

CITY OF SOLANA BEACH



Handbook for Boards, Commissions and Committees

*Prepared by the City Clerk's Office
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A. INTRODUCTION

"Never doubt that a small group of thoughtful committed citizens can change the world; indeed, it's the only thing that ever has."

-- Margaret Mead

Thank you for contributing to your community by serving on a Board, Commission or Committee. The City Council appreciates your willingness to work in this capacity and hopes your experience will be inspiring, enjoyable and satisfying.

Individuals who serve in this capacity are considered public officials of a legislative body. As such there are basic laws and procedures you must comply with as you serve out your term. This Handbook is intended to be used as a reference for the basic protocols that apply generally to all advisory bodies. This Handbook is also designed to clarify the role of Board, Commission and Committee members in relation to other citizens, City Staff and to the City Council.

In assuming a role as a public official on a Citizen Board, Commission or Committee you are making a commitment to actively participate in the local government process and act in the best interest of the City. As a member on a legislative body you act in an advisory capacity to the City Council to assist them in addressing community needs and concerns. This role is one of great responsibility and integrity in which you must always represent your commission and City in a respectful ethical manner.

B. Requirements to be a Member of a Board, Commission, or Committee

Member requirements may vary for each Board, Commission, and Committee and are determined by the Solana Beach Municipal Code commencing with Chapter 2.60 and/or by City Council resolution. The following requirements shall be followed by all Citizen Board, Commission, and Committee members:

- Submit fingerprints for a background check (Council Policy No. 19)
- Take an oath of office (SBMC 2.60.05)
- Complete the Statement of Economic Interest Form 700 (SBMC 2.60.05)
- Complete Online Ethics Training (SBMC 2.60.05)

C. Scope of Authority

Boards, commissions and committees act in an advisory capacity to the City Council and thus are referred to collectively as “advisory bodies.” Advisory bodies may formulate recommendations and function as a forum for discussion of various issues and should function as a group. The advisory role includes expressing views on programs and policies within the authorized scope of interest. Advisory groups will also focus on issues for the City Council by identifying pros, cons and possible actions.

Advisory bodies are not involved in administration or operation of City departments. They may not direct Staff to initiate programs and may not conduct major studies or establish policy. Advisory bodies also may not determine departmental work programs or Staff priorities. They may not take unilateral action as an official representative and they can not serve as advocates for departmental budgets, programs or policies.

D. Attendance

For advisory bodies to function effectively and accomplish their goals, all members must be active participants. The attendance policy for advisory body members is outlined in SBMC Chapter 2.60.010 and what follows is a summary of this section.

Attendance is critical for advisory bodies to function as intended. Therefore, if any member misses two meetings in a row without notice or cause, the member’s position will be vacated in order to be filled with someone who is able to attend the meetings for that term. Just cause for absences includes illness, family emergency, or schedule conflicts directly related to the business and interest of the City.

Also, a member who misses three meetings in one year will be referred to the City Manager for further review and determination of cause. Three unexcused absence is grounds for dismissal.

E. Legal

As a member of a Council advisory group you are considered a public official. As such, there are various Federal, State and local laws with which you must comply. City Staff will offer as much guidance as possible to ensure compliance with the laws, but it is ultimately your responsibility to abide by all requirements.

In general, there are two laws with which you should become very familiar. They are the Brown Act and the Political Reform Act. These Acts were in part created to ensure a transparent Government with no behind-the-scenes dealings and to ensure that actions taken by Government are in the public interest and not for the undue benefit of private individuals.

The Brown Act

The Brown Act (California Government Code, Sections 54950-54963) is a state law that governs meetings conducted by local legislative bodies to facilitate public participation and to curb misuse of the democratic process by secret legislation by public bodies. Advisory bodies must comply with the Brown Act by ensuring public access to their meetings. The Brown Act generally requires local legislative bodies to conduct meetings in open public sessions and to post meeting agendas in advance.

Criminal violations of the Brown Act are misdemeanors punishable by up to one year in jail and/or fines. For these reasons, the City's business must be carried out in a manner that prevents any actual or perceived Brown Act violations. Some more specific requirements of the Brown Act are described below.

Quorum

At any meeting of an advisory body, a majority of those members currently appointed shall constitute a quorum for purposes of conducting business, and unless otherwise posted, a majority vote of those present and voting shall be sufficient to adopt motions.

A "meeting" is considered to take place *anytime* that a quorum of the advisory body gathers to discuss that body's business. The Brown Act prohibits a quorum from meeting privately.



Scenarios:

- A. Four members of a seven-member art commission meet at an art gallery to evaluate the art for a proposed gallery exhibit at City Hall. OR
- B. Four members of a seven-member recreation commission meet at a store to buy decorations for a city event.

Outcome: Violation of the Brown Act

Both of these interactions are considered to be private "meetings" since there was no public notice posted of the agenda and a quorum met without providing the public an opportunity to participate. If only three of the seven members got together to buy decorations or evaluate the art (as directed by the entire commission) and later reported back to the commission about their activities, then this would not be a violation of the Brown Act.

Agendas

State law requires that an agenda for each regular advisory meeting be posted at least 72 hours prior to the meeting. The agenda shall state the time and place of the meeting and a brief description of matters to be heard. The agenda shall also provide an opportunity for

members of the public to be heard at the meeting regarding matters within the jurisdiction of the advisory body. The Staff liaison assigned to each advisory body is responsible for preparation of the meeting agenda. All agendas shall contain a section titled “Next Meeting Agenda” that allows for members to request agenda topics for consideration at the next meeting. The final approval of the agenda is under the authority of the City Manager’s Staff. No matter may be considered by the Commission other than those matters listed on the agenda, as per the Brown Act. The liaison must provide the agenda to the City Clerk’s Office for official posting during regular City business hours and prior to the 72-hour posting deadline.

Meeting Types

City advisory bodies may hold two types of meetings: ***regular and special meetings***. The Staff liaison to the advisory body is responsible for noticing the advisory members and the City Clerk’s office of meeting cancellations, adjournments, and/or change of locations.

The Brown Act requires advisory bodies to conduct public meetings. Therefore, both regular and special meetings should be conducted with doors to the room open in order to facilitate public involvement. The public should have the opportunity to speak at the meetings by being called upon.

Regular Meetings

Regular meetings are held at the time and place as determined by the majority vote of the legislative body.

Special Meetings

Special meetings may be held at a different time or place to discuss specific issues as noted on the meeting agenda, as long as the meeting has been properly noticed.

Serial Meetings – Violation of the Brown Act

The Brown Act specifically prohibits “any use of direct communication, personal intermediaries or technological device employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on any item by the members of the legislative body.” This type of meeting occurs through a series of communications by individual members or groups smaller than a quorum that ultimately involve a majority of the members. The problem with serial meetings is in the process, which deprives the public of an opportunity for meaningful participation in advisory body decision-making. Except for teleconferencing discussed below, the Brown Act specifically prohibits “any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members to develop a collective concurrence as to action to be taken on an item by the members.

The serial meeting may occur by either a “daisy chain” or a “hub-and-spoke” sequence. In the daisy-chain scenario Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. The hub-and-spoke process involves, for example, a staff member (the hub) communicating with members of the advisory body (the spokes) one-by-one for a

decision on a proposed action, or a staff members briefing a majority of members prior to a formal meeting and, in the process information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

An advisory body member has the right, if not the duty, to meeting with constituents to address their concerns. That member also has the right to confer with a colleague or appropriate staff about local agency business. However, if several one-on-one meetings or conferences leads to a "collective concurrence as to action to be taken" among a majority, the Brown Act has been violated. Members should always be vigilant when discussing local agency business with anyone to avoid conversation that could lead to a collective concurrence among the majority of the advisory body.

Example

Scenario:

There are five members on a commission. Member #1 sends an email to Member #2 asking whether he thinks they should put an item on the agenda for the next meeting. Member #2 gives an opinion, but then has some doubts, so he forwards the email to Member #3. As soon as the third member received the email the Brown Act considers that a quorum "met" to discuss an issue, because information was ultimately exchanged among a quorum of members. This is considered to have been a serial meeting and is a violation of the Brown Act.

Gatherings That Are Not Meetings

There are six types of gatherings that are not subject to the Brown Act. If a gathering does not fall within any of the six exceptions listed below, a majority of members in the same room who are merely listening to a discussion of the body's business will be participating in a meeting that requires notice, an agenda, and for public comment. The six exceptions are as follows:

1. Individual Contacts: Conversations between a member of the body and any other person, that does not serve to "poll" members of the body does not constitute a meeting for the purposes of the Brown Act.
2. Conferences: Attendance of a majority of the members of the body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the body, provided by a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.
3. Community Meetings: Attendance of a majority of members of the body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

4. Other Legislative Bodies: This exception allows a majority of legislative body to attend an open and publicized meeting of the local agency, provided that the majority of members do not discuss among themselves specific business within the body's subject matter jurisdiction.
5. Standing Committees: Attendance by a majority of the members of the body at an open and noticed meeting of a standing committee of that body, provided that the members of the body who are not members of the standing committee attend only as observers.
6. Social or Ceremonial Events: Attendance of a majority of the members of the body at a purely social or ceremonial occasion, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

Conflicts of Interest

Members serving on Citizen Boards, Commissions and Committees and similar bodies are public officers and subject to the conflict of interest laws. Advisory bodies are required to comply since they have the ability to compel a governmental decision and make substantive recommendations to other bodies and the City Council. The purpose of such laws is to promote public confidence in the conduct of public officers.

It is the duty of the individual member to contact the local agency's advisor if the member believes he or she has a conflict of interest. Deciding whether a member has a conflict of interest is fact intense and may require some analysis or research. Therefore, in matters involving potential conflicts, advance preparation to determine conflicts should be done as far in advance of meeting participation as is possible. Any last minute conflict of interest questions may result in giving conservative advice, that the member should announce his or her conflict and disqualify him or herself from the matter.

Political Reform Act

The Fair Political Practices Commission (FPPC) administers and enforces the Political Reform act and issues regulations to carry out its purpose.

The purpose of the Political Reform Act is to prohibit a public official from participating in a decision that will impact his or her economic interests. Conflicts of interest are prevented in two ways: by disclosure and disqualification. This section of the Handbooks is intended to provide a "big picture" of the conflict of interest provisions of the Political Reform Act. A public official should not rely solely on this Handbook to decide whether they have a conflict of interest since making this determination will depend heavily on the facts specific to the decision being made and a detailed application of the laws. The Fair Political Practices Commission (FPPC) provides the guidelines for determining conflict of interest issues. If you have any concerns regarding conflict of interest please contact the FPPC, City Staff or the City Attorney for guidance prior to participating in any discussion on the subject matter.

Disclosure of Financial Interests

The purpose of disclosing financial interests is to alert public officials of personal interests that might be affected while performing their official duties, i.e. making governmental

decisions. All members of City advisory bodies should avoid the appearance of bias in pending City matters at all times.

Public officials disclose their financial interests on a form entitled “**Statement of Economic Interests**” or “**Form 700**” issued by the FPPC. The Form 700 is filed within 30 days of taking office, annually, and within 30 days of leaving office. Form 700s submitted by public officials are public records and are made available for public inspection upon request.

There are six kinds of economic interests from which a conflict of interest may arise. Those economic interests are the following:

- **Business investment.** An economic interest in a business entity in which the public official, his or her spouse/domestic partner, dependent children, or anyone acting on the public official’s behalf has invested \$2,000 or more.
- **Business employment or management.** A business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management, paid or unpaid.
- **Real property.** An economic interest in real property in which the public official, his or her spouse/domestic partner, dependent children, or anyone acting on his or her behalf has invested \$2,000 or more , and also certain leasehold interests.
- **Sources of income.** An economic interest in a source from whom the public official has received (or has been promised) \$500 or more in income within 12 months prior to the decision. The public official will have a community property interest in the spouse’s income. Also, if the public official, his or her spouse/domestic partner or dependent children, own 10% or more of a business, the public official will be considered to receive “pass-through” income from the business’ clients. In other words, the business’s clients may be considered sources of income to the public official.
- **Gifts.** A gift is anything of value for which you have not provided equal or greater consideration to the donor. A gift is reportable if its fair market value is \$50.00 or more. In addition, multiple gifts totaling \$50.00 or more received during the reporting period from a single source must be reported. Gifts are reportable regardless of where the donor is located. You must report a gift even if you never used it or you gave it away to another person. However, you are not required to disclose gifts that were not used and within 30 days were returned to the donor or delivered to a charitable organization without being claimed by you as a charitable contribution for tax purposes. Gifts are limited by law to a value of \$390.00 from any one source in a calendar year.
- **Personal financial effect.** An economic interest in the public official’s personal expenses, income, assets, or liabilities, as well as those of the public official’s immediate family. This is known as the “personal financial effects” rule. If these are likely to go up or down, \$250 or more as a result of the governmental decision, then it has a “personal financial effect” on the public official.

Common Law

The common law conflict of interest is not defined by statute or by regulation. It has developed through precedential court decisions. The basic rule is that a public officer is bound to exercise the powers conferred on him or her with disinterested skills, zeal, and

diligence and primarily for the benefit of the public. The California Attorney General has taken the position that where no conflict is found according to statutory prohibitions, a special situation could still constitute a conflict under the common law doctrine.

As a general rule, the decision maker should not be tempted by his or her own personal interest and doctrine will apply to situations involving non-financial personal interest.

The City Attorney's office is most commonly used for reference. By statute, the FPPC has the primary responsibility for impartially administering and implementing the Political Reform Act. Opinions from the City Attorney's office are not binding on the FPPC. Therefore, a public officer's reliance on the a City Attorney's opinion will not immunize an officer from any FPPC administrative action, or from any civil or criminal proceeding if any officer violated the Political Reform Act or other conflict of interest laws. Each officer may gain assurance by requesting a formal opinion from the FPPC.

Once the sources of economic interest for any public official are identified, potential conflicts of interest are determined by examining whether a decision being made by the public official will either directly or indirectly have an impact on the public official's economic or other beneficial interests. The likelihood that the outcome of the decision will have an important impact, need not be a certainty, but it must be more than merely possible.

When it has been determined that there is a conflict of interest, the City's policy is that the member must recuse themselves from the discussion and the meeting (physically leave the room) to ensure that there is no influence or participation on the subject matter.

F. Public Records Disclosure and Retention

The City, including its advisory bodies, is subject to state laws governing the retention of public records. The State Public Records Act, which is modeled after the federal Freedom of Information Act, applies to records containing information relating to the conduct of the public's business prepared, owned, used, or retained by a local agency regardless of physical form or characteristics. Unless otherwise provided, public records are to be open to inspection at all times during the office hours of public agencies. Any person may receive a copy of any identifiable public record upon request and payment of a prescribed fee.

In general, public records are subject to disclosure unless they are expressly exempt under the Public Records Act or exempt under the "balancing test." The balancing test is also referred to as the "catchall provision," where the City must determine whether the public interest in disclosure is clearly outweighed by the public interest in nondisclosure.

Public records generated by advisory groups generally include agendas, meeting minutes, materials distributed at meetings, and working files related to commission business (i.e. . . . event planning). The general retention period per the California Government Code for most

documents is two years and the retention period for minutes is permanent since this is a vital record of the City.

G. Meeting Decorum

In order for meetings to be effective it is important to follow proper meeting decorum, some of which is outlined below.

Role and Responsibilities of Chair

The Chair shall preserve order and decorum at all meetings of the advisory body, announce the advisory body's decisions, and assess the questions from the commission members to be on the topic. The Chair is responsible for ensuring the effectiveness of the group process. An effective Chair balances moving the discussion forward with involving all members of the advisory body and allowing for adequate public participation. In the absence of the Chair, the Vice Chair shall act as the presiding officer.

Role and Responsibilities of Members

Members should assist the Chair. They should obtain recognition before speaking and limit their remarks to the issue. Members should ask clarification questions and respect their colleague's rights. If they have any concerns or objections, these should be raised at the meeting.

Meeting Protocol

It is the Chair's role to facilitate meeting protocol. Staff liaisons may assist the Chair in starting the meeting on time, and also provide guidance in meeting protocol. Staff may also facilitate and promote effective communication. Here are some additional guidelines to consider while conducting meetings:

- Start meetings on time.
- Keep the agenda in mind in order to give each item the appropriate time.
- Announce at the start of the meeting if the order of agenda items is to be rearranged either for convenience, response to those attending only for certain items, or for better pacing of the agenda.
- Let the Chair run the meeting.
- Be fair, impartial, and respectful of the public, Staff and each other. Give your full attention when others speak.
- Trust your own good judgment on decisions.
- Keep in mind that people may be attending a meeting for the first time and may be unfamiliar with the advisory body procedures. In your discussion, either avoid or explain technical terms or verbal shorthand.
- Listen to audience concerns.
- Do not engage in side conversations or otherwise be distracted.
- Do not engage the public in debate.
- Remember that your advisory body exists to take actions. It is not simply a discussion group or debating society.
- End meetings at a reasonable hour.

Preparing Motions

Advisory body meetings are usually conducted according to parliamentary procedure. The Chair directs the meeting, and his/her rulings must be followed unless they are overruled by the body.

When a member wishes to propose an action on a particular item on the posted agenda for the advisory body to consider, the member makes a motion. A motion goes through the following steps:

1. The member asks to be recognized by the Chair.
2. After being recognized, the member makes the motion, "*I move that we...*"
3. Another member seconds the motion, "*I second the motion.*"
4. The Chair restates the motion and asks for discussion on the motion.
5. When the Chair determines that there has been enough discussion, the debate may be closed with, "*Is there any further discussion?*"
6. If no one asks for permission to speak, the Chair then puts the question to a vote, "*All those in favor say aye.*" "*All those opposed say nay.*" The Chair should restate the motion prior to the vote to ensure the motion is clearly understood by all. Any member may request a roll call vote on a motion.
7. After the vote, the Chair announces the decision.

Properly phrasing a motion can be difficult and corrections may be necessary before it is acted upon. Until the Chair states the motion, the member making the motion may rephrase or withdraw it.

H. Role and Relationships

Relationship to Council

The primary purpose of all Citizen Commissions is to act in an advisory capacity to the City Council. The City Council may direct the Commission to research various topics to assist them in making decisions.

Relationship to City Staff

The relationship of the Citizen Commissions and Staff is an active and continuous one. City Staff provides assistance to the Commission which includes assistance with the facilitation of meetings, preparation and distribution of the agenda and minutes. Commission members work closely with the Staff liaisons; however, they do not have the authority to supervise or direct the work of Staff. Additional direction to Staff must be approved by the City Manager. City Staff members are available to provide general Staff assistance to the advisory body.

The Staff liaison assigned to each advisory body will be responsible for:

1. Preparation of the meeting agenda.
2. Submitting the final agenda to the City Clerk's Office for official posting prior to the 72-hour posting deadline for regular meetings.

3. Noticing the advisory members and the City Clerk's office of meeting cancellations, adjournments, and/or change of locations.
4. Assist the Chair in beginning the meeting on time and provide guidance in meeting protocol.
5. Preparation of the minutes of each meeting.

Meeting Minutes

The Municipal Code requires that minutes be taken and approved for each meeting of an advisory body. The Staff liaison assigned to the advisory body is responsible for preparation of the minutes of each meeting. Meeting minutes shall be a brief record of matters discussed and actions taken by the advisory body. The minutes shall also list the names of those persons speaking during the public comment period. Minutes should not reflect personal opinions and/or comments that do not directly relate to actions taken by the advisory body. Minutes of the meeting shall be submitted to the advisory body for approval at its next meeting and shall be signed by the Chair.

II. Appendixes

Appendix 1: Responsibilities of Board, Commission, Committee Members

Appendix 2: Do's and Don'ts For Advisory Group Members

Appendix 3: Rosenberg's Rules of Order: Parliamentary Procedures

Appendix 4: Key Ethics Law Principles for Public Servants

J. Resources

California Codes – Government Code
The Ralph M. Brown Act - SECTION 54950-54963
<http://www.leginfo.ca.gov/calaw.html>

League of California Cities
Open and Public IV: A Guide to the Ralph M. Brown Act
<http://www.cacities.org/index.jsp>

Fair Political Practices Commission
Political Reform Act – add website
California Code of Regulations
www.fppc.ca.gov

California Attorney General's Office
<http://ag.ca.gov/>