

MEMORANDUM

To: City of Costa Mesa Commission/Committee/Board Members
From: Thomas P. Duarte, City Attorney
By: Yolanda M. Summerhill, Deputy City Attorney
Date: October 1, 2013
Subject: Brown Act Compliance

INTRODUCTION

With your service to the City of Costa Mesa as a commission/committee/board member comes some additional responsibilities that all members must be aware of in order to protect the integrity of the process. Members responsibilities that are referred to in this memo come from a number of different sources including the Brown Act, Costa Mesa Municipal Code, the City's Handbook to Commission/Committee/Board members and City policies. Below is a discussion of a fraction of some of the issues that commonly arise.

Brown Act

The first obligation of City Council appointees is to ensure that their actions are consistent with the Brown Act. The Brown Act prohibits a congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any item that is the subject matter of the legislative body. With the rise in technology, this definition has evolved over time. Most notably, the use of email in today's society to communicate with other members of the commission/committee/board on committee matters becomes a real hazard in that any response that is sent out to a majority of the committee is considered a violation of the Brown Act. For this reason, our office advises members to avoid altogether email communication with his or her fellow members. If members wish to send information to his or her fellow members on matters related to the committee, one approach is to direct those communications to the City Clerk or committee secretary who will then disseminate the information in such a way so as to avoid a Brown Act violation.

Additionally, commission/committee/board members attending must exercise caution in attending other events to ensue there is no violation of the Brown Act. For example, if the city council establishes a 5-member housing committee and the downtown development committees that meet once a month. Several members of the housing committee are interested in attending the downtown development committee meeting because the discussion involves development in their neighborhood. If those 3 housing committee members attend the downtown development committee meeting, that

is potentially a Brown Act violation if the housing committee members get involved in the discussion that involves housing committee business. There are a number of exceptions to this rule but given its complexity, we recommend the member consult our office so that we can determine whether their attendance is consistent with the Brown Act.

Committee Members Obligations under the City of Costa Mesa Commission/Committee/Board Member Handbook

The City of Costa Mesa Commission/Committee/Board Member Handbook provides several guidelines that members should follow. Members should review the portion beginning on page 19 (attached) in particular to get a better understanding of his or her responsibilities. Of significance the portion entitled "Relations with the Public and Outside Agencies" provides that, "[i]ndividual comments of commission, committee or board members should always be distinguished from full commission, committee or board positions. Special care should be taken when talking to the press or City Council to distinguish individual viewpoints from official commission, committee or board positions."

Now that you are serving in this role, it is important to take your "citizen" hat off and replace it with your "committee" member hat. In doing so, commission/committee/board members' communications with members of the public, the press and the city council should be measured in identifying the viewpoint is not that of the entire group but rather an individual viewpoint while also limiting any impression of bias.

Conflict of Interest

Commission/committee/board members must disclose their financial interests and must abstain from participating in any matter before the member's board that may have a material effect on the individual member's financial interest in order to comply with the various conflict of interest provisions. Typically, commission/committee/board members should think twice about participating in a decision where he or she will benefit financially. Fact patterns leading up to a conflict of interest are often times complex. As with the Brown Act, we recommend the member consult our office so that we can determine whether any decision made by him or her involves a conflict of interest.

Fair Hearing Requirements

In quasi-judicial actions, decision makers who have ex parte contacts on matters pending before them are required to disclose all such contacts and the information received at the public hearing so as to allow the applicant and the public to respond or comment on such information. *Clark v City of Hermosa Beach* (1996) 48 CA4th 1152, cert denied (1997) 520 US 1167. Thus, when the commission/committee/board will be the decision maker on an item, the intention is to ensure that all of the evidence the body

receives comes directly to them during the proceeding. If a member has received evidence outside of the hearing, it should be disclosed in order to ensure that the applicant receives a fair hearing.

CONCLUSION

City Council appointees to commissions, committees and board are governed by under state and municipal law including the Brown Act, conflict of interest provisions and the City of Costa Mesa Commission/Committee/Board Member Handbook. Above are some of the common issues that arise and should serve as guidance through this process.

dismissal, or suspension of City employees. All action and business of commissions, committees, and boards is to be conducted by the group as a whole. No member is to transact business on an individual basis unless duly authorized by a majority of the quorum. Should a split opinion exist on commission action, the majority report that is sent to the Council as the recommendation should include an attached explanation outlining reasons for dissent.

Relations with the City Council

Commission, committee and board members should always be open in communicating with the City Council. Contact should never be used to circumvent fellow commission, committee or board members, or the staff. All formal communication to the City Council should be in writing, with written reports and minutes distributed to the Council after each committee, commission or board meeting.

A commission, committee or board recommendation may be included in a staff report presented to the City Council by the City Manager. If a commission, committee or board desires to suggest major changes or additions to city policies, the commission, committee or board must first review the issue with its assigned staff liaison.

Relations with City Staff

The relationship between the staff liaison and advisory body is pivotal. One or more staff liaisons are assigned to each committee, commission and board to: attend meetings; speak to procedural and policy issues; coordinate the distribution of agendas and minutes; and provide support by preparing reports and assisting in special projects. Council approval shall be required for any Committee or Board assignment which requires more than four (4) hours of staff time. Staff liaisons are appointed by the City Manager or his designee. Staff liaisons are not considered members of the commission, committee or board and have no power to vote on commission, committee or board matters. Because of their support position, staff members should not respond to questions from the public at commission, committee or board meetings, unless requested to do so by the Chair. The staff liaison will assist in identifying issues, which may need the commission, committee, or boards attention, and will assist in suggesting alternatives the commission, committee or board may consider. Staff's recommendations are purely advisory. The following are important guidelines to follow in maintaining effective working relationships:

1. Contacts should only be made with the staff member assigned to the commission, committee or board. At such time as a commissioner, committee or board member wants to make contact with a higher level supervisor, the member should notify the

assigned staff person of this contact.

2. Contacts with staff members should be clearly within the framework of the commission, committee or board assignments.
3. Commissioners, committee and board members should not ask for individual reports, favors, or special consideration. Any assignment requiring more than (4) hours of staff time requires prior City Council approval.
4. Citizen complaints heard by commissioners or committee and board members should be referred directly to the staff liaison assigned to the commission, committee or board.
5. The assigned staff liaison reports directly to a supervisor and may not be able to carry out every recommendation that a commission, committee, or board may have without obtaining his or her supervisor's approval.

Relations with the Public and Outside Agencies

It is important to recognize that a commission, committee, or board member's actions and comments can be interpreted as that of the entire advisory body, city council, or city as a whole. For this reason, the following guidelines should be followed:

1. There should be no promises made to the public that are binding on the commission, committee, board, City Council, or City staff.
2. Comments to the public and to the press should be factual.
3. Technical questions which cannot be answered by commissions, committees or board members should be referred to the staff liaison for a response.
4. Commission, committee and board members have an obligation to listen to input from the public in a courteous and appropriate manner.
5. Individual comments of commission, committee and board members should always be distinguished from full commission, committee or board positions. Special care should be taken when talking to the press or City Council to distinguish individual viewpoints from official commission, committee or board positions.
6. Commission, committee and board members are free to engage in political campaigns or partisan activity while serving on a

commission, committee or board. However, ethics and common sense should be applied. Commission, committee or board members who work on a political campaign may not do so in the name of the commission. City government is nonpartisan. Therefore commissions, committees and boards are nonpartisan, and cannot take action to sponsor political candidates.

F. Conflict of Interest

Commission, committee or board members are subject to conflict of interest provisions. These provisions, outlined in various sources, are designed to protect the public from biased decisions based on financial interests. There are a number of sources of conflict of interest laws, including the Political Reform Act of 1974, (Government Code 8100Q), Chapter X of the Costa Mesa Municipal Code, and other sections of the Government Code. Each of these sources is consistent in holding commission and committee members responsible to disclose their financial interests, and to abstain from participating in any matter before the member's commission or committee which may have a material effect on the individual member's financial interest.

Commission, committee and board members are required to file annual statements of economic interest which disclose the member's interest in investments, real property, and income designated as reportable. Disclosure forms and instructions are available through the City Clerk's Office.

Any member of a local agency who knowingly fails to disclose such interest will be guilty of misconduct in office. The penalties for violating conflict of interest laws are serious, and may include fines and a prohibition against future service in public office. If a commission, committee or board member is uncertain as to a possible conflict of interest, it is generally best to refrain from participating and voting on the matter at hand. A safe way to deal with a possible conflict is for the member to state the basis for his/her conflict of interest immediately after the chairperson announces the item for consideration. Clarification as to what specifically constitutes a conflict of interest may be obtained from the City Attorney's Office through the staff liaison.