

# *City of Richmond*

BOARDS & COMMISSIONS TRAINING

July 12, 2023, 2:00-4:00 p.m.

Zoom Link: <https://ci-richmond-ca-us.zoom.us/j/99258380198>



# Agenda

- I. WELCOME
- II. GENERAL ROLE OF BOARDS, COMMISSIONS, & COMMITTEES
- III. APPOINTMENT PROCESS
- IV. HANDBOOK OVERVIEW & REPRESENTING THE CITY
- VI. TRANSPARENCY RULES
  - a. Public Record Act Requests
  - b. Brown Act
  - c. Conflict of Interest
- VII. ROSENBERG'S RULES OF ORDER, MEETING PROCEDURES AND RULES
- VIII. CREATION OF AD HOC COMMITTEES & AB 2449
- IX. CONCLUSION

# General Role of Boards, Commissions, & Committees

- ▶ Currently we have approximately 24 active boards/committees
- ▶ Advise the Council on wide variety of policy issues/programs
  - ▶ Expand the opportunity for citizen input and participation
- ▶ Bodies differ in duties/responsibilities, many are solely & entirely advisory to the elected body.

# General Role of Boards, Commissions, & Committees (continued)

## *DOES NOT INCLUDE:*

- ▶ Directing staff to initiate or implement programs
- ▶ Determining departmental work or staff priorities.
- ▶ Taking unilateral action as an official representative

# Appointment Process

## City Clerk's Office:

Receives Application and check for completeness before forwarding to Mayor's Office



## Mayor's Office:

Reviews Application for Eligibility



## Mayor's Office:

Approves or Denies Application; sends considerations for Approval of Appointment to City Council



## City Council:

Approves or Denies Mayor's recommendations for Appointment



## City Clerk's Office:

Notifies Mayor's Office, New Commissioners, and Staff Liaisons of Approval

# Handbook Overview

*Adopted April 27, 2021 – Resolution No. 45-21*

## BOARD, COMMISSION AND COMMITTEE FUNCTIONS

### ROLES:

“WHAT WAS THE BOARD, COMMISSION, OR COMMITTEE ESTABLISHED TO DO?”

### RESPONSIBILITIES OF BOARD, COMMISSION, OR COMMITTEE MEMBERS

### RELATIONSHIPS:

- WORKING WITH EACH OTHER, COUNCIL, STAFF LIASONS, & THE PUBLIC

### MEMBERSHIP:

-WHAT IS REQUIRED TO BECOME A MEMBER OF EACH BOARD, COMMISSION, OR COMMITTEE

## CONFLICT OF INTEREST

### BOARD, COMMISSION, AND COMMITTEE ORGANIZATION:

-ELECTION OF OFFICERS/TERMS

### DEVELOPMENT OF A WORK PROGRAM

## MEETING PROCEDURES

# *Handbook Overview*

## *Representing the City – Business Cards*

- ▶ **Use of City Business Cards, Logo, and Insignia:**

Board, commission, and committee members may request city business cards, unfortunately, at their own expense, to be used only for official City of Richmond business or promoting the City.

- ▶ The City Attorney's Office advises against individual board members, commissioners, and committee members privately printing their own business cards using the city logo or insignia.

- ▶ The staff liaison is responsible for ordering business cards from the City's approved printing vendor.

The vendor the City currently uses is AAA (formerly Office City)

# *Handbook Overview*

## *Representing the City - Use of City Insignia*

- ▶ Use of City Insignia shall be for purposes directly connected with the official business of the City of Richmond, its City Council, officers or departments, and for those matters expressly approved by the Clerk of the City Council or his or her designee.
- ▶ With the exception of uses of City Insignia for purposes directly connected with the official business of the City of Richmond, a person shall not, without the prior approval of the Clerk of the City Council or his or her designee, use or allow to be used any reproduction or facsimile of City Insignia in any manner whatsoever

(Source: Ordinance No. 29-08 N.S.)

# Handbook Overview

## REFERENCE LINKS

Link to Boards and Commission Page:

<https://www.ci.richmond.ca.us/256/Boards-and-Commissions>

Link to Boards, Commission, and Committee Handbook:

<https://www.ci.richmond.ca.us/DocumentCenter/View/48361/COR-Boards-and-Commissions-Handbook---Revision-Adopted-3-1-2022?bidId=>

## The ABCs of Open Government Laws

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government. Conducting government openly and transparently is an opportunity to include the public in decision-making processes and demonstrate that the agency has nothing to hide.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California's constitution.

### CALIFORNIA'S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:

- A. Conduct the public's business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.
- B. Allow the public to participate in meetings.
- C. Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.

This pamphlet summarizes these three requirements for local officials in broad terms. For information about how these requirements apply in any given situation or more information about this area of the law in general, local officials are encouraged to consult with their agency attorneys.

The law also requires certain local officials to be transparent about their personal financial interests and relationships. For more information about these requirements, please see the Institute's bookmark entitled "Key Ethics Law Principles for Local Officials" and *A Local Official's Reference on Ethics Laws*. Both are available at [www.ilsg.org/trust](http://www.ilsg.org/trust).

# Transparency Rules

- ▶ **PUBLIC RECORDS ACT** – Allows public inspection of records
- ▶ **BROWN ACT** – Open meeting laws
  - Conduct business in open and publicized meetings.
  - Allow public to participate in meetings.
- ▶ **CONFLICT OF INTEREST RULES**

# Public Records Act

- ▶ **Applies to members of City Boards & Commissions**
- ▶ **Requirements stem from:**
  - California Government Code § 6250 et. seq.
  - Chapter 2.40 of the Richmond Municipal Code (“RMC”)
- ▶ **Public Records can be requested by the public**
- ▶ **City officials are required to conduct a reasonable search & disclose all records they are able to locate**
- ▶ **Public Record: Any writing containing information relating to City business**
  - Includes any documents/communications regarding official City business sent or received by Board members or commissioners, including personal emails & texts
  - On City email/network or on personal devices
  - Personal texts are public records if they relate to City business
- ▶ **If City receives a PRA request for official’s emails or text messages, officials will be asked to complete an affidavit & provide the responsive documents.**

# Public Records

- ▶ Agendas and meeting materials
- ▶ Other writings prepared, owned, used or retained by agency (including electronic)
- ▶ Penalties: Adverse media attention + costs and fees if litigated





# *The Ralph M. Brown Act*

*(AKA: The Open Meeting Laws)*

- ▶ “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.”

(Gov. Code § 54953)

# *What is a Meeting?*

- ▶ Meetings occur when a legislative body's majority congregates at the same time and place to hear, discuss, or deliberate on any item that the Body may legally act upon.
- ▶ Narrow exceptions exist to what the Brown Act considers a "meeting" (e.g., conferences, social gatherings).





# Serial Meetings

## Examples of serial meetings:

### ▶ Chain:

If member A contacts member B to express his/her opinion on a City-related issue, and B contacts member C and shares the opinions of members A and B, a “serial meeting” may result in violation of the Brown Act.

### ▶ Hub and spoke:

An intermediary, such as staff member, contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the legislative body.



# Serial Meetings & AB 992

- ▶ **New rule in 2020:** A legislative body member shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

- This includes likes, thumbs up, emojis, sharing, or commenting
- Social media is any online platform that “is open and accessible to the public.” Includes traditional social media sites such as Facebook, Twitter, or Nextdoor, but also smaller forums such as a discussion section on a news website.



- ▶ **Takeaway:** Members should avoid commenting on or even liking or posting emojis or other responsive remarks on the social media post of another Council member so as to avoid the possibility that a majority of the body is deemed to be engaged in a communication.

# *What is NOT a Meeting?*

If a quorum does not receive information on, discuss, or deliberate on any item, on which the body may legally act, then the following, generally, are NOT meetings:

- ▶ Individual contact
- ▶ Public conferences
- ▶ Other local agency meetings
  - ▶ Community meetings
- ▶ Social or ceremonial gatherings

# Agenda Requirements

- ▶ A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.
- ▶ No action may be taken if an item is not on the agenda (unless it is a qualified emergency item)



# Penalties: Failing to Comply With the Brown Act

- ▶ Nullification of decision
- ▶ Criminal Misdemeanor – for intentional violations (up to 6 months in jail/\$1000 fine)
- ▶ Injunction, Mandamus & Declaratory Relief
- ▶ Challenger must demand corrective action within 90 days of action -- or 30 days if agenda issue
- ▶ 30 days to correct action before suit
- ▶ Intense adverse media attention

**DANGER**  
**BROWN ACT VIOLATIONS**



# *Personal Financial Gain*

*Public servants should not financially benefit from their positions*

# Legal Framework

1. **Political Reform Act of 1974** (Government Code Section 87100 *et seq.*) which regulates all official actions of a public official including Conflicts of Interest.
  - ▶ The Fair Political Practices Commission FPPC has adopted detailed regulations implementing the Act that are set forth in Title 2 of the California Code of Regulations at Sections 18700 *et seq.*
2. **Conflicts of Interest in the Making of a Contract** (Government Code sections 1090–1097)

# General Rule Under the Political Reform Act

- ▶ No public official at any level of state or local government shall
  - make,
  - participate in making, or
  - in any way use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.
  
- ▶ Officials must refrain from participating in the decision-making process when it is:
  - 1) reasonably foreseeable
  - 2) that the decision will have a material financial effect on the Official's financial interest
  - 3) that is distinguishable from that of the public generally.

# Disqualification Based on Financial Interests

## ▶ Rule:

You may not participate in a decision if financial interests are affected by a decision (Gov. Code § 87100, et seq.)

▶ A public official 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. (FPPC Regulation 18700)

▶ Effect can be positive or negative

# Recognizing Financial Interests

There are 5 categories of economic interests from which conflicts can arise:

- 1) Economic Interests in business entities
- 2) Economic Interests in sources of income to the public official
- 3) Economic Interests in sources of gifts to the public official
- 4) The personal financial effects rule
- 5) Economic Interests in real property



# *Disqualification Versus Abstention*

- ▶ Mere existence of a conflict does not imply wrongdoing unless you don't disqualify yourself when you should
- ▶ Abstention vs. Disqualification
  - ▶ **Abstention** = voluntary
  - ▶ **Disqualification** = legally required

# FPPC 4-Part Test

- ▶ Step One:
  - ▶ Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?
- ▶ Step Two:
  - ▶ Will the reasonably foreseeable financial effect be material?
- ▶ Step Three:
  - ▶ Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?
- ▶ Step Four:
  - ▶ If after applying the three-step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision.
  - ▶ If the public official will be called upon to make, participate in the making, or use his or her official position to influence a governmental decision in which he/she has a financial interest as determined under Steps One through Three, he/she will have a prohibited conflict of interest.

# What Kinds of Interests?

## Source of Income

- ▶ “\$500 Rule” - Sources of direct income of \$500 or more in prior 12 months
  - ▶ Your own income
  - ▶ Promised income
  - ▶ Partner’s/child’s income
  - ▶ Loans/guarantors

## Investment in Business or Real Property

- ▶ “\$2000 Rule” - Investment in business entity or interest in real property

# Real Property Interests

- ▶ Three specific categories of materiality based on the location of the real property interest, with differing standards and presumptions or tests for each.
  - **500 feet or less:** presumed to be a conflict unless rebutted by clear and convincing evidence.
  - **500 - 1,000:** No presumption—complicated set of factors!
  - **Over 1,000 feet:** presumed *not* a conflict, unless evidence to the contrary.



# *Exceptions to Conflict Rule*

There are two exceptions to the Act's general prohibition on participating in a decision when you have a conflict.

- The “public generally” exception
- The “legally required participation” exception

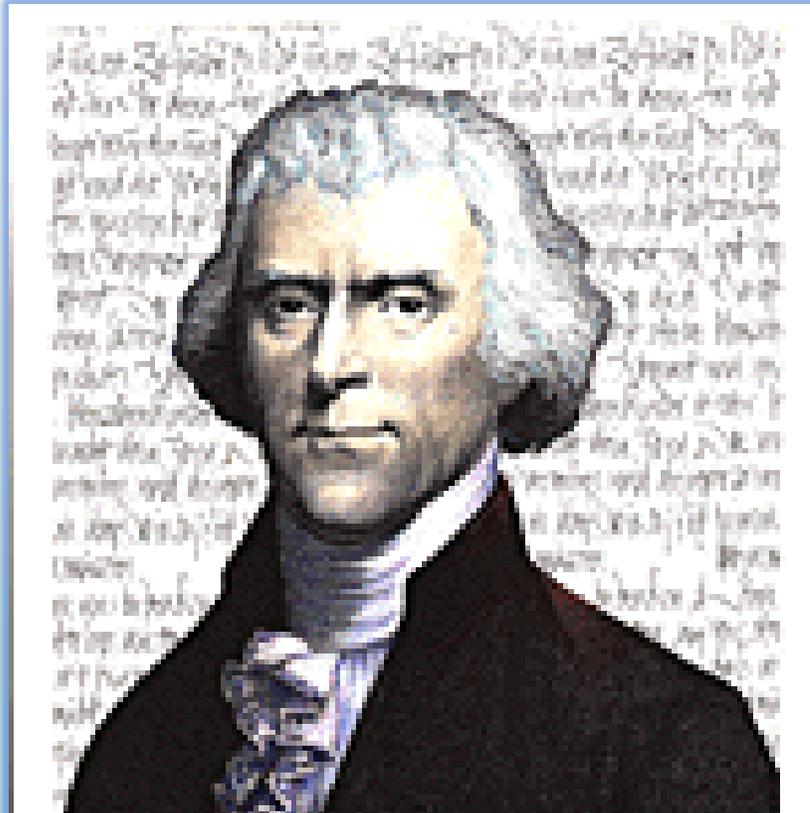
# What Do We Do When A Conflict Exists?

- ▶ Do NOT participate in the discussion
- ▶ Do NOT discuss, give opinion, or influence
- ▶ Disclose
- ▶ Disqualify



# *If You Are Disqualified ...*

- ▶ Don't discuss or influence (staff or colleagues)
- ▶ Identify nature of conflict at meeting
- ▶ Leave room (unless on consent)
- ▶ No voting or discussing the matter
- ▶ NOTE: You do not count towards a quorum!!



# Penalties!



- ▶ Invalidate decision
- ▶ Loss of office (+ disqualification for future)
- ▶ Misdemeanor (jail time and penalties)
- ▶ Fines (\$5,000 to \$10,000 per violation)
- ▶ Attorney's fees
- ▶ Embarrassment (personal and political)

# Conflicts of Interest in Making Public Contracts

- Gov. Code § 1090 prohibits a government officer or employee acting in their official capacity from making a contract, or participating in the making of a contract, in which he or she is financially interested.
  
- Financial interests would include:
  - Landlord or tenant of contract party
  - Attorney or agent of contracting party
  - Supplier of goods or services to the contracting party.
  - Officer or employee of a nonprofit corporation that is a contracting party.

# Penalties for Making Contracts with a Conflict

The contract will be void and unenforceable and the official will be subject to:

- ▶ Criminal and civil penalties including fines, imprisonment, and forever disqualification from holding office
- ▶ Potential disgorgement of any consideration received, or property acquired in the transaction
  
- May have to refund money paid
  
- ▶ Disqualification may not be enough
  - ▶ Direct or indirect interest
  - ▶ Limited exceptions
  
- Willful violation of Section 1090 may be punished as a felony (\$1,000 fine, imprisonment & loss of office)

# *Gifts: \$50/\$590 Rule*

- ▶ Giving or receiving gifts can create an economic interest
- ▶ Complicated rules



# Perks Others Offer

- ▶ Report \$50 and up (over a year)
- ▶ Limit \$590/year (thru Dec. 31, 2023)
- ▶ Exceptions for some kinds of travel, informational materials
- ▶ May also be a disqualifying interest (over \$590 in prior 12 months)



# Gifts Aren't Always Obvious

- ▶ Meals, food and drink (including receptions)
- ▶ Entertainment (concerts & sporting events)
- ▶ Certain kinds of travel and lodging
- ▶ For any questions regarding gifts please contact the FPPC at: [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)



# Rosenberg's Rules of Order

- ▶ The chair runs all meetings and makes rulings, but a majority of the legislative body can override the chair.
- ▶ Some legislative bodies have bylaws and resolutions establishing governing procedures.
- ▶ The concept of due process applies to public bodies, especially when acting in a quasi-judicial role, and decisions may be reversed for the failure to provide due process.
  - ▶ City agencies act in both legislative and judicial roles.
    - ▶ *Legislative*: Establish general rules with universal application.
    - ▶ *Judicial*: Decide cases between individuals.
    - ▶ *Legislative decisions*: General plan, zoning.
    - ▶ *Judicial decisions*: Conditional use permit, subdivision map, variance.
  - ▶ Due process requires fairness in decision-making: Must hear evidence and make decisions based on evidence.

# Parliamentary Procedure – Simplified

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Adjourn	"I move that we adjourn" (Only needed prior to the end of the agenda)	No	Yes	No	No	Majority
Recess	"I move that we recess until..."	No	Yes	No	Yes	Majority
Complain about noise, room temp., etc.	"Point of privilege"	Yes	No	No	No	Chair Decides
Suspend further consideration of	"I move that we table it"	No	Yes	No	No	Majority
End debate	"I move the previous question" or "Call the question"	No	Yes	No	No	2/3
Postpone consideration of	"I move we postpone this matter until..."	No	Yes	Yes	Yes	Majority
Introduce a motion	"I move that..." or "I move to..."	No	Yes	Yes	Yes	Majority
Amend a motion	"I move that this motion be amended by..." (You can also ask for a friendly amendment, which is less formal; if mover and second concur, no vote needed)	No	Yes	Yes	Yes	Majority
Refer to a Committee	"I move that the question be referred to a committee for more study"	No	Yes	Yes	Yes	Majority

The above listed motions and points are listed in established order of precedence. When any one of them is pending, you may not introduce another that is listed below, but you may introduce another that is listed above it.

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Object to procedure or personal affront	"Point of order"	Yes	No	No	No	Chair decides
Request information	"Point of information"	Yes	No	No	No	None
Object to considering some undiplomatic or improper matter	"I object to consideration of this question" (This would generally just be used if something is not on the agenda)	Yes	No	No	No	2/3
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..." (Only a member of the prevailing side can make a motion to reconsider)	Yes	Yes	Only if original motion	No	Majority
Vote on a ruling by the Chair	"I appeal the Chair's decision"	Yes	Yes	Yes	No	Majority

The motions, points and proposals listed above have no established order of preference; any of them may be introduced at any time except when meeting is considering one of the top three matters listed from the first chart (Motion to Adjourn, Recess or Point of Privilege).

# Creation of Ad Hoc Committees

- ▶ The action to create an ad hoc committee must be done at a publicly noticed meeting under the Brown Act and placed as an item on an agenda
  
- ▶ Depending upon the rules under which a board/commission operates, either the chair of a city board/commission or the board/commission as a whole choose appoint commissioners to Ad Hoc Committees
  
- ▶ The Ad Hoc Committee Created Must:
  - Consist of less than the number of members which would constitute a quorum
  - Have a defined purpose and a time frame to accomplish that purpose
  - Be advisory, i.e., the committee has not been delegated any decision-making power and will be returning to the full board with its recommendation. See, *Joiner v. City of Sepastopol* (1981) 125 Cal App. 3d 799. Ad hoc committee

# Assembly Bill 2449

- AB 2449 amends the Brown Act to provide an additional procedure for members of legislative bodies to attend public meetings remotely.
- As long as a quorum of the legislative body participates in person from a physical location open to the public, the remaining agency members can participate remotely in two situations:

## 1. JUST CAUSE

*Just cause* is defined as any one of the following:

- childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely;
- a contagious illness that prevents a member from attending in person;
- a need related to a physical or mental disability; or
- travel while on business of the legislative body or another state or local agency.

A member may only participate remotely under the just cause provisions up to two meetings per calendar year.

## 2. EMERGENCY CIRCUMSTANCES

*Emergency circumstances* means a physical or family medical emergency that prevents a member from attending in person.

### Additional Rules if Members Participate Remotely

Legislative bodies may still meet via teleconference by following the traditional Brown Act rules of identifying the teleconference site on the agency's agenda and ensuring it is accessible for the public to attend.

# Questions?



Please submit any questions you  
may have in writing to:

[QuestionsBCC@ci.richmond.ca.us](mailto:QuestionsBCC@ci.richmond.ca.us)