



Community Advisory Committee

Regular Meeting

July 11, 2024





Welcome & Call to Order


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Roll Call




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Land Acknowledgement



Public Comment for Items Not on the Agenda



Items to be Withdrawn or Reordered on the Agenda

Consent Meeting Agenda

1. Approval of June 13, 2024, CAC Meeting Minutes
2. Update on Marketing, Public Relations, and Local Government Affairs
3. Update on Customer Operations
4. Update on Programs
5. Update on Regulatory and Legislative Affairs



Public Comment for Consent Agenda

Regular Meeting Agenda

6. Election of Chair, Vice-Chair, and Secretary for Fiscal Year 2024-2025
7. Ralph M. Brown Act and Conflict of Interest and Ethical Conduct Policy Training

Item # 6

Election of Chair, Vice-Chair, and Secretary for Fiscal Year 2024-2025

Recommendation: Elect a Chair, Vice-Chair and Secretary for Fiscal Year 2024-2025.

Presenter: Xiomalys Crespo, Sr. Community Engagement Manager

Election of FY 2024-2025 CAC Officers

Chair


- Serve as the primary liaison and spokesperson for the CAC
- Support Staff with setting the CAC agenda
- Guide the CAC in developing an annual workplan consistent with the CAC Scope of Work and approved by the Board of Directors
- Determine if meetings are required or if a meeting should be canceled
- Lead and manage CAC meetings to ensure all CAC and community members are heard, work to keep meetings to allotted time, as well as manage public comments
- Work with staff to determine a suitable meeting location and a recurring date and time
- Represent the CAC at the Board of Directors to provide updates, submit information, or respond to Board requests
- Represent the CAC to within organizational processes, to other organizations, or at events, as appropriate

Vice-Chair

- Assume CAC Chair responsibilities if the Chair is absent from a meeting or otherwise unable to perform their duties

Secretary

- Take attendance and meeting notes, and work with staff to distribute relevant information to members



Public Comment for Item 6

Item # 7

Ralph M. Brown Act and Conflict of Interest and Ethical Conduct Policy Training

The CAC will receive legal training on Brown Act and Conflicts of Interest requirements.

Presenter:

Nick Norvell, Legal Counsel, Best, Best & Krieger



BBK

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Ralph M. Brown Act and Conflict of Interest and Ethical Conduct Policy Training

July 11, 2024

Why Is This Training Important

- Comply with the law and San Diego Community Power policies
- Learn best practices
- Promote positive public perceptions
- Avoid legal problems

Ralph M. Brown Act

California's Open Meetings Law

Purpose of the Brown Act

Ensure that almost all aspects of decision-making of legislative bodies are conducted in public and open to public scrutiny.

“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” (Gov. Code § 54950.)



The Ralph M. Brown Act

To whom does the act apply?

- Local agencies
- Legislative bodies
- Persons elected to legislative bodies, even prior to assuming office



Key to the Brown Act

- All meetings shall be open and public except when the Brown Act authorizes otherwise.



The Brown Act - Meetings



- *What is a Meeting?*

- Any gathering of a majority of the members at the same time and place to hear, discuss or deliberate upon any matter under their jurisdiction.
- No action needs to be taken for a meeting to occur; conversations between and among members of a legislative body about issues confronting the agency is sufficient.

The Brown Act - Meetings

- *When Is a Meeting Not a Meeting?*

- Individual contacts;
- Conferences and seminars;
- Community meetings;
- Purely social or ceremonial occasions;
- Attendance at standing committee meetings;
- Meetings with other legislative bodies

A majority of the body may attend these events/occurrences, as long as they do not discuss among themselves issues related to the agency.

The Brown Act – Serial Meetings Prohibited

- *Serial Meetings – Expressly Prohibited*

- “Use of direct communication, personal intermediaries, or technological devices employed by a majority of the legislative body members in order to develop a collective concurrence as to action to be taken on an item by the legislative body is prohibited.”

The Brown Act – Serial Meetings Prohibited

Ways Serial Meetings Can Happen

- Personal Meeting
- Telephone
- Email
- Written Correspondence
- Use of Intermediaries
- Social Networking Sites such as Facebook or Twitter/X



The Brown Act – Serial Meetings Prohibited

Two types of Serial Meetings

1. Chain

- Member A speaks to Member B who speaks with Member C about a particular matter and in the process they all form a collective concurrence on a matter.

2. Hub and Spoke

- An intermediary (including an alternate board member) acts as a hub of a wheel with members relaying information back and forth to each other through the hub and in the process a majority of the legislative body develops a collective concurrence.

The Brown Act – Serial Meeting Exceptions

Briefings by Staff or Asking Questions to Staff

- While the Brown Act prohibits serial meetings, it also explicitly provides an exception for one-on-one or less than a quorum communications by a non-member (i.e., staff) with members of the legislative body.
- However, does NOT allow back and forth and sharing of views of different members.

Scheduling a Special Meeting

- Brown Act also allows communications to call or schedule a special meeting without discussing substance.

The Brown Act – Social Media

AB 992 (2020) – It is not a serial meeting to provide information to or solicit information from the public using social media.

- Must be “open and accessible” to general public (no blocking)
- Cannot discuss among a majority
- No responding directly to other members’ posts about agency business
- No use of emojis, etc., on other members’ posts

The Brown Act – Social Media

E-mail Tips

- Refrain from “reply all” to e-mails
- Do not take a position or make a commitment
- Take caution
- Ensure compliance with law



The Brown Act – Rules Governing Meetings

- Regular meeting
- Special meetings
- Public's right to comment
- Agenda materials



The Brown Act – Rules Governing Meetings

REGULAR MEETINGS - Agenda Requirements:

- Post 72 hours prior to the meeting.
- Must include the time and location of the meeting.
- Must contain a brief general description of each item to be discussed or addressed, including closed session items.

The Brown Act – Rules Governing Meetings

SPECIAL MEETINGS - Agenda Requirements:

- ⑩ Posted no later than 24 hours prior to the meeting.
- ⑩ Must include the time and location of the meeting.
- ⑩ Must contain a brief general description of each item to be discussed or addressed, including closed-door items.

The Brown Act – Rules Governing Meetings

Distribution of Agenda Packet to Public

In addition to posting an agenda, a local agency must also make the agenda packet available to the public when the materials are distributed to all or a majority of the legislative body, whichever is first.

The Brown Act – Rules Governing Meetings

The Public's Right to Comment

- ⑩ At every regular meeting, members of the public have the right to directly address the body on any item of public interest if that item is under the jurisdiction of the body.
- ⑩ For agenda items, the public must be given an opportunity to comment before or during the body's consideration of the item.
- ⑩ At special meetings, members of the public have the right to address the body about any item that is listed on the agenda.



The Brown Act – Rules Governing Meetings

*Subject to certain exceptions for emergency or urgent situations noted in the Brown Act, **no action or discussion is allowed for any item not listed on the agenda.***

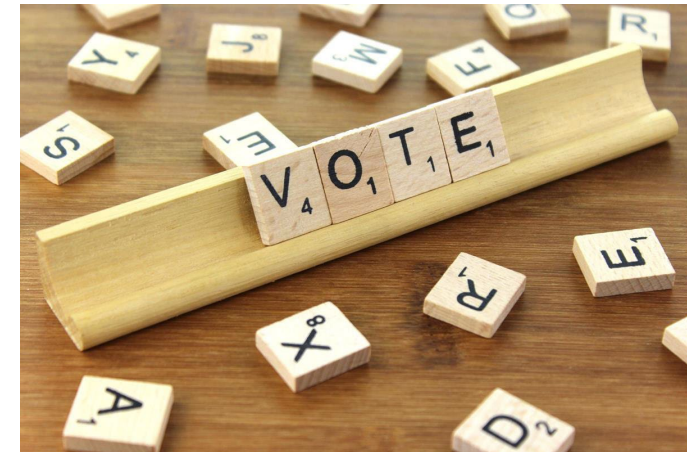
Other exceptions:

- Brief responses to statements or questions from public
- Questions to staff for clarification of matters based upon public comments
- Brief announcements or reports on member's or staff's own activities
- Providing references or information to staff
- Asking staff to report back at a future meeting on a matter

Conducting Meetings - Voting

Taking Action

- Votes are initiated by a motion and second
 - If there is no second, motion fails
- After motion and second, restate the motion, then conduct vote
- Vote is taken by voice vote or roll call
 - Roll call required if meeting by teleconference
 - Brown Act prohibits secret votes or ballots, whether the vote is preliminary or final
- Brown Act requires public report of vote
 - If unanimous, say so for the record
 - If split vote, report who voted yes and no



Conducting Meetings – The Consent Calendar

- For items that are routine or ministerial and no discussion is anticipated/required.
- The Chair will ask if anyone wishes to remove a matter from the consent calendar.
- If a CAC Member has a question, comment, or wishes to vote “no” on a consent calendar item, they should request to remove it from the consent calendar.
- Members of the public may also request to remove a consent calendar item.
- The CAC will then act on the remaining items on the consent calendar without discussion.
- Items pulled from the consent calendar will then be considered, and a staff report will be provided only if requested by the CAC Member who pulled the item.

Conducting Meetings - Teleconferencing

- San Diego Community Power has a teleconferencing policy that allows teleconferencing if Community Power and the participating legislative body members can meet legal requirements.
- To ensure compliance with the Brown Act, CAC Members are required to contact Community Power staff as soon as possible with the request to teleconference and general reason for needing to teleconference.
- Staff will work with General Counsel to determine if teleconferencing is legally and logistically available and provide options to the CAC Member, if possible.

The Brown Act – Violations & Consequences

- Agency has opportunity to cure and correct certain types of violations
- For violations, Court may:
 - Enjoin action,
 - Invalidate action, or
 - Mandate correction.
- Court costs & attorney fees are recoverable
- Individuals who intentionally violate may be guilty of a misdemeanor

Conflict of Interest and Ethical Conduct Policy

Conflict of Interest & Ethical Conduct Policy Overview

Purpose: Provide a code of ethics and acceptable conduct that applies to San Diego Community Power Directors, Committee Members, and Employees, and uphold public trust and highest moral and ethical standards for Community Power.

Scope: Incorporates the California Government Code (including Political Reform Act & Government Code section 1090), regulations of the Fair Political Practices Commission, and other Community Power policies.

Conflict of Interest & Ethical Conduct Policy

Responsibility to San Diego Community Power & Public

It is the responsibility of each Community Power official and employee for their actual or perceived conflicts of interest, and to reduce or eliminate actual or perceived conflicts to the extent possible.

Their conduct in both their official and private affairs should be above reproach to assure that their public position is not used nor perceived as being used for personal gain.

Conflict of Interest & Ethical Conduct Policy

General Rule on Conflicts of Interest

San Diego Community Power officials and employees shall not:

- Engage in any business or transaction, or have a financial or other personal interest, direct or indirect, that is incompatible with the discharge of their duties or would tend to impair their independence, judgment, or action in the performance of their duties.
- This prohibition is interpreted based on the California Government Code, regulations of the Fair Political Practices Commission, and common law conflicts of interest under California law.

Personal Financial Interests Political Reform Act of 1974

General Rule

Public officials shall not:

- make
- participate in making or
- attempt to influence

a governmental decision in which they have a financial interest.



Personal Financial Interests Political Reform Act of 1974

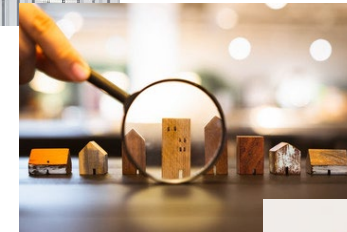
What is your role in the governmental decision?

- **Making**: Authorizing, directing, voting on, or committing the agency to the decision.
- **Participating in Making**: Providing information, opinions, or a recommendation for the purpose of affecting the decision.
- **Attempting to Influence**: (1) Contacting any official in the agency for the purpose of affecting a decision, or (2) contacting another agency on behalf of your agency to affect a decision.

Personal Financial Interests Political Reform Act of 1974

Types of Economic Interests:

- ✓ Business Investment
- ✓ Source of Income
- ✓ Business Position or Employment
- ✓ Real Property
- ✓ Gifts
- ✓ Personal Finances



Personal Financial Interests Political Reform Act of 1974

The FPPC Does a Four-Step Analysis:

1. Is it reasonably foreseeable that decision will have a financial effect on your economic interest?
2. Will financial effect be material?
3. Is the financial effect indistinguishable from its effect on the public generally?
4. Is there another exception?



Personal Financial Interests Political Reform Act of 1974

Reasonably foreseeable – “Realistic possibility”

Material – Above FPFC standards (e.g., employer is a named party for a grant/contract, within 500 feet of real property, etc.)

Public generally exception – Affects: (1) 25% of properties, businesses, or individuals, and (2) no unique effect on public official

Other exceptions – e.g., rule of necessity

Personal Financial Interests Political Reform Act of 1974

HYPO:

A CAC member is going to vote to recommend that the Board approve a contract with a nonprofit that employs his spouse in a top executive position.

1. *Can the CAC member vote on the decision to recommend award of the contract?*
2. *Can the CAC member contact staff to influence staff's support of the contract?*



Personal Financial Interests Political Reform Act of 1974

Answer: No and no.

An official has an economic interest in his or her own finances and those of his or her immediate family (spouse and dependent children). The Political Reform Act (and by extension San Diego Community Power's policy) prohibits *making a decision AND attempting to influence a decision*.



Personal Financial Interests Political Reform Act of 1974

HYPO:

San Diego Community Power is considering approval of an energy facility on the opposite side of a creek that borders a CAC member's backyard.

Can the CAC member who owns the property vote on recommending the project to the Board?



Personal Financial Interests Political Reform Act of 1974

Answer: Most Likely, No.

An official who has an financial interest of \$2,000 or more in real property is presumed to have a conflict in any matter affecting real property located within 500 feet of the property line of the official's property, and may not vote on the matter unless there would be no measurable impact to the property.



Personal Financial Interests Political Reform Act of 1974

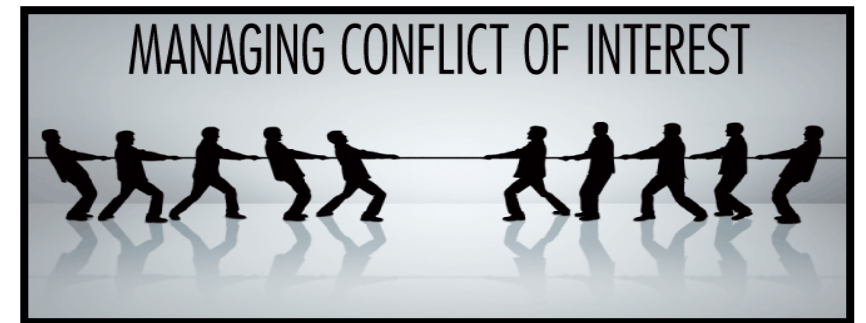
What do we do when a conflict exists?

DO NOT PARTICIPATE IN THE DECISION

DO NOT DISCUSS, GIVE OPINION OR INFLUENCE

DISCLOSE

DISQUALIFY



Financial Interest in Public Contracts

Government Code § 1090

If:

A Public Official (including certain consultants)

Who Have a Financial
Interest

Makes a Contract

Then:

Contract is VOID

Penalties Apply, including potential criminal
penalties



Self-Dealing

Financial Interest in Public Contracts

Contract Defined



Use general contract principles

Examples:

- All contracts or agreements
- Purchases
- Employment agreements
- Grants and donations

Financial Interest in Public Contracts

“Making” the Contract

“Making” includes:



Negotiations,
Discussions,
Reasoning,
Planning, and

The “give and take which goes beforehand in the making of the decision to commit oneself”

Financial Interest in Public Contracts

Types of Financial Interests

Financial Interest

- Direct (contracting party)
- Indirect (related to contracting party)

Effect

- Positive or negative

Certainty not required



Financial Interest in Public Contracts

Remote Interest Exceptions - § 1091(b)

Requirements:

- Public disclosure noted on records
- No attempt to influence
- Board/body acts in good faith

17 Exceptions, including:

- Employees, in certain cases
- Suppliers, in certain cases



THESE ARE FACT-SPECIFIC - CHECK WITH GENERAL COUNSEL

Financial Interest in Public Contracts

Non-Interest Exceptions - § 1091.5(a)

Requirements:

- Some do not require disclosure or disqualification

14 Exceptions, including:

- Corporate ownership
- Less than 3% of shares, and
- Income of less than 5% of total
- Expense reimbursements
- Recipient of public services



THESE ARE FACT-SPECIFIC - CHECK WITH GENERAL COUNSEL

Conflict of Interest & Ethical Conduct Policy

Use of Position for Personal or Outside Gain

San Diego Community Power officials and employees shall not:

- Use their position, title or status to influence, or attempt to influence, Community Power's review or approval of a Community Power contract, grant, or other decision based on their interest as a private individual, self-employed consultant or to facilitate work, grant funds, or other benefits for a collateral employer or other financial interest.
- Review or approve, or influence or attempt to influence in any manner, a Community Power contract, grant, or decision relating to their work done as a private individual, self-employed consultant or by their collateral employer, regardless of whether the work or proposal submitted was done by the Community Power official or employee or other staff of their collateral employer or other financial interest.

San Diego Community Power Practices to Ensure Compliance with Conflict of Interest & Ethical Conduct Policy

What does all of this mean?

- It is generally OK for Community Power to have contracts/grants with employers or other financial interests of CAC Members, as long as CAC Members do not make, participate in making, or seek to influence decisions about those grants, contracts, or other decisions.
- Community Power staff and General Counsel work to ensure that the CAC is not involved in the making of contracts that could create a potential conflict for one or more of its members.
- CAC members should recuse themselves from any participation and should not contact San Diego Community Power Directors, management, or staff to influence contracts, grants, or other decisions that would affect their financial interests, including their outside employer, other source of income (including spouse's income), source of gifts, etc.



Conflict of Interest & Ethical Conduct Policy

Use of Position for Personal or Outside Gain

Potential limited exception about contacts with San Diego Community Power if all of the following apply:

- (1) Their contact is the same/similar to what is available to all other proposers/grant applicants (e.g., only contact the named staff person, not management or Community Power Directors);
- (2) Their contact is in a private capacity consistent with their usual role in their outside organization/employment, NOT because they are a CAC Member or are affiliated with Community Power; AND
- (3) Their contact would not create a conflict under the Political Reform Act or Government Code section 1090 (General Counsel may need to perform an analysis and/or request an opinion from the FPPC).

When in doubt, ask for advice.

Conflict of Interest & Ethical Conduct Policy

Personal Investments

Endeavor not to make personal investments in enterprises that could be involved in decisions or recommendations made by them in their role with San Diego Community Power.

If an official or employee does have a financial interest in matters or enterprises coming before them, they must disqualify themselves from any participation, including attempting to influence a decision.



Gift Rules Under Political Reform Act

Disclose
\$50+

Disqualify
\$590/12mos.

Refuse
\$590+

Bottom Line: Watch your calendar

Estimate

Track

If Gift Exceeds Limit: Return, Pay or Donate

San Diego Community Power Gift Rules

All Community Power officials and employees should be mindful not to accept gifts, favors, gratuities, or entertainment that would create an appearance of influencing their duties.

- Exceptions: Discounts or rebates available to general public; plaques, trophies, etc. of nominal value; free admission to events where giving a speech or presenting on a panel, etc.

To extent feasible, return prohibited gifts, favors, gratuities, entertainment, etc.

If unsure, check with General Counsel

Conflict of Interest & Ethical Conduct Policy

Other Items

No participating or influencing a decision affecting a prospective employer.

No solicitation of political campaign donations from employees.

No endorsement of products or services in San Diego Community Power capacity.

Strong encouragement to disclose improper governmental activities (waste, fraud, abuse) and prohibition on intimidating, threatening or interfering to prevent the disclosure of improper activities.

Conflict of Interest & Ethical Conduct Policy

Consequences for Violations

Potential censure, removal or other action deemed appropriate by the Board of Directors.

Consequences may also include criminal, civil, or administrative penalties, if a violation of law.



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ATTORNEYS AT LAW

Questions?

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Public Comment for Item 7

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Discussion of Potential Agenda Items for Board of Directors Meetings

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Committee Member Announcements

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Adjournment



Next Regular Community Advisory Committee Meeting

September 12, 2024

6:00 p.m.

