

Key Legal Issues for Board and Commission Members

City of Solana Beach
Climate Action Commission
April 2016

SBMC Chapter 2.60

- City Residency for members with exception of 2 Professional members
- Members appointed by the City Council
- Can be removed by majority vote of City Council
- Automatic termination for absence without cause from two successive, regular meetings, or absence for three meetings during the year
- No compensation
- All meetings to be conducted per Brown Act
- Officers elected annually—chair and vice chair

Climate Action Commission

- Solana Beach City Council Resolution 2015-127 discusses membership, meetings and duties of the Climate Action Commission
- 9 members appointed by City Council, 2 year terms
 - 5 members residents of the City
 - 2 “professional” members from environmental and/or scientific community and the residency requirement does not apply
 - 2 City Council members
- City Council may appoint advisory members with no voting privileges but can act as key advisors
- 5 members constitute a quorum
- All recommendations and reports must be in writing and signed by Chairperson and delivered to the City Council and City Manager

Climate Action Commission Purpose and Duties (Resolution 2015-127)

- Advisory legislative body subordinate to the City Council
- The Commission shall develop a Climate Action Plan, including updating the City's Greenhouse Gas Emissions Inventory, setting reduction targets, implementing mitigation measures and performing periodic monitoring, verification and evaluations

Board, Commission, and Committee Member's Handbook

- Gives descriptions of each Board, Commission and Committee
- Meeting procedures
- Brown Act overview
- “500-foot” rule/conflicts of interest
- Form 700
- Toolkit
- Available on City website at: http://www.ci.solana-beach.ca.us/index.asp?SEC=E6F6BCBF-9AF1-4BBF-8A71-DC1779EE88BA&Type=B_BASIC

Economic Disclosure Requirement- Form 700

- Required by Political Reform Act to prevent conflicts of interest by requiring certain officials to disclose personal financial interests which could cause conflicts
- Boards/Commissions required to file Form 700 are listed in the City's Conflict of Interest Code (SBMC Section 2.60.005(B)(2)(b))

Form 700

- Filed with City Clerk, available for public inspection
- Interests of filer, spouse/domestic partner and dependent children (varies with type of interest)
- Financial interests: investments, real property, sources of income, gifts, loans, business positions
- Timing:
 - Assuming office – within 30 days of assuming office
 - Annual – while in office
 - Leaving office – within 30 days of leaving office
 - Amended – at any time

Form 700

- Penalties for failing to file up to \$100 and for late filing of up to \$5000
- Resources:
 - Form 700 Instructions and Reference Manual (www.fppc.ca.gov)
 - 1-866-ASK-FPPC
 - City Clerk and City Attorney

Conflicts of Interest

- Generally governed by Political Reform Act & Gov't Code Section 1090
- Precludes an official from participating in a decision if it will impact the official's economic interests
- Most common: “500-foot rule” of disqualification applies when you own property within 500 feet of the boundaries of the property that is the subject of a decision
- Other potential conflicts of interest (especially those involving contracts) should be discussed with staff and the City Attorney as soon as they are identified
- Recently adopted changes to regulations regarding real property, sources of income, business entity, gifts and personal finances

Types of Conflicts Leading to Disqualification

- Any business entity in which the public official has a direct or indirect **investment** worth two thousand dollars (\$2,000) or more.
- Any **real property** in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- Any **source of income** aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made (this includes community property).
- Any **business entity** in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- Any donor of, or any intermediary or agent for a donor of, **a gift or gifts** aggregating four hundred sixty dollars (\$460) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Conflicts of Interest

- Disqualification Procedure
 - Public disclosure of the economic interest when the agenda item is announced (for example, “I will be recusing myself from participating in this item because I own a home within 500 feet of the property that is the subject of this decision”)
 - The public official must recuse himself or herself and leave the room
 - Important: Disqualification precludes any and all discussion of the item with staff and/or fellow board members

AB 1234 Ethics Training

- State law requires certain officials to receive two hours of ethics training every two years
- Applicability: members of legislative bodies who receive compensation or who are eligible for expense reimbursement (see SBMC § 2.60.005(B)(2)(c))
- Newly appointed officials must complete the training within one year of assuming office
- Alternatives for Compliance
 - In-person training
 - Online training: see “Local Ethics Training” link under the “Ethics” tab on FPPC website (<http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html>)

Brown Act – Open Meetings

- Government Code § 54950 et seq.
- Requires meetings of the legislative bodies of public agencies to be open and public
- “Legislative body” includes the agency’s governing body (City Council) and advisory and decision making boards and commissions
- SBMC Section 2.60.005(C)(1) requires all meetings of City boards, commissions and committees to be conducted in accordance with the Brown Act
- Resolution 2015-127 states all meetings of the Commission shall be conducted in accordance with California open meeting laws

Brown Act- What is a Meeting?

- Any congregation of a majority of the members of the legislative body
- At the same time and place
- To hear, discuss, or deliberate upon any item within the jurisdiction of the legislative body or agency

Brown Act

- “Meeting” exceptions:
 - Individual contacts
 - Attendance at community meetings, meetings of other agencies, conferences and seminars, social gatherings
 - Meetings of “ad hoc” subcommittees – temporary advisory committees of less than a quorum of the board, with a limited purpose, dissolved when the purpose is completed
 - Meetings of a standing committee (or sub-committee), provided that the members of the legislative body who are not members of the standing committee attend only as observers

Brown Act – Agenda Requirements

- 72-hour advance posting of agendas for regular meetings (physical posting and internet posting)
- 24-hour advance posting of special meeting agendas
- Must specify time and place of meeting
- Must contain “brief description” of each item of business to be discussed, including any action on an environmental document
- Action cannot be taken regarding items not listed on the agenda, with limited exceptions
- Non-agenda public comment must be allowed at all regular meetings – allowed a brief response or can direct the issue to be placed on a future agenda

Brown Act Issues for Boards

- “Informal” meetings that are not noticed
- “Serial” meetings
 - A series of individual contacts that results in a majority of the members reaching a collective concurrence on an item of business (can occur by use of technology, such as email)
- Discussion of non-agendized items (other than brief response/direction to staff to agendize a future item)
- Teleconference meetings
- Proper noticing on the agenda—agenda must substantially comply with requirements
- Sub-committees

Due Process and Ex Parte Contacts

- A party or applicant has a constitutional right of due process when a board or commission is making a decision that could impact the party/applicant's property rights
- Due process means the decision making process is fair:
 - The decision maker must hear all the evidence
 - The decision maker must not be biased or have prejudged the matter
 - The decision is based on substantial evidence
 - The affected party knows what evidence the decision was based on and has an opportunity to comment on or rebut the evidence

Due Process and Ex Parte Contacts

- “Ex parte” communications occur when decision makers receive evidence outside of the noticed hearing
- This can include site visits, speaking with parties/witnesses or conducting outside research
- Because the affected party has a right to comment on the basis for the decision, decision makers should either avoid ex parte contacts, or should disclose any facts gathered outside the hearing or ex parte contacts prior to the close of the hearing

The End

Questions?