

Boards and Commissions Training

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AGENDA

- **San José City Charter**
- **San José Municipal Code Ch. 2.08**
- **Annual Workplan & Reports**
- **Brown Act, City Sunshine, Conflicts of Interest**
- **Parliamentary Procedure**
- **City Council Policy 0-4**
- ***Form 700 & Family Gift Report**
- ***Ethics & Sexual Harassment / Discrimination Prevention Training**

* Applies to certain Board Members and Commissioners

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Frequently Used Terms

- **Commission Secretary**
 - City department staff person that staffs your Commission meetings
 - Prepares meeting agendas in accordance with approved workplan
 - Drafts meeting minutes
 - Manages Commission communication and correspondence

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Advisory or Decision-Making Body?

ADVISORY BODIES	DECISION-MAKING BODIES
AIRPORT COMMISSION	APPEALS HEARING BOARD
ARTS COMMISSION	BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES
CLEAN ENERGY COMMUNITY ADVISORY COMMISSION	CIVIL SERVICE
COUNCIL APPOINTMENT ADVISORY COMMISSION	DEFERRED COMPENSATION ADVISORY COMMITTEE
COUNCIL SALARY SETTING COMMISSION	FEDERATED RETIREMENT BOARD
DOWNTOWN PARKING BOARD	PLANNING COMMISSION
HISTORIC LANDMARKS COMMISSION	POLICE & FIRE RETIREMENT BOARD
HOUSING AND COMMUNITY DEVELOPMENT COMMISSION	
HUMAN SERVICES COMMISSION	
LIBRARY AND EARLY EDUCATION COMMISSION	
NEIGHBORHOODS COMMISSION	
PARKS AND RECREATION COMMISSION	
SENIOR CITIZENS COMMISSION	
YOUTH COMMISSION	

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DESIGNATED COUNCIL COMMITTEE

Board or Commission	Designated Council Committee
Airport Commission	Transportation and Environment Committee
Clean Energy Community Advisory Commission	
Downtown Parking Board	
Arts Commission	Community and Economic Development Committee
Historic Landmarks Commission	
Housing and Community Development Commission	
Human Services Commission	
Board of Fair Campaign & Political Practices (formerly Ethics Commission)	Rules and Open Government Committee
Council Appointment Advisory Commission	Neighborhood Services and Education Committee
Library and Early Education Commission	
Neighborhoods Commission	
Parks and Recreation Commission	
Senior Citizens Commission	
Youth Commission	

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SAN JOSE CITY CHARTER

- **Article X: Boards and Commissions**
- **Establishes Planning Commission, Civil Service Commission, and Salary Setting Commission**
- **Allows Council to create such other boards and commissions as it requires, and grant them such functions, powers and duties as are consistent with the Charter**
- **All boards and commissions created by Council are subject to the direction and supervision as specified by Council**

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SAN JOSE MUNICIPAL CODE 2.08

- **Expressly sets forth the Commission's Functions, Powers, and Duties**
- **Excused Absences**
 - Member's illness; illness or death of member's spouse, domestic partner, parent, child, sibling or dependent
 - Member is away on authorized City business

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SAN JOSE MUNICIPAL CODE 2.08

- **Automatic Resignation if**
- **Unexcused absences from**
 - Any 3 consecutive regular meetings, or
 - More than 20% of total number of regular meetings in any calendar year
- **Can be reappointed by Council if Council finds there was good excuse for absences and in City's best interests**

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SAN JOSE MUNICIPAL CODE 2.08

- **Quorum**
- **Majority of the total number of seats, whether filled or vacant**
- **Example: 11 member commission; 6 is a quorum**

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SAN JOSE MUNICIPAL CODE 2.08

- **Voting* (§ 2.08.095)**
- **Requires affirmative vote of at least a majority of those present, as long as there is a quorum**
- **Example: 11 member commission; 6 is a quorum; 7 present; Vote of 4 passes**

*Board of Fair Campaign & Political Practices, Civil Service Commission, DCAC, Retirement Boards and Salary Setting Commission have own voting rules

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BROWN ACT

- General Rule: All meetings must be open to the public.
- The Ralph M. Brown Act, Government Code Sections 54950 - 54963, was enacted in 1953 to ensure local government meetings *were open and public*.
- Scope:
 - Applies to any “legislative body”, decision-making or advisory, *including boards, commissions and subcommittees*.
 - Exception: single purpose temporary (“*ad-hoc*”) subcommittees formed solely of less than a quorum of the legislative body. Sunshine Resolution § 2.3.1.2 limits an *ad hoc* committee term to less than 6 months.

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BROWN ACT – MEETING

- **Any congregation**
- **Of a *majority of the members of a legislative body***
- **At the *same time and location***
- **To *hear, discuss, deliberate, or take action***
- **On any item within the *subject matter jurisdiction* of the legislative body or the local agency to which it pertains**

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BROWN ACT – NOT A MEETING

- Individual contacts by members of the public
- Attending a conference
- Attending an open & publicized community meeting (e.g., an election debate)
- Attending an open and noticed meeting of another body (but, cf. serial meetings), or
- Attending a social function (e.g., a holiday party)

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BROWN ACT – PROHIBITED MEETINGS

- Use by
- *A majority of members*
- *Of a series of communications of any kind,*
- *Directly or through intermediaries*
- *To discuss, deliberate, or take action*
- *On any item of business within the subject matter jurisdiction of the board or commission*

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BROWN ACT – PROHIBITED MEETINGS

- **Serial Meetings – Examples:**
- **“Daisy Chain”** [A → B → C]
 - Member A talks to Member B, who then texts to Member C about the same topic.
- **“Hub And Spoke”**
 - Member A talks to Member B and then talks to Member D about the same topic
- **Email Reply to All**



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BROWN ACT – PROHIBITED MEETINGS

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

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BROWN ACT – AGENDA ITEMS

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

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POP QUIZ!



COMMISSION AGENDA

- I. Call to Order
- II. Discuss Proposed FY18-19 Budget
- III. Adjournment



COMMISSION AGENDA

- I. Call to Order
- II. Discussion **and possible action** on Proposed FY18-19 Budget
- III. Adjournment



BROWN ACT – AGENDA ITEMS

- No discussion or action of items not on posted Agenda
- Comments by Commissioners regarding un-agendized items are only allowed as follows provided there is *no discussion or action*:
 - Briefly responding to public comment
 - Asking a question for clarification
 - Referring item to staff
 - Brief report by Commissioner on his or her activities
 - Brief announcement

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BROWN ACT – PUBLIC COMMENT

- Limited to items within scope of Commission's subject matter jurisdiction
- Required for Regular Meetings
- Highly Recommended for Special Meetings
- City standard = 2 minutes, but Chair has discretion to limit time when appropriate
- Speakers using a translator get twice the time

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BROWN ACT – PUBLIC COMMENT

Responding to Issues Not on the Agenda

- Refer the speaker to staff
- Refer the speaker to appropriate reference material
- Request staff to report back at a future meeting
- Direct staff to place the matter on a future agenda

BROWN ACT VS. CITY SUNSHINE

Boards, Committees & Commissions	City Sunshine	Brown Act Requirements
Regular Meeting Agenda	7 days, action items	72 hours
Special Meeting Agenda	4 days unless 2/3 of members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	24 hours
Minutes	Action minutes, post draft within 10 days after meeting	Minutes are not generally required
Recordings	Audio record meeting and maintain recording for 2 years	Recording is not required, but if made, must be retained for 30 days
Staff Reports	7 days (posted with Agenda)	Documents provided after agenda posting shall be made available to the public at the place indicated on the Agenda

PUBLIC RECORDS ACT

- Applies to members of City Boards and Commissions
- Requirements stem from:
 - California Government Code § 6250 et seq.
 - [City Sunshine Resolution No. 77135, § 4](#)
 - [City Policy 6.1.1, Public Records Policy and Protocol](#)
- Public Records can be requested by the public
- Public Record: Any writing containing information relating to City business
 - Includes documents or communications regarding official City business that is sent or received by Board members or commissioners, including personal emails and texts
 - On City email/network or on personal devices
 - *Personal texts are public records if they relate to City business
- “City officials...are required to disclose all records they can locate with reasonable effort. This includes searching their own personal files, accounts, and devices for responsive material.”
(City Policy 6.1.1)

POLITICAL REFORM ACT

- Commissioner must recuse if there is a disqualifying financial interest.
- Commissioner has a disqualifying financial interest if the *decision* will have a *reasonably foreseeable material* financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any other listed *financial interest*.

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POLITICAL REFORM ACT

- **Decision** – Making or attempting to influence a decision includes making recommendations and reports to a decision-maker. Assume that all of your Commission's actions will qualify.
- **Financial interest** – Includes sources of your family's income or gifts; business entities; real property; and your family's personal finances (including a mobile home).
- **Material** – Means significant; specific tests for each type of financial interest are located in the state regulations.
- **Reasonably Foreseeable** – Determined by state test.

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POLITICAL REFORM ACT

Sources of income of \$500 or more

- **Your own income**
- **Promised income**
- **Income of spouse / domestic partner / child**
- **Loans**

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POLITICAL REFORM ACT

Real property interests of \$2000 or more

- **Direct or Indirect**
- **Spouse / Domestic Partner / Child's Property**
- **Leasehold Interest (except month to month)**
- **500 Foot Rule**

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POLITICAL REFORM ACT

Other kinds of Interest

- Gifts
- Businesses
- Investments
- Contracts
- Personal bias or interests
- Personal finances

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GIFTS - \$50 Limit

- General Rule: No Gifts over \$50 from anyone who is located in or doing business in the City of San Jose per calendar year
- No Gifts from Lobbyists
- City Policy 1.2.2: Gift Policy

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GIFTS - \$50 Limit Exceptions

- Gift from:
 - Family Member,
 - Long-term, Close Personal Friend, or
 - Due to Pre-existing Personal/Business Relationship
- Inheritance
- Bereavement Offerings
- Raffle Prize Open to the Public
- Home Hospitality
- Disaster Relief (e.g., FEMA)
- Reciprocal / Mutual Exchanges
- Wedding Gifts
- Wedding/Civil Union Party Favors/Goodie Bags
- Acts of Neighborliness
- Date or Dating Relationship
- Acts of Human Compassion

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POLITICAL REFORM ACT

If you think you have a conflict:

- Recuse yourself on the record
 - from participating in discussion or voting and
 - refrain from attempting to influence the decision
 - Fill out Declaration of Conflict of Interest Form!
- Step down from the dais and leave the room.
- You may speak as a member of the public with respect to interests that are solely your own.
- Note: recusal can pose voting and quorum issues.

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CITY'S REVOLVING DOOR

Form 700 Commissioners

- For 2 years after leaving the commission
- Cannot represent anyone else
- Whether or not for compensation
- Before the commission on which you served
- Includes Public Comment
- Exception: representing self
- San José Municipal Code § 12.10.040
- No waiver

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PARLIAMENTARY PROCEDURES

- **Establish a Quorum**
 - Note Absences for the Record
 - Note Arrivals / Departures for the Record (affects vote)
- **Announce Agenda Item Number and Subject**
- **Invite staff / commissioner to present the item**
- **Ask members of the commission if they have questions of clarification**
- **Invite Public Comments**
- **Invite a motion**
 - Announce who made the motion
 - Announce who seconded
- **Vote**
 - Must be verbal or shown on public display screen
 - Announce vote result, and who voted no or abstained

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Annual Workplan & Reports

- **Required by City's Municipal Code**
- **Each fiscal year, all City Commissions***
 - **Annual Workplan of activities**
 - **Budget of personal and non-personal costs**
 - **Annual Report of accomplishments**
 - **Submit to Designated Council Committee**

*Except Charter Commissions and the Appeals Hearing Board

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COUNCIL POLICY 0-4

Consolidated Board and Commission Policy 0-4*

- Recruitment, Selection, Appointment, and Resignation
- Requirements for Board members and Commissioners
- Board and Commission Governance and Operations
- Code of Conduct
- Authority of Boards and Commissions

*Updated in August 2016; next update planned Fall 2018.

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COUNCIL POLICY 0-4

ROLES & RESPONSIBILITIES OF A BOARD MEMBER AND COMMISSIONER

- **Attend Meetings**
 - At least 50% of the length of the entire meeting
 - Notify Commission Secretary in advance about excused absences
- **Abide by Code of Conduct & Code of Ethics***
 - Conduct meetings in dignified and courteous manner
 - Be professional, respectful and courteous to staff and public
 - Support Chair's effort to conduct meeting effectively and fairly

* Code of Ethics: Council Policy 0-15; City Policy 1.2.2

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COUNCIL POLICY 0-4

ROLE OF A CHAIR

- **Preside at meeting**
 - Run meetings in an orderly, efficient manner
 - Manage conflicts that may arise
 - Keep discussion on topic
 - Stick to the agenda
 - Get through agenda items in a timely manner
- **Conduct meetings in accordance with Rules of Order, approved Bylaws, 0-4**
- **Reference Material: Institute of Local Government – Understanding the Role of Chair**

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COUNCIL POLICY 0-4

USE OF COMMISSION TITLES

YES	NO
Resumé or Biography	Non-City Email Signature
City-Issued Email Signature	Political Endorsement/Campaigns



COUNCIL POLICY 0-4: Use of Title

- Resumé or biography okay; non-City email signature block not okay
- Use with Disclaimer: When speaking or writing publicly on matters within your Commission's scope, but not on behalf of the Commission
- Use with Commission Authorization: Can use your title to speak or write on behalf of the Commission when authorized by the Commission
- As Designated Representative: For outreach purposes when authorized by the Commission to conduct outreach on specific topics in the workplan



COUNCIL POLICY 0-4

COMMISSION DOs

- **DO** make recommendations only on topics within the scope of authority set forth by Council and within your Commission workplan
- **DO** use City stationery, including emails, only for official Commission business. All correspondence concerning Commission's business should be sent with a copy to City Commission staff.

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COUNCIL POLICY 0-4

COMMISSION DOs

- **DO** place items on the Council Agenda in accordance with the Rules Resolution and Commission Workplan
- **DO** make requests for information or for research from staff through the Designated Council Committee (if more than just copies of existing information)

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COUNCIL POLICY 0-4

COMMISSION DON'Ts

- **DON'T** use your Commissioner title to make personal political endorsements
- **DON'T** interview candidates for political office or endorse such candidates
- **DON'T** individually or as a body independently support or oppose legislation, including ballot measures

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COUNCIL POLICY 0-4

COMMISSION DON'Ts

- **DON'T** contact City consultants outside of a Commission meeting, unless authorized by the City
- **DON'T** represent City or Commission in front of other non-City entities (e.g., County or VTA boards) without express approval from Council

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COUNCIL POLICY 0-4

COMMISSION DON'Ts

- **DON'T** accept money or favors for performing your City duties
- **DON'T** use confidential information
- **DON'T** discriminate against anyone
- **DON'T** participate in any discussions if you have a real or perceived personal bias or conflict of interest

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COUNCIL POLICY 0-4: LETTERS

- **From Commission re: Council or Council Committee Items**
 - Submit through Commission Secretary
 - Direct email to Council or Council Committee is not allowed
- **From Commission re: Commission Items to Non-City Entities**
 - Submit through Commission Secretary
 - Get authorization from Council Committee
 - Upon approval, submitted by Commission Secretary on City's behalf

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COUNCIL POLICY 0-4: SUBCOMMITTEES

- **Standing Committees**
 - Made solely of less than a quorum of the Commission
 - Continuing subject matter jurisdiction or meeting schedule fixed by Commission
 - Brown Act body
 - Generally not allowed unless pre-approved by Council Committee
- **Ad Hoc (Temporary) Committees**
 - Made solely of less than a quorum of the Commission
 - Specific short term tasks or projects
 - Less than 6 months

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FORM 700 & FAMILY GIFT REPORT

- Airport Commission
- Appeals Hearing Board
- Arena Authority
- Arts Commission
- Civil Service Commission
- Deferred Compensation Advisory Committee (DCAC)
- Downtown Parking Board
- Board of Fair Campaign and Political Practices (formerly Ethics Commission)
- Federated and Police & Fire Retirement Boards
- Historic Landmarks Commission
- Housing & Community Development Commission
- Work2future (SVWIB) Board
- Planning Commission*

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FORM 700 & FAMILY GIFT REPORT

- Due within 30 days of assuming or leaving office
- Due April 1 annually
- City mandatory \$10/day penalty for not filing (maximum \$100)
- State can fine up to \$5,000 for not filing
- Don't report your personal residence unless using it for rental income (use APN for privacy)
- Recommend listing City or business contact address since public record

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MORE REQUIRED TRAINING

AB 1234 Ethics Training & AB 1661 Sexual Harassment and Discrimination Prevention Training

- Appeals Hearing Board
- Civil Service Commission
- Deferred Compensation Advisory Committee
- Federated and Police & Fire Retirement Boards
- Board of Fair Campaign and Political Practices (formerly Ethics Commission)
- Planning Commission
- Work2future (SVWIB) Board

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RESOURCES

- **City Clerk website:**
www.sanjoseca.gov/index.aspx?nid=145
- **Understanding the Role of Chair:**
http://www.ca-ilg.org/sites/main/files/file-attachments/understanding_the_role_of_chair_nov_2012_3.pdf

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Questions & Answers

Thank you for participating
in this training.

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