

# OPEN GOVERNMENT, PARLIAMENTARY PROCEDURE, AND ETHICS

## BOARD AND COMMISSION ORIENTATION



City of Sunnyvale  
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## Objectives

- ▶ Understand the purpose of California's open government laws.
- ▶ Understand the requirements for open public meetings (Brown Act), public records, and ethical conduct.
- ▶ Understand basic parliamentary procedure and how parliamentary rules interact with the Brown Act.
- ▶ Be empowered to fulfill your role as public officials to further the goals of transparency, public participation, and ethical government.



## What Is Open Government?

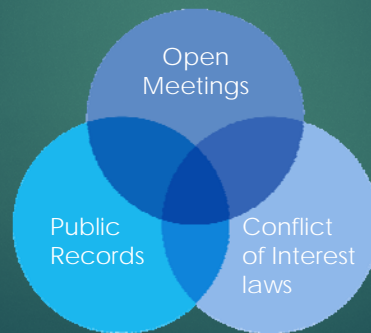
### Open Government Means:

- ▶ Public gets advance notice of proposed decisions. (AGENDAS)
- ▶ Decisions are made in public. (OPEN MEETINGS)
- ▶ Public has right to be heard and participate in decisions. (PUBLIC COMMENT)
- ▶ Public has right to documents and other information about government activities. (PUBLIC RECORDS)
- ▶ Public has right to know if officials have personal financial interests that may affect their decisions. (FORM 700)
- ▶ Officials must recuse themselves from decisions that would personally benefit them. (CONFLICT OF INTEREST LAWS)



## Three Key Components:

- ▶ The Brown Act (Open Meeting Law)
- ▶ The California Public Records Act
- ▶ Conflict of Interest Laws\*



\*Free online training on conflict of interest laws is available on the FPPC website, <http://localethics.fppc.ca.gov>



## Local Government: Quick Intro

## Local Government in California

- ▶ Our system of government is created by the California Constitution and state laws (Government Code).
- ▶ Local government entities include cities, counties, and special districts.
- ▶ Cities may be “charter cities” or “general law cities”.
- ▶ Sunnyvale is a charter city (has a charter adopted by the voters).
- ▶ Charter cannot be changed except by the voters.
- ▶ City Council can adopt laws and policies consistent with the Charter and not in conflict with state or federal law.

## Boards and Commissions

- ▶ City Council can delegate authority to appointed Boards and Commissions.
- ▶ Some B/Cs are created by the City Charter, others by the City Council by ordinance or policy.
- ▶ Some B/Cs are advisory only.
- ▶ Some can make binding decisions on certain matters (e.g. Planning, Personnel Board, Arts Commission).
- ▶ Council Policy 7.2.19 contains the bylaws for all 10 Sunnyvale B/Cs.



# Ordinances, Resolutions, & Motions

## ► Ordinance

- Creates generally-applicable rules of conduct or government.
- Requires two hearings (introduction and adoption).
- Does not go into effect for 30 days (except urgency ordinances).
- May be codified in the Municipal Code.

## ► Resolution

- Can be used whenever an ordinance is not required.
- Does not require a 2<sup>nd</sup> reading, goes into effect immediately.

## ► Motion ("Minute Orders")

- B/C actions are typically by motion.
- Planning Commission adopts resolutions on rare occasions.
- B/Cs can recommend but do not adopt ordinances.



The Brown Act

## The Brown Act

- ▶ California open meeting law (Gov. Code 54950 et seq.)
- ▶ Applies to all “legislative bodies” of local public agencies.
  - Includes all B/Cs created by the City Charter or by action of the City Council.
- ▶ Basic Requirement:
  - All meetings must be open to the public unless an exception applies for a “closed session” (e.g. personnel matters, real estate negotiations).
  - B/Cs (other than Personnel Board) typically do not have closed sessions.

## Agenda Requirements

- ▶ Agenda must be posted 72 hours before the meeting with certain exceptions
  - Special meetings: 24 hours notice
  - State of emergency (disasters): 1 hour or less
- ▶ Must include a brief general description of each item of business to be discussed.
- ▶ Cannot take action on any matter that is not on the agenda, with very limited exceptions.
- ▶ All documents and other materials provided to the B/C must also be available to the public.
- ▶ Additional noticing requirements apply to certain actions (e.g. zoning amendments, utility rates, fees)



## Permissible Non-Agenda Actions

- ▶ Place an item on a future agenda.
- ▶ Request information or a report back from staff.
- ▶ Ask a question for clarification.
- ▶ Make a brief announcement.
- ▶ Briefly report on member's own activities.
- ▶ Briefly respond to questions from the public.
  - If a member of the public raises an issue that requires more than a very brief discussion, put it on the agenda for the next meeting and ask staff to investigate and report back.

## Other Non-Agenda Actions

These situations are not common:

- ▶ The item was continued from meeting no more than 5 days earlier, where notice of the continuance was posted following the earlier meeting.
- ▶ Emergency situations (e.g. major disaster, terrorist attack, etc.) A majority vote required to find that an emergency exists before the item can be heard.
- ▶ A matter requiring immediate attention arose after posting of the agenda. Requires 2/3 vote to hear the item. (This exception does not cover staff errors in posting the agenda)

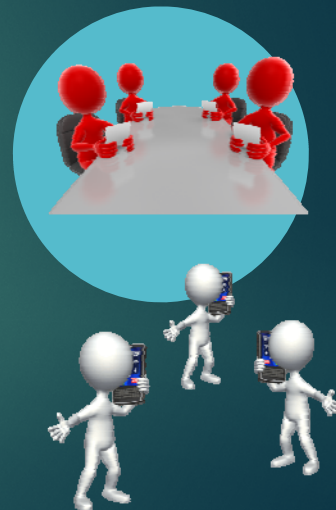
## Public Participation

- ▶ Public has right to speak on any item on the agenda.
- ▶ During open public comment ("citizens to be heard"), public may speak on any matter within the body's subject matter jurisdiction.
- ▶ Chair may impose reasonable time limits on public speakers.
  - Typically 3 minutes per speaker.
  - If the speaker has a translator, they get twice as much time.
  - If the meeting is crowded, the chair may shorten time per speaker in a non-discriminatory manner as long as everyone gets a chance to speak.
  - Tip: chair may gently encourage speakers to be brief and avoid repeating the same comments.

## What is a "Meeting"?

- ▶ Brown Act requirements only apply to "meetings".
- ▶ A "meeting" occurs whenever:
  - ▶ A majority of the members (quorum) are together at the same time and place to discuss or deliberate on any matter within their subject matter jurisdiction.
  - ▶ OR, a majority of members use direct communication, technology, or intermediaries to develop a "collective concurrence".

Gov. Code 54952.2(a)



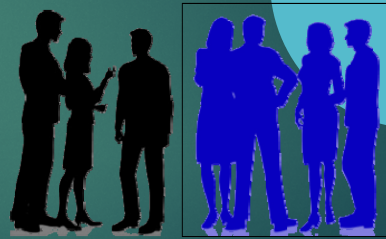


## What is a Quorum?

- ▶ The minimum number of members who must be present to hold a meeting.



5 members; quorum = 3



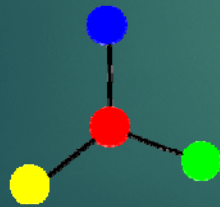
7 members; quorum = 4

## What is Subject Matter Jurisdiction?

- ▶ Anything that the B/C has authority to discuss or consider as defined by applicable law or policy.
- ▶ Not limited to pending matters or matters that are actually coming before the B/C.
- ▶ Examples:
  - Planning Commission: anything related to land use, general plan, zoning, or development.
  - Personnel Board: anything related to city's employment policies or procedures.
  - Sustainability Commission: anything related to City's policies on green technology, recycling, etc.

## Serial Meetings

- ▶ A series of communications involving a majority of members to deliberate, take action, or develop a consensus.
- ▶ Might involve one-on-one conversations, intermediaries, letters, telephone, email, or other technology.



Hub and Spokes



Daisy Chain

## Examples of Brown Act Violations

- ▶ The members of the Arts Commission go out for coffee after a meeting, and end up talking about ideas for promoting greater awareness of public art.
- ▶ One member of BPAC emails another member about a new City policy on bike lanes. That member forwards the email to other members, who reply with their views.
- ▶ A member of City staff speaks separately with each member of the Planning Commission to provide an update on the Town Center development. During several of those discussions, the staff person reveals views expressed to her by the other commissioners.



## Examples of Brown Act Violations

- ▶ A member of the public brings up an issue at "citizens to be heard" that is not on the agenda. The commissioners vote to form an ad hoc committee to look into the issue.
  - *Only a brief discussion is allowed in response to non-agenda comments. Forming the ad hoc committee is an action that must be on an agenda.*
- ▶ After a meeting is adjourned, a majority of the commissioners remain in the room, continuing to debate the pros and cons of a decision that they just made.
  - *When socializing with other commissioners outside of the meeting, be careful not to discuss anything related to the commission's business.*

## Brown Act Exceptions

- ▶ Individual contacts or conversations (unless it results in a serial meeting)
- ▶ Conferences and "similar gatherings" open to the public\*
- ▶ Community meetings open to the public sponsored by an entity or organization other than Sunnyvale\*
- ▶ Open and noticed meetings of the City Council, other B/Cs, or other local public agencies\* (other cities, VTA etc.)
- ▶ Purely social and ceremonial occasions\*

\*Majority of members must not discuss among themselves, except as part of a scheduled program, business of a specific nature within their subject matter jurisdiction.

## Other Permissible Conduct

- ▶ Expressing one's views in a public forum such as giving a speech, writing a newspaper editorial, tweeting or blogging.
- ▶ Reading a letter or email from a constituent that was sent to the entire B/C.
- ▶ Speaking to constituents, even if they have also spoken to other commissioners.

However, a "collective deliberation" can accidentally occur through online discussions, "reply all" email responses, or third parties acting as intermediaries.

*TIP: Always be cautious of the potential for serial meetings.*

## Due Process Considerations

- ▶ Additional legal requirements apply to B/Cs that make "quasi-judicial" decisions that affect the rights of individual persons or entities, such as:
  - Granting or denying permits
  - Hearing appeals of staff decisions
- ▶ Examples: Personnel Board, Planning Commission, Heritage Preservation, Arts Commission.
- ▶ Must not be biased or pre-judge.
- ▶ Implication of bias can arise from public comments or outside contacts with applicants or opponents.
- ▶ Okay to have and express opinions on general policy.



## Teleconference Meetings

- ▶ Brown Act has special requirements when a member wants to participate by telephone, Skype etc.
  - The remote location must be on the agenda.
  - The location must be open to the public, ADA accessible, and have a speakerphone.
  - Notice of the meeting must be posted at the remote location.
  - Public must be allowed to participate at the remote location.
- ▶ City policy does not allow members of B/Cs to participate in a meeting remotely.



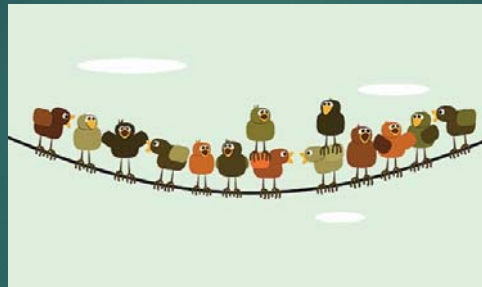
## Meeting Decorum

- ▶ Chair should explain rules of decorum at the beginning (e.g. no boos or cheering). Remind as necessary.
- ▶ Cameras and recording devices are allowed. Camera equipment should be positioned to avoid blocking aisles or view.
- ▶ Service animals are allowed unless disruptive (barking, biting).
- ▶ Speakers should not be cut off unless they are actually disrupting the meeting (very high bar – more than offensive insults).
- ▶ Have a thick skin. Tolerate criticism with good humor.
- ▶ Be courteous to speakers. Do not argue.
- ▶ Chair may try to redirect a speaker who is completely off topic, but may be better just to let them have their 3 minutes.
- ▶ If crowd won't settle down, call a brief recess.



"These people are members of the community that care about where they live. So what I hear when I'm being yelled at is people caring loudly at me."

- Leslie Knope, Assistant Director of Parks and Recreation,  
City of Pawnee

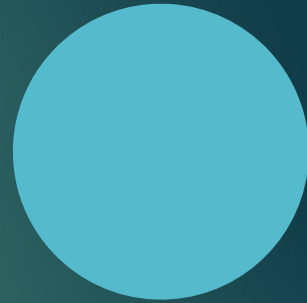


Parliamentary Procedure



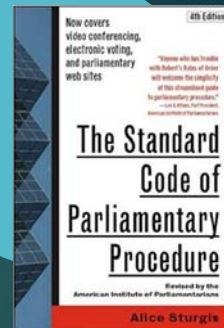
## Goals of Parliamentary Procedure

- ▶ Extend equal courtesy to everyone.
- ▶ Protect the rights of the minority.
- ▶ Ensure that the majority rules.
- ▶ Focus on one item at a time.



## Parliamentary Rules

- ▶ Sunnyvale follows the "Standard Code of Parliamentary Procedure" by Alice Sturgis.
- ▶ Designed for use by both public and private entities.
- ▶ Rules must be read in connection with Brown Act and other laws governing public meetings in California.
- ▶ Some rules do not apply to public meetings.
  - Private boards can spontaneously form committees, add items to the agenda at the same meeting, and cut off debate before everyone has spoken.
  - Such actions are prohibited by the Brown Act.



## Role of the Chair

- ▶ The Chair is responsible for running the meeting and making parliamentary rulings.
- ▶ If the Chair is absent, the Vice Chair assumes the role of Chair.
- ▶ If both the Chair and Vice Chair are absent, then any "senior member" may act as the Chair.
- ▶ If there is a dispute over who should act as temporary chair, the body should nominate and vote on a temporary chair to serve for the duration of the meeting.
- ▶ Nomination of chair does not require a second.

## Public Hearing Process

- ▶ The Chair calls the item on the agenda.
- ▶ Staff gives a report.
- ▶ Members may ask questions (*questions*, not comments).
- ▶ Chair opens the public hearing.
- ▶ Chair calls up speakers based on order of speaker cards.
- ▶ Speaker cards are voluntary. Speakers are not required to fill out a card or identify themselves.
- ▶ Members may ask questions of speakers for clarification. Avoid arguing with speakers or challenging their opinions.
- ▶ Chair closes the public hearing.
- ▶ Members may discuss and ask final staff comments.



## Motions

- ▶ When members have finished with all questions and comments, the chair should ask for a motion.
- ▶ Motion is made and seconded.
- ▶ If there is no second, chair asks for another motion.
- ▶ The chair is allowed to make a motion if no one else does.
- ▶ Once a motion is made and seconded, the chair should restate the motion and open debate.
- ▶ Typically the maker of the motion speaks first, followed by the seconder.

## Formal Rules of Debate

- ▶ Members must be recognized by the chair before speaking.
- ▶ Once a member speaks, they cannot speak again until everyone else has a chance.
- ▶ No interruptions except under limited circumstances (e.g. points of order, parliamentary inquiries, and questions of privilege).
- ▶ No cross-talk.
- ▶ The chair is allowed to speak on the motion after everyone else has spoken.
- ▶ "Motion for informal consideration" can be used to suspend these rules and have a freer discussion.

## General Consent

- ▶ General consent is often used to decide non-controversial items.
- ▶ Example:
  - "I move that we take a 15-minute recess."
  - "Seconded."
  - Chair: "There is a motion to take a 15-minute recess. Is there any objection? ... Hearing no objection, the motion passes by general consent."
- ▶ If anyone makes an objection, a formal vote is required.

## Withdrawing a Motion

- ▶ Before the motion is open for debate, the maker of the motion may withdraw it at any time by stating it is withdrawn.
- ▶ Once debate opens, withdrawal requires a majority vote or general consent.
  - ▶ [Maker, to the Chair]: "I request permission to withdraw my motion."
  - ▶ [Chair]: "The maker of the motion has requested that the motion be withdrawn. Is there any objection? .... Hearing no objection, the motion is withdrawn by general consent."



## Amending a Motion

- ▶ Motions may be amended formally or informally.
- ▶ Informal motion ("friendly amendment")
  - Member offers a "friendly amendment"
  - If no objection, motion can be amended by general consent.
  - If there is an objection, a formal motion is required.
- Formal motion to amend
  - A member makes a motion to amend.
  - Motion is seconded.
  - Debate is limited to the motion to amend.
  - After the vote, debate resumes on the main motion.
  - Motion to amend can be amended, but only one primary and one secondary motion to amend can be pending at the same time.

## Resolving Problems

- ▶ Point of order: asks the Chair to make a parliamentary ruling.
  - Example: "Point of order. We cannot consider two primary motions to amend at the same time."
  - [Chair]: "Point well taken. The motion is out of order."
- ▶ Parliamentary inquiry: asks the Chair a question about a rule of parliamentary procedure.
- ▶ Question of privilege: raises a matter pertaining to the convenience or comfort of a member or the whole assembly (e.g. adjusting temperature, noise, etc.)
- ▶ Points of order, parliamentary inquiries, and questions of privilege may be made at any time and may interrupt a speaker.

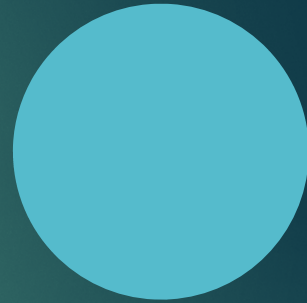
## Motion to Appeal

- ▶ Any member may appeal a decision or ruling by the Chair.
- ▶ Requires a second.
- ▶ May be debated.
- ▶ Requires a majority vote in the negative to overrule the chair. Example:
  - [Chair]: "The motion to amend is out of order."
  - [Commissioner A]: "I move to appeal."
  - [Commissioner B]: "I second the motion."
  - [Chair]: "A motion to appeal my decision has been made and seconded. Shall the decision of the Chair be sustained?"

## Continuances

- ▶ Continuing the Entire Meeting
  - Also known as a "motion to adjourn to a later time".
  - If date is unspecified, deemed to be the next regular meeting.
  - Less than a quorum can continue a meeting. If no members are present, the clerk or secretary can continue the meeting.
- ▶ Continuing an Item of Business
  - Motion to postpone temporarily (table): item is heard later in the same meeting.
  - Motion to continue to a time certain: item is continued to a specific date/time.
  - Motion to continue to a time uncertain: not a recognized motion in standard parliamentary rules. When re-introduced, the item is technically new business.





## Taking the Vote

## Voting

- ▶ All votes must be public (no secret ballots).
- ▶ A quorum must be present to vote.
  - Members recused for financial conflicts of interest are treated as absent (do not count to make a quorum).
  - Members abstaining for other reasons are counted for the quorum.
- ▶ Most actions can be taken by a majority of the quorum.
  - If 3 out of 5 members are present, majority = 2.
  - If 4 or 5 out of 7 members are present, majority = 3.
- ▶ Certain actions may require:
  - A specific minimum number of votes (e.g. 4 out of 7).
  - A vote by a majority of the entire membership.
  - A super-majority.
- ▶ An affirmative vote is required to take an action. A failed motion requires another motion.

## Voting Problems

- ▶ Three (of five) members are recused for financial conflicts.
  - No quorum.
  - Random process is used to select one member to vote on the item (FPPC "Rule of Necessity").
- ▶ One member (of five) is absent and two have a financial conflict.
  - No quorum.
  - Continue the item so that the absent member can vote.
- ▶ One member (of five) is absent and two abstain for reasons other than a financial conflict of interest.
  - The abstentions count toward the quorum.
  - The motion requires two votes to pass.

## Tie Votes

- ▶ A tie vote means that no action has been taken.
- ▶ A tie is not the same as a majority voting "no".
- ▶ The outcome of a tie depends on the context:
  - If the B/C is hearing an appeal from a staff decision, a tie vote leaves the status quo in place, meaning that the staff decision is final.
  - If the B/C is making a recommendation to City Council, a tie vote means that B/C has no recommendation.
- ▶ The B/C should keep working to craft a motion that a majority can support. If necessary the item may have to be continued to the next meeting when absent members are present.





## Conflicts of Interest

## Financial Conflicts

- ▶ Large topic, mostly outside the scope of this presentation.
- ▶ Rules are complicated and have many nuances.
- ▶ It's your personal legal duty and responsibility to comply with the conflict of interest laws.
- ▶ Violations can result in grand jury investigations, criminal prosecution or removal from office.
- ▶ Takeaway: know when you may have a conflict and seek advice from the FPPC or the City Attorney's office.

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## Governing Law

- ▶ Self-interested contracts (Gov. Code 1090)
  - Prohibits officials from being financially interested (directly or indirectly) in any contract made by them in their official capacity, or any board or body of which they are a member.
  - Recusal is not an option; contract is void.
  - Agency is prohibited from paying the contractor even if significant work was performed.
- ▶ Political Reform Act (Gov. Code 87000 et seq.; FPPC regs)
  - Requires officials to recuse themselves from participating in decisions in which they have a financial interest.
  - Includes any conduct that would influence the outcome (providing information, recommendations, opinions etc.)

## Types of Financial Conflicts

FPPC Regulations apply when an official, their spouse or dependent children have a material financial interest in:

- ▶ A business entity that will be affected by the decision.
- ▶ Real property located near enough to a project that the project would reasonably affect property values.
- ▶ A source of income that will be affected by the decision (employer, stock ownership, etc.)
- ▶ Someone who has given gifts to the official, spouse or dependent children above the annual gift limit (currently \$470)
- ▶ Other personal financial effects.



## Recusal Process

- ▶ Announce the nature of the conflict. Examples:
  - "I am recusing myself from this item because my home is located 550 feet from the project."
  - "I am recusing myself because my husband is employed by the permit applicant."
- ▶ Step off the dais and leave the room.
- ▶ If the conflict involves the official's solely-owned real property or business entity, the official may sit in the audience and speak as a member of the public.

## "Common Law" Conflicts

- ▶ A personal interest may raise an "appearance of impropriety" even though it does not violate conflict of interest regulations.
  - Financial interests of adult children.
  - Close friendship with someone affected by the decision.
  - Bias against a project applicant.
- ▶ May leave the dais, but not required to.
- ▶ Do not participate in the discussion or debate.
- ▶ Abstain from voting.



## Public Records Act

## Calif. Public Records Act (CPRA)

- ▶ Gov. Code Section 6250 et seq.
- ▶ Access to information concerning the conduct of the public's business is a fundamental right of every person in the state.
- ▶ "Records" include any writing, in whatever form, including electronic records, that is owned, used, or retained by the agency.
- ▶ Includes, maps, photos, computer data, etc.



## Exceptions

CPRA has limited exceptions for certain information such as:

- ▶ Personnel records
- ▶ Medical information
- ▶ Attorney-client privilege
- ▶ Law enforcement investigations
- ▶ Utility customer records
- ▶ Trade secrets

## Email, Texts, and Social Media

- ▶ Email related to the public's business is a public record unless an exception applies.
- ▶ The California Supreme Court recently ruled that agencies have a duty to turn over public records contained in officials' private email accounts and texts.
- ▶ Recommendations:
  - Set up a separate email account for commission business. Never use your personal or work email.
  - Set up a separate Facebook page, LinkedIn and Twitter accounts for your role as a public official.
  - Unresolved legal issues: blocking users and deleting comments.



## Ethics and Conduct

### Sunnyvale Code of Ethics and Conduct

- ▶ Guidelines for good government adopted by City Council.
- ▶ Not law; however, some ethical violations could also be unlawful under state laws governing open meetings, financial conflicts, or corruption.
- ▶ Largely self-enforcing.
- ▶ Chair should intervene if he/she observes an apparent violation.
- ▶ City Council may remove B/C member for violations.



## Key Ethical Principles

- ▶ Always act in the public interest.
- ▶ Comply with both the letter and the spirit of the law.
- ▶ Professional and personal conduct should be above reproach.
- ▶ Respect the process and rules of order.

## Conduct of Meetings

- ▶ Use official titles
- ▶ Respect role of the chair
- ▶ Avoid personal attacks
- ▶ Don't publicly criticize individual staff
- ▶ Be courteous to members of the public
- ▶ Listen attentively
- ▶ Make decisions based on merit
- ▶ Don't argue with speakers

## Common Ethical Issues

- ▶ Granting personal favors.
- ▶ Accepting favors or gifts.
- ▶ Advocating for private interests.
- ▶ Using confidential information for personal gain.
- ▶ Appearing to speak in official role (name, title, letterhead) without authorization.
- ▶ Contacting city staff outside of meetings with questions or personal requests (work with your staff liaison!)
- ▶ Having information (e.g. from outside meeting with project applicant) not disclosed or shared with rest of B/C.



ANY QUESTIONS?