



# The San Francisco Sunshine Ordinance, the Brown Act, & Public Records Act

## Meetings and Public Records Requests

---

PRESENTED BY:

ADAM RADTKE, DEPUTY CITY ATTORNEY, SAN FRANCISCO CITY ATTORNEY'S OFFICE

VIRGINIA DARIO ELIZONDO, DEPUTY CITY ATTORNEY, SAN FRANCISCO CITY ATTORNEY'S OFFICE

# The Brown Act & Sunshine Ordinance

---

## Conducting the People's Business

### The Brown Act: Government Code §§ 54950-54963

Local legislative bodies, such as boards, councils and commissions are a group of people who come together to discuss and come up with the most effective ideas.

The Ralph M. Brown Act is the law that guarantees the public's right to attend and participate in meetings of local legislative bodies.

### Sunshine Ordinance: San Francisco Administrative Code Chapter 67

San Francisco Ordinance was developed to insure easier access to public records and to strengthen open meeting laws.

# Meeting Defined

---

A meeting occurs whenever a majority of the members of a policy body come together at the same time and place via communication. Admin. Code § 67.3(b)(1).

Meetings must be open to the public and held within city limits. Cal. Govt. Code § 54954(b); Admin. Code § 67.6(b).

A meeting occurs even if the policy body takes no action but only gathers information collectively or discusses an issue.

Formal meetings, retreats, site tours, and meal gatherings are permitted if done properly.

Pre-meetings, post-meetings, teleconferencing (with limited exceptions), and seriatim (or serial) meetings are not permitted.

# Policy Bodies

---

The Commission is a policy body, and the Commission “meets” when a majority of the commissioners (4 out of 7 including open seats) come together in the same time and place. Also known as a “Quorum.”

Carefully track attendance because the Commission can lose a Quorum during the meeting. At that point, the Commission cannot take any further formal action other than: (1) fix the time to which to adjourn, (2) adjourn the meeting, (3) recess the meeting, or (4) take measures to secure a quorum.

Policy bodies can create subordinate policy bodies that are also subject to the Brown Act, such as a standing committees on budget, personnel, etc.

Subordinate policy bodies may be unintentionally created without a formal vote of the commission, such as the Chair suggesting that commissioners A & B look into something and report back to the commission. Watch for quorum, or quorum of subcommittees issues.

# Open Meeting Basics

---

Agendas must be posted at the Library and on the department website 72 hours for regular and special meetings. Accompanying materials must be posted when made available to the Commission.

The public has the right to observe and participate in the meetings:

- General public comment period for all other subjects under the body's purview (regular meetings only)
- Separate public comment on every action item before the vote.

All deliberations and actions must occur during open, properly noticed meetings.

Remote attendance is restricted to Commissioners on parental leave and Commissioners with ADA accommodation.

The City must provide notice of the cancellation of a meeting to the public as soon as reasonably possible. Admin. Code § 67.6(g).

# Agenda Requirements

---

Agendas must be posted at least 72 hours before the meeting. Amendments can be posted >72 hours as long as they provide greater specificity to what has already been posted.

The Agenda should be sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected of the reason to attend the meeting or seek more information on the item. Reasonable person standard.

Agenda must specify discussion, action, and discussion and possible action items.

Policy bodies cannot take “action” unless the item is identified as “Action Item.” However, the body is not required to take action.

Policy bodies cannot discuss or act on items not on the agenda. However, they can direct staff to add items to future agendas, and they can rearrange items on the agenda.

Policy bodies can have limited follow-up to general public comment for purposes of clarification, but not discussion.

# Do's: Conduct of Meeting

---

Many policy bodies have rules of conduct in their bylaws or resolutions.

- Start meetings at the scheduled time or later (for example, to wait for a member due to traffic, etc.)
- Take roll and be sure the quorum is present.
- Notify the attendees if agenda items that are listed will be discussed in a different order. Admin. Code § 67.15(e).
- Conduct Commission votes openly and publicly.
- If an item has been discussed and the quorum decides to change their stance later in the meeting, that is permitted. When this occurs, the presiding officer must make it clear that the group has not completed its consideration of the item and they intend to bring it up again which includes public comments.
- The presiding officer may order the removal of individuals engaging in disruptive behavior. Depending on the circumstances, before taking this step, the presiding officer should warn the offending individual and afford an opportunity to correct the behavior.

# Don'ts: Conduct of Meetings

---

- No secret or anonymous ballots.
- Start meetings before the time listed on the agenda.
- Conduct meetings without a quorum.
- Read or send text messages during meetings.
- An absent member of a policy body may not vote by proxy. See generally Charter §§ 2.104(b), 4.104(b); Admin. Code §§ 1.29, 67.16.
- All members must vote, unless they have a conflict of interest or are excused by a majority of members present (i.e., no “abstentions”) Charter § 4.104(b)
- Once an action has been taken, the policy body must disclose the action and announce the vote of each member of the body. Cal. Govt. Code § 54953(c)(2).



# Closed Session

---

Closed-door meetings may be held under limited exceptions. (Real estate negotiations, existing or anticipated litigation, personnel matters, labor negotiations, security matters, etc.)

Closed sessions must be properly noticed on the agenda and any action taken must be publicly reported at the end of the session.

Individual members of legislative bodies may not disclose information discussed in closed session.

During closed session: stay on topic and conduct yourself as though the discussion could later be disclosed, record the session and keep indefinitely, and restrict attendance to Commissioners and necessary staff and employees.

# Public Attendance and Comment

---

Cannot require sign-in or ID to attend.

Must allow:

- Public to record.
- Provide opportunity to comment ***before*** any action is taken.
- Provide general comment period for non-agenda topics within body's purview.
- Make writings related to open session business available to public.

Commission members may not respond or act in response to public comment, but may briefly respond or ask questions, refer to staff for follow-up or request that something be placed on a future agenda for discussion.

# Checklist for Chair re: Public Comment

---

Ask for public comment on each item, even if the room is empty, so that it is recorded.

Take public comment before any vote.

Announce the specifics of the vote after each action item.

If agenda is rearranged, then let public know ASAP.

If item has been scheduled for a specific time, do not take it earlier.

Apply and enforce the speaking time equally, regardless of viewpoint, but allow additional time for people with disabilities or who need translation, as appropriate.

Public speakers are allowed up to three minutes on an item, but public comment can be less if there is a reasonable basis. (Limited time, lots of public speakers, long agenda.) Basis should be on the record.

Public speakers can be critical, but not disruptive.

No right to a response.

# Sunshine Ordinance & Public Records Act

---

What is a Public Record?

It is any writing that contains information relating to the conduct of public business prepared, owned, used by a state or local agency.

Examples of Public Records:

Emails, including attachments to emails, video recording, audio recording, voicemail, text messages and photographs.

# Information on personal communications devices

---

Any communication relating to the City's business that a public employee or official sends or receives on a personal electronic device such as cell phones and personal computers are subject to disclosure as public records.

These communications are subject to the department's retention policy.

Consider using City-issued email addresses to conduct Commission business.

Consider forwarding any commissioner business from your private email address to City-issued email address.

Communicate Commission business through the Commission secretary.

# You do not have to remember all of this information!

---

This presentation is intended to answer most of the questions we commonly hear from departments, boards and commissions.

If you have any questions, feel free to ask us now or contact us in the future as needed.

Thank you for your time!