



OPEN GOVERNMENT, PARLIAMENTARY PROCEDURE, AND ETHICS

City of Sunnyvale
CVRA Citizen Advisory Commission
February 20, 2019



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?

- 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)



Basics of CA Local Government

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



Brown Act Basics

- California open meeting law (Gov. Code 54950 et seq.)
- Applies to “legislative bodies” of local agencies, including CAC (created by Council action)
- All meetings must be open to the public unless an exception applies for a “closed session.”
- Agenda, public participation, decision-making rules



Agenda Requirements

- Agenda must be posted 72 hours before the meeting with certain exceptions.
- 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 commission must also be available to the public.



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.



Public Participation

- Public has right to speak on any item on the agenda.
- During open public comment, 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.
- Tip: chair may gently encourage speakers to be brief and avoid repeating the same comments.



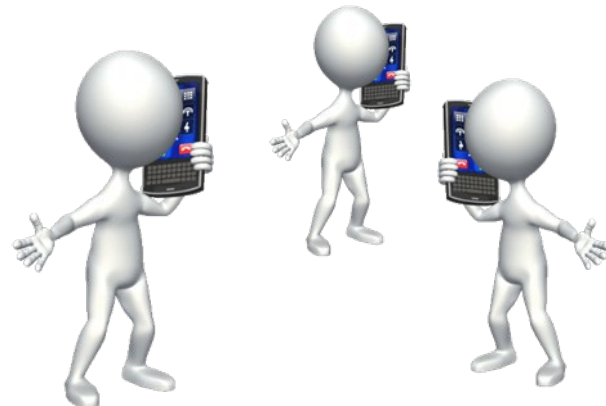
“These people are members of the community that care about where they live. So what I hear when I’m being yelled at is people caring loudly at me.”

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



What is a “Meeting”?

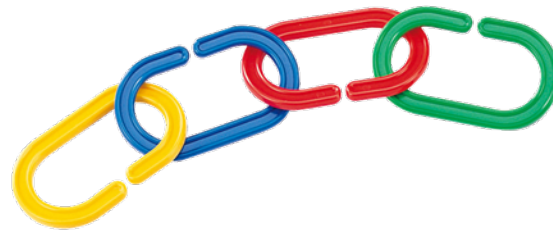
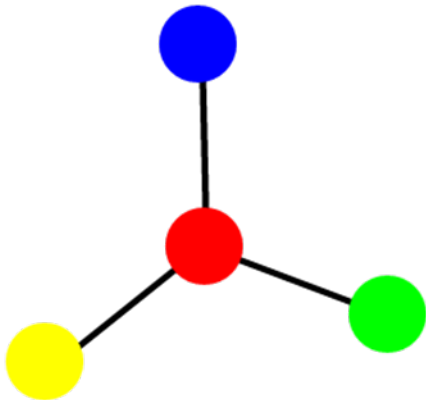
- Brown Act requirements apply to “meetings”.
- A “meeting” occurs whenever:
 - A majority of the members (quorum) are together at the same time and place to discuss or deliberate on any matter within their subject matter jurisdiction.
 - OR, a majority of members use direct communication, technology,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





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.
- TIP: Use caution with technology; don't "reply all"





Permissible Conduct

- Individual contacts or conversations (unless it results in a serial meeting)
- Conferences and “similar gatherings” open to the public
- Non-City Community meetings open to the public
- Open and noticed meetings (City Council, other B/Cs, or other agencies)
- Purely social and ceremonial occasions
- Expressing one’s views in a public forum (speech, newspaper editorial, tweeting or blogging).
- Reading a letter or email from a constituent or speaking to constituents, even if they have also spoken to other commissioners.
- CAUTION: a “collective deliberation” can accidentally occur through online discussions, “reply all” email responses, or third parties acting as intermediaries.



Basics of Parliamentary Procedure

- Goals:
 - Extend equal courtesy to everyone.
 - Protect the rights of the minority.
 - Ensure that the majority rules.
 - Focus on one item at a time.
- Sunnyvale follows the “Standard Code of Parliamentary Procedure” by Alice Sturgis.
- Rules must be read in connection with Brown Act and other laws governing public meetings in California (some Sturgis rules do not apply because they conflict with 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.
- Chair closes the public hearing.
- Members may discuss and ask for 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.



Special Debate Issues

- General Consent: For non-controversial issues (recess, etc), no vote required unless objection
- Amendments to Motions: “Friendly” amendments may be approved by general consent. “Formal” amendments require votes. Debate is limited to the motion to amend.
 - After the vote, debate resumes on the main motion. Only one primary and one secondary motion to amend can be pending at the same time
- Withdrawal of Motion: Maker may withdraw before debate opens; after debate opens majority vote or general consent required.



Voting

- All votes must be public, and a quorum must be present to vote.
- Members abstaining for reasons unrelated to financial conflicts are counted for the quorum.
- Actions can be taken by a majority of the quorum.
- An affirmative vote is required to take an action. A failed motion requires another motion.
- A tie vote means that no action has been taken (for CAC, tie vote means no recommendation).



CA Public Records Act

- 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.
- Certain exceptions- confidential information



Electronic Records and CPRA

- 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.
 - Set up a separate Facebook page, LinkedIn and Twitter accounts for your role as a public official (but, be aware of unresolved legal issues related to blocking users and deleting comments).



Ethics and Conduct

- Sunnyvale Code of Ethics and Conduct- guidelines adopted by City Council
- Key principles:
 - Always act in the public interest.
 - Comply with both the letter and the spirit of the law.
 - Respect the process and rules of order.
- In meetings:
 - Be courteous
 - Respect role of the chair
 - Avoid personal attacks
 - Don't publicly criticize individual staff
 - Listen attentively
 - Make decisions based on merit



Questions?

- Thank you for your service!