Brown Act and Conflicts of Interest

Clean Energy Alliance – Community Advisory Committee

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Ralph M. Brown Act
Purpose of the Brown Act

- Promote transparency and public participation in local government
- Move decision making into the public eye
Meetings

- **Elements:**
  - Congregation of a majority
  - Same time and location (including teleconference location)
  - To hear, discuss, deliberate, or take action on any item
  - Subject matter jurisdiction
Regular Meeting

- Agenda must be posted 72 hours in advance
- Brief description of items of business
- Posted agenda must be freely accessible to public
- Only 24 hours’ notice required for special meetings
Teleconferencing

- Meetings can be conducted by teleconference (audio or video connection)
- Quorum must participate from locations within the jurisdiction (Suspended due to COVID-19)
- Agenda must identify each teleconference location (Suspended due to COVID-19)
Serial Meetings Are Illegal

What is an illegal serial meeting?

• Direct or indirect communication
• Employed by a majority
• To discuss, deliberate, or take action on any item of business or potential business
Serial Meetings Are Illegal

- Don't hit "Reply All"
- Remember the discussion must occur publicly on dais not via email or texts among members
2 Types of Serial Meetings

Chain

Hub and Spoke
Serial Meetings: Chain

Tweet → Retweet
Serial Meetings: Hub and Spoke

- One person serves as the central hub
- Receives and disseminates information to multiple spokes
Individual Briefings Are Allowed

- Individual briefings are permitted
  - "Unidirectional"
  - Don’t describe views of any other members
  - Don’t ask member’s views
Meeting Exceptions

- When is a meeting not a “meeting?”
  - Individual contacts
  - Conferences and seminars
  - Community meetings
  - Another body of the agency when it is an open and noticed meeting of that body
Items not posted on agenda?

- No discussion or decision on items not on the posted agenda
  - Limited exceptions

Government Code §§ 54954.2(a)(3), 54956
Members Must Stick to Items on Agenda, Except...

- Brief response to comments / questions
- Clarification / reference to staff
- Brief announcements / report on activities
- Requests for future report
- Placement of items on future agenda
Public Comments at Meetings

- Public agencies may not prohibit public criticism of the agency or the legislative body.
- Members of the public may comment on anything with the Committee’s subject matter jurisdiction.
- This includes items NOT on the agenda.
Enforcement & Consequences

Three types of enforcement actions:

- Civil action to invalidate a decision or action
- Civil action for a determination of a past violation
- Criminal prosecution
Conflicts of Interest
The Political Reform Act

- The Basic Rule - Section 87100

  - No public official at any level of state or local government,
  - Shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision,
  - In which he or she knows or has reason to know that he or she has a financial interest
CEA Conflict of Interest Code

- CEA adopted a Conflict of Interest Code
  - Applies to Community Advisory Committee
- Members of Community Advisory Committee must report interests specified in the Code on Form 700
All Members of the Community Advisory Committee must fill out a Statement of Economic Interests (Form 700)

- Penalties for late filing / failure to file
- Accurate reporting prevents conflicts & increases public confidence
- Failure to report an interest will almost always make the FPPC, public and press more suspicious

The CEA Conflict of Interest Code requires you to include the following interests on Form 700:

- Real Property within jurisdiction of CEA (excluding personal residence)
- Income (if source plans to contract or has contracted in the last 2 years with CEA)
- Business Interests and Investments (if related to an entity that plans to contract or has contracted in the last 2 years with CEA)
When to File Form 700

- **Within 30 days of taking office**
- **Annual Statements**
  - Covers January 1st through December 31st of previous year
  - Report all changes in reported interests during this time period
  - Must file by April 1st
- **Within 30 days of leaving office**
  - Include the same information as in your annual statements
  - Covers all changes since last annual statement
Real Property

- **Real property interests worth at least $2,000**
  - Owned by you
  - Owned by your spouse separately
  - Your dependent child’s property
  - Your interest as a tenant in real property (except month-to-month tenancy)
Income

• Sources of income of $500 or more in the last 12 months
  • Your own income such as salary from a private employer
  • Promised income
  • Dependent child’s income
  • Loans
  • Spouse / partner income
  • Commission income
Business Interests and Investments

- **Investments**
  - Investments worth $2,000 or more
  - Mutual Fund exception

- **Business Interests**
  - Management or employment
  - “Related” business entities
  - Property interests of businesses
Do I Have a Conflict?

Step 1: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official’s financial interests?

Step 2: Will the reasonably foreseeable financial effect be material?

Step 3: **Affirmative Defense:** Can the public official demonstrate that the material financial effect on his financial interest is indistinguishable from its effect on the public generally?

Step 4: **Prohibition:** If Three-Step analysis establishes a conflict, the official may not make, participate in making or attempt to use his official position to influence a governmental decision.
If You Are Disqualified

- You cannot *make, participate in the making, or use or attempt to use your position to influence the decision*
- Do not discuss or influence (staff or colleagues)
- Do not participate in public meeting or provide recommendation
When You Recuse

- Disclose your interest on the record
- Leave the room
PRA Penalties

- Invalidation of decision
- Misdemeanor (could result in loss of office)
- Fines
- Attorney’s fees (yours and others)
- Embarrassment (personal / political)
THANK YOU FOR YOUR PARTICIPATION!

QUESTIONS?

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