official, his or her spouse/domestic partner, dependent children, or anyone acting on his or her behalf has invested \$2,000 or more , and also certain leasehold interests.
- **Sources of income.** An economic interest in a source from whom the public official has received (or has been promised) \$500 or more in income within 12 months prior to the decision. The public official will have a community property interest in the spouse’s income. Also, if the public official, his or her spouse/domestic partner or dependent children, own 10% or more of a business, the public official will be considered to receive “pass-through” income from the business’ clients. In other words, the business’s clients may be considered sources of income to the public official.
- **Gifts.** A gift is anything of value for which you have not provided equal or greater consideration to the donor. A gift is reportable if its fair market value is \$50.00 or more. In addition, multiple gifts totaling \$50.00 or more received during the reporting period from a single source must be reported. Gifts are reportable regardless of where the donor is located. You must report a gift even if you never used it or you gave it away to another person. However, you are not required to disclose gifts that were not used and within 30 days were returned to the donor or delivered to a charitable organization without being claimed by you as a charitable contribution for tax purposes. Gifts are limited by law to a value of \$390.00 from any one source in a calendar year.
- **Personal financial effect.** An economic interest in the public official’s personal expenses, income, assets, or liabilities, as well as those of the public official’s immediate family. This is known as the “personal financial effects” rule. If these are likely to go up or down, \$250 or more as a result of the governmental decision, then it has a “personal financial effect” on the public official.

Common Law

The common law conflict of interest is not defined by statute or by regulation. It has developed through precedential court decisions. The basic rule is that a public officer is bound to exercise the powers conferred on him or her with disinterested skills, zeal, and

diligence and primarily for the benefit of the public. The California Attorney General has taken the position that where no conflict is found according to statutory prohibitions, a special situation could still constitute a conflict under the common law doctrine.

As a general rule, the decision maker should not be tempted by his or her own personal interest and doctrine will apply to situations involving non-financial personal interest.

The City Attorney's office is most commonly used for reference. By statute, the FPPC has the primary responsibility for impartially administering and implementing the Political Reform Act. Opinions from the City Attorney's office are not binding on the FPPC. Therefore, a public officer's reliance on the a City Attorney's opinion will not immunize an officer from any FPPC administrative action, or from any civil or criminal proceeding if any officer violated the Political Reform Act or other conflict of interest laws. Each officer may gain assurance by requesting a formal opinion from the FPPC.

Once the sources of economic interest for any public official are identified, potential conflicts of interest are determined by examining whether a decision being made by the public official will either directly or indirectly have an impact on the public official's economic or other beneficial interests. The likelihood that the outcome of the decision will have an important impact, need not be a certainty, but it must be more than merely possible.

When it has been determined that there is a conflict of interest, the City's policy is that the member must recuse themselves from the discussion and the meeting (physically leave the room) to ensure that there is no influence or participation on the subject matter.

F. Public Records Disclosure and Retention

The City, including its advisory bodies, is subject to state laws governing the retention of public records. The State Public Records Act, which is modeled after the federal Freedom of Information Act, applies to records containing information relating to the conduct of the public's business prepared, owned, used, or retained by a local agency regardless of physical form or characteristics. Unless otherwise provided, public records are to be open to inspection at all times during the office hours of public agencies. Any person may receive a copy of any identifiable public record upon request and payment of a prescribed fee.

In general, public records are subject to disclosure unless they are expressly exempt under the Public Records Act or exempt under the "balancing test." The balancing test is also referred to as the "catchall provision," where the City must determine whether the public interest in disclosure is clearly outweighed by the public interest in nondisclosure.

Public records generated by advisory groups generally include agendas, meeting minutes, materials distributed at meetings, and working files related to commission business (i.e. . . . event planning). The general retention period per the California Government Code for most

documents is two years and the retention period for minutes is permanent since this is a vital record of the City.

G. Meeting Decorum

In order for meetings to be effective it is important to follow proper meeting decorum, some of which is outlined below.

Role and Responsibilities of Chair

The Chair shall preserve order and decorum at all meetings of the advisory body, announce the advisory body's decisions, and assess the questions from the commission members to be on the topic. The Chair is responsible for ensuring the effectiveness of the group process. An effective Chair balances moving the discussion forward with involving all members of the advisory body and allowing for adequate public participation. In the absence of the Chair, the Vice Chair shall act as the presiding officer.

Role and Responsibilities of Members

Members should assist the Chair. They should obtain recognition before speaking and limit their remarks to the issue. Members should ask clarification questions and respect their colleague's rights. If they have any concerns or objections, these should be raised at the meeting.

Meeting Protocol

It is the Chair's role to facilitate meeting protocol. Staff liaisons may assist the Chair in starting the meeting on time, and also provide guidance in meeting protocol. Staff may also facilitate and promote effective communication. Here are some additional guidelines to consider while conducting meetings:

- Start meetings on time.
- Keep the agenda in mind in order to give each item the appropriate time.
- Announce at the start of the meeting if the order of agenda items is to be rearranged either for convenience, response to those attending only for certain items, or for better pacing of the agenda.
- Let the Chair run the meeting.
- Be fair, impartial, and respectful of the public, Staff and each other. Give your full attention when others speak.
- Trust your own good judgment on decisions.
- Keep in mind that people may be attending a meeting for the first time and may be unfamiliar with the advisory body procedures. In your discussion, either avoid or explain technical terms or verbal shorthand.
- Listen to audience concerns.
- Do not engage in side conversations or otherwise be distracted.
- Do not engage the public in debate.
- Remember that your advisory body exists to take actions. It is not simply a discussion group or debating society.
- End meetings at a reasonable hour.

Preparing Motions

Advisory body meetings are usually conducted according to parliamentary procedure. The Chair directs the meeting, and his/her rulings must be followed unless they are overruled by the body.

When a member wishes to propose an action on a particular item on the posted agenda for the advisory body to consider, the member makes a motion. A motion goes through the following steps:

1. The member asks to be recognized by the Chair.
2. After being recognized, the member makes the motion, "*I move that we...*"
3. Another member seconds the motion, "*I second the motion.*"
4. The Chair restates the motion and asks for discussion on the motion.
5. When the Chair determines that there has been enough discussion, the debate may be closed with, "*Is there any further discussion?*"
6. If no one asks for permission to speak, the Chair then puts the question to a vote, "*All those in favor say aye.*" "*All those opposed say nay.*" The Chair should restate the motion prior to the vote to ensure the motion is clearly understood by all. Any member may request a roll call vote on a motion.
7. After the vote, the Chair announces the decision.

Properly phrasing a motion can be difficult and corrections may be necessary before it is acted upon. Until the Chair states the motion, the member making the motion may rephrase or withdraw it.

H. Role and Relationships

Relationship to Council

The primary purpose of all Citizen Commissions is to act in an advisory capacity to the City Council. The City Council may direct the Commission to research various topics to assist them in making decisions.

Relationship to City Staff

The relationship of the Citizen Commissions and Staff is an active and continuous one. City Staff provides assistance to the Commission which includes assistance with the facilitation of meetings, preparation and distribution of the agenda and minutes. Commission members work closely with the Staff liaisons; however, they do not have the authority to supervise or direct the work of Staff. Additional direction to Staff must be approved by the City Manager. City Staff members are available to provide general Staff assistance to the advisory body.

The Staff liaison assigned to each advisory body will be responsible for:

1. Preparation of the meeting agenda.
2. Submitting the final agenda to the City Clerk's Office for official posting prior to the 72-hour posting deadline for regular meetings.

3. Noticing the advisory members and the City Clerk's office of meeting cancellations, adjournments, and/or change of locations.
4. Assist the Chair in beginning the meeting on time and provide guidance in meeting protocol.
5. Preparation of the minutes of each meeting.

Meeting Minutes

The Municipal Code requires that minutes be taken and approved for each meeting of an advisory body. The Staff liaison assigned to the advisory body is responsible for preparation of the minutes of each meeting. Meeting minutes shall be a brief record of matters discussed and actions taken by the advisory body. The minutes shall also list the names of those persons speaking during the public comment period. Minutes should not reflect personal opinions and/or comments that do not directly relate to actions taken by the advisory body. Minutes of the meeting shall be submitted to the advisory body for approval at its next meeting and shall be signed by the Chair.

II. Appendixes

Appendix 1: Responsibilities of Board, Commission, Committee Members

Appendix 2: Do's and Don'ts For Advisory Group Members

Appendix 3: Rosenberg's Rules of Order: Parliamentary Procedures

Appendix 4: Key Ethics Law Principles for Public Servants

J. Resources

California Codes – Government Code
The Ralph M. Brown Act - SECTION 54950-54963
<http://www.leginfo.ca.gov/calaw.html>

League of California Cities
Open and Public IV: A Guide to the Ralph M. Brown Act
<http://www.cacities.org/index.jsp>

Fair Political Practices Commission
Political Reform Act – add website
California Code of Regulations
www.fppc.ca.gov

California Attorney General's Office
<http://ag.ca.gov/>

Appendix 1: Responsibilities of Board, Commission, and Committee Members

Selection as an active member of a City Board, Commission, or Committee provides an unusual opportunity for genuine public service. Although the specific duties of each advisory body vary with the purpose for which they are formed, there are certain responsibilities common to all Board, Commission, and Committee members. The following is a summary of the important responsibilities of members, and guidelines, which will assist in maximizing one's contribution to the community.

A. Understanding the Role and Responsibility of the Commission

Members should become familiar with the City programs within their group's scope of interest by consulting with the staff liaison. However, the role of the commission is to advise the City Council on specific City program areas and related policies, not to establish City policy or administer City programs.

B. Properly Represent the Commission

Members must not represent their own views or recommendations as those of the commission unless the majority of the body has officially voted to approve such action.

Members making recommendations or expressing views not approved by a majority of the commission should indicate they are expressing themselves as private citizens. Public statements should contain no promises to the public that purport to be binding on the commission, staff, or City Council.

C. Concern with the Entire Community

Although members may be selected in part on the basis of representing defined groups, in order to assure that all interests are voiced and considered, upon appointment each member should represent the overall public good and not that of an exclusive group or interest. The question, "what is good for the entire community?" should take precedence over "what will increase the advantage of my interest group?"

D. Be Conscious of Your Relationship to City Council & City Staff

Good relations with the City Council and City Staff are necessary for the successful operation of any commission. It is important that each member respect the authority of those who, in the end, will be charged with the final responsibility for action taken by the City.

E. Establish a Good Working Relationship with other Members

On many occasions the success or failure of the efforts of a member is largely dependent upon the degree of cooperation evident among the individual members of the body. In order to build a consensus around common goals and objectives, members will often have to first reconcile contradictory view points and show a willingness to objectively consider the real and/or basic issues.

The following steps should be taken with all members:

- Always show respect for each individual's view point
- Allow other members adequate time to present their views before making comments
- Be open and honest at all times
- Recognize new members and see that they are made welcome and receive assistance in becoming acquainted with their new duties

F. Be Prepared to Vote

It is the responsibility of the member to make adequate preparations for each meeting. If necessary, the member may wish to make field visits to locations under consideration prior to the meeting. Being prepared will greatly assist you when it comes time to vote on an issue. If members do not participate when they do not have a genuine conflict of interest, they are not carrying out the primary job for which they were appointed.

Appendix 2: Conflict of Interest Do's & Don'ts for Advisory Group Members

Prepared by McDougal, Love, Eckis, Smith, Boehmer & Foley

Economic Disclosure (Form 700)

- DO timely file your assuming office, annual and leaving office statements.
- DO consult your conflict of interest code disclosure category and Form 700 instructions to determine what to disclose.
- DO err on the side of disclosure.
- DON'T disclose your personal residence address – it is exempt from disclosure.
- DO keep a running file regarding matters such as gifts to make annual reporting easier.
- DON'T accept more than \$420 in annual gifts from a single source that is within your disclosure category.
- DO use the City Attorney (619-440-444), City Clerk, and/or FPPC (1-866-ASK-FPPC) as resources.

Conflict of Interest

- DO watch out for upcoming agenda items related to your economic interests.
- DON'T participate in any way if you are disqualified from a matter.
- DO seek advice from the City Attorney (619-440-444), City Clerk, and/or FPPC (1-866-ASK-FPPC) on potential disqualification as soon as you identify an issue.
- DO take special care to avoid conflict issues involving contracts, which are the most serious form of conflicts of interest.

Brown Act – Open Meetings Law

- DON'T allow informal or social gatherings to become “meetings” subject to noticing and open meeting requirements.
- DON'T allow a series of one-on-one contacts (including phone calls or emails) to turn into a “serial meeting”.
- DO hold all meetings at a location within the City of Solana Beach.
- DO allow the public access to all meetings other than *approved* closed sessions.
- DO provide a time for public comment on each regular meeting agenda.
- DON'T discuss items of business that are not listed on the agenda.
- DON'T require meeting attendees to sign an attendance list or sign up sheet (use of a *voluntary* sign up sheet is permissible).
- DO make available for public inspection all recordings of meetings and all documents distributed to board members during meetings.

Disclaimer: This is a brief summary of some key legal issues applicable to board and commission members, for discussion purposes only. Many exceptions and variations to these general rules exist. Please seek individual advice if you have questions about any of these issues. City's legal counsel: *McDougal, Love, Eckis, Smith, Boehmer & Foley*

Rosenberg's Rules of Order:
● Simple Parliamentary
Procedures for the 21st Century



MISSION:

To restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION:

To be recognized and respected as the leading advocate for the common interests of California cities.

**About the League of California Cities**

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts educational conferences and research, and publishes *Western City* magazine.

About *Western City* Magazine

Western City is the League of California Cities' monthly magazine. *Western City* provides lively, interdisciplinary analyses of issues affecting local governance. Its goal is to offer immediately practical ideas, information and bigger-picture policy issues and trends. For more information, visit www.westerncity.com.

"Rosenberg's Rules of Order" first appeared in *Western City* magazine in August and September 2003.

About the Author

Dave Rosenberg is an elected county supervisor representing the 4th District in Yolo County. He also serves as director of community and intergovernmental relations, director of operations, and senior advisor to the governor of California. He has served as a member and chair of numerous state and local boards, both appointed and elected, and also served on the Davis City Council for 12 years, including two terms as mayor. He has taught classes on parliamentary procedure and has served as parliamentarian for large and small governing bodies. In the fall of 2003, Gov. Davis appointed Rosenberg as a judge of the Yolo County Superior Court.

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

by Dave Rosenberg

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that hasn't always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules, *Robert's Rules of Order*, which are embodied in a small but complex book. Virtually no one I know has actually read this book cover to cover.

Worse yet, the book was written for another time and purpose. If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook. On the other hand, if you're running a meeting of a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order. Hence, the birth of "Rosenberg's Rules of Order."

This publication covers the rules of parliamentary procedure based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified and slimmed down for 21st century meetings, yet they retain the basic tenets of order to which we are accustomed.

"Rosenberg's Rules of Order" are supported by the following four principles:

1. Rules should establish order. The first purpose of the rules of parliamentary procedure is to establish a

framework for the orderly conduct of meetings.

2. Rules should be clear. Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.

3. Rules should be user-friendly. That is, the rules must be simple enough that citizens feel they have been able to participate in the process.

4. Rules should enforce the will of the majority while protecting the rights of the minority. The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

The Chairperson Should Take a Back Seat During Discussions

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct. The chair should be well versed in those

rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, published agenda; informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map for the meeting. And each agenda item can be handled by the chair in the following basic format.

First, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed.

Second, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body,

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire to move on.

a staff person, or a committee chair charged with providing information about the agenda item.

Third, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

Fourth, the chair should invite public comments or, if appropriate at a formal meeting, open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then the "nays" is normally sufficient. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this governing body."

Motions in General

Motions are the vehicles for decision-making. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

Motions are made in a simple two-step process. First, the chair recognizes the member. Second, the member makes a motion by preceding the member's desired approach with the words: "I move ..." A typical motion might be: "I move that we give 10 days' notice in the future for all our meetings."

The chair usually initiates the motion by:

1. Inviting the members to make a motion: "A motion at this time would be in order."

2. Suggesting a motion to the members: "A motion would be in order that we give 10-days' notice in the future for all our meetings."
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

The Three Basic Motions

Three motions are the most common:

1. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."
2. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

3. The substitute motion. If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would “move a substitute motion.” A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

When Multiple Motions Are Before The Governing Body

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the *first* vote should be on the *last* motion made. So, for example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows.

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passes*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) *failed*, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would now move to consider the main motion (the first motion) as *amended*. If the motion to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are *not* debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

A motion to fix the time to adjourn.

This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to

be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the

the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook.

motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super-Majority Votes

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means

pend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body may second the motion). If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to sus-

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every

It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus.

lege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privi-

lege relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy. ■

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KEY ETHICS LAW PRINCIPLES FOR PUBLIC SERVANTS

The following principles drive California's ethics laws. If you find yourself in a situation that implicates one of these principles, talk with your agency counsel as soon as possible about the specifics of what the law does and does not allow.

Personal Financial Gain - Appearing to Influence Decisions

Public Officials:

- Must disclose their financial interests.
- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests (see reverse for list of types of financial interests).
- Cannot have an interest in a contract made by their agency.
- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Cannot influence agency decisions relating to potential prospective employers.
- May not acquire interests in property within redevelopment areas over which they have decision-making influence.

Personal Advantages and Perks Relating to Office

Public Officials:

- Must disclose all gifts received over \$50 and may not receive gifts aggregating to over \$340 (2004) from a single source in a given year.
- Cannot receive compensation from third parties for speaking, writing an article or attending a conference.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- Cannot participate in decisions that may affect (positively or negatively) their personal interests.
- Cannot accept free transportation from transportation companies.
- Cannot send mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Cannot receive loans over \$250 from those within the agency or those who do business with the agency.

Fairness, Impartiality and Open Government

Public Officials:

- Cannot participate in decisions that will benefit their immediate family (spouse or dependent children).
- Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings - such as land use permits - involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than \$250 from permit applicants while application is pending and for three months after a decision (does not apply to elected bodies).
- Must conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Must allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- Must disclose information about significant (\$5000 or more) fundraising activities for legislative, governmental or charitable purposes.

A PUBLIC OFFICIAL'S CONFLICT OF INTEREST CHECKLIST

Key Concepts:

- A public agency's decision should be based solely on what best serves the public's interests.
- The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- Having a conflict of interest does not imply that you have done anything wrong; it just means you have financial or other disqualifying interests.
- Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. Don't take that risk.

Basic Rule: A public official may not participate in a decision - including trying to influence a decision - if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in contract, the official's agency may be prevented from even making the contract.

When to Seek Advice from Your Agency Counsel: The rules are very complex. Talk with your agency counsel 1) early and often 2) when an action by your public agency 3) may affect (positively or negatively) 4) any of the following:

- Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months for you or your immediate family (spouse and dependent children).
- Business Management or Employment.** An entity for which you serve as a director, officer, partner, trustee, employee, or manager.
- Real Property.** A direct or indirect interest in real property of \$2000 or more that you or your immediate family (spouse and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of your decision.
- Personal Finances.** Your or your immediate family's (spouse and dependent children) personal expenses, income, assets, or liabilities.
- Gift Giver.** A giver of a gift of \$340 or more to you in the prior 12 months to you, including promised gifts.
- Lender/Guarantor.** A source of a loan (including a loan guarantor) to you.
- Contract.** You or a member of your family would have an interest (direct or indirect) in a contract with the agency.
- Business Investment.** An interest in a business that you or your immediate family (spouse and dependent children) have a direct or indirect investment worth \$2000 or more.
- Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where you:
 - Have a direct or indirect investment worth \$2000 or more; or
 - Are a director, officer, partner, trustee, employee, or manager.
- Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of yours that owns real property.
- Campaign Contributor.** A campaign contributor of yours (applies to appointed decision-making bodies only).
- Other Personal Interests and Biases.** You have important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on your ability to make a fair decision.

What Will Happen Next? Agency counsel will advise you whether 1) you can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in.

Even If It's Legal, Is It Ethical? The law sets only minimum standards. Ask yourself whether members of the public whose opinion you value will question whether you can act solely in the public's interest. If they might, consider excusing yourself voluntarily from that particular decision-making process. Remember, good ethics is good politics.

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