



TO: Boards and Commissions and Keep Hayward Clean and Green Task Force

FROM: Maureen Conneely, Assistant City Attorney

SUBJECT: Review of Conflict of Interest Rules, the Brown Act and FPPC Form 700

This memorandum presents a broad overview of conflict of interest regulations, the Brown Act and FPPC Form 700 requirements for the City's Boards and Commissions and the Keep Hayward Clean and Green Task Force.

Conflicts of Interest

Public officials, including members of the City's boards, commissions and the Keep Hayward Clean and Green Task Force, are governed by several different conflict-of-interest laws. The most comprehensive conflict of interest rules are enacted by the Fair Political Practices Commission (FPPC) and derive from the California Political Reform Act. Common law conflict of interest rules also may preclude a public official from acting in a manner that creates an appearance of impropriety.

The FPPC conflict-of-interest analysis involves answering a series of questions:

- (1) Are you a public official?
- (2) Are you making, influencing or participating in a governmental decision?
- (3) What are your economic interests?
- (4) Are your economic interests directly or indirectly involved in the governmental decision?
- (5) Are your economic interests material?
- (6) Is it reasonably foreseeable that the materiality standard will be met by the governmental decision?
- (7) If you have a conflict of interest, does the "public generally" exception apply?
- (8) If you have a disqualifying conflict of interest, is your participation legally required?

Members of the City's boards, commissions and the Keep Hayward Clean and Green Task Force are public officials who participate in governmental decisions, either directly or in an advisory capacity. Economic interests include real property (owned or leased), businesses, investments,

gifts, salaries and other sources of income belonging to you or your immediate family. For example, if an applicant is the source of \$500 of income to you - either personally, or through a family member or a business that you own - in the 12 months prior to the time of the your action on an applicant's application, you likely have a conflict of interest on that particular application. Generally speaking, public officials are precluded from participating in a decision if they own property that is within 500 feet of the property that is the subject of the action.

Once the public official determines that a conflict of interest exists, the public official must publicly identify the economic interest involved, including specific details about the economic interest. For real property, this means the location of the real property must be disclosed, unless it is the public official's residence. This disclosure must be done after the announcement of the agenda item but before discussion of the item. The public official must then immediately leave the room.

An overview of conflicts regulations prepared by the FPPC is available either on-line at www.fppc.ca.gov or from City staff. Violations of the Political Reform Act may result in fines and/or criminal, civil or administrative proceedings. As the conflict of interest analysis is both factually and legally intensive, it is always wise to consult with the City Attorney's office in advance so that a thorough review can be conducted.

Ralph M. Brown Act

The Ralph M. Brown Act ("Brown Act") is California's "sunshine" law for local governments. Based upon state policy that the people must be informed so that they can maintain oversight of their government, the Brown Act requires that all meetings of the legislative bodies of a local agency be open and public, unless an exception exists. The City Council and all the City's boards and commissions, including the Keep Hayward Clean and Green Task Force, are legislative bodies for purposes of the Brown Act.

Meetings: Under the Brown Act, a meeting is any congregation of a majority of the members of a legislative body at the same time and the same place to hear, discuss or deliberate on any item that is within the subject matter jurisdiction of the local agency. All deliberations during a meeting of the legislative body must be conducted in open session. The Brown Act, however, does not limit individual contacts between a member of the legislative body and any other person, except in the context of "serial meetings" which are discussed below. The Brown Act also permits the majority to attend a social gathering, provided that agency business is not discussed.

Under the Brown Act, the public has a right to address the City's legislative bodies at any meeting on any topic that is within that body's subject matter jurisdiction. However, the City has the right to limit public speech through the imposition of agendas and rules of order and decorum.

Discussing Items Not On The Agenda: While the Brown Act generally prohibits acting on or discussing items not on the posted agenda, it allows the following actions:

- Brief responses to statements made or questions posed by persons exercising their public comment rights.
- Questions of staff or the speaker for clarification.
- Brief announcements.
- Brief reports on Commissioner or Board Member activities.
- Referrals to staff for additional information or action.
- Reports back to the Board or Commission on any matter.
- Direction to staff to place a matter of business on a future agenda.

While neither the legislature nor the courts have provided guidance on what a "brief" statement, comment, announcement or report may be, discretion dictates that the remarks be completed within a few minutes. Caution should be used to avoid any discussion or action on an item that has not been agendized.

Technological Communications and Serial Meetings: The Brown Act applies to all meetings of the City's legislative bodies. One of the most frequently asked questions about the Brown Act involves serial meetings. The serial meeting may be a "daisy-chain" style meeting in which one member contacts another member and that member contacts a third member who then contacts a fourth member, etc., until a quorum has been reached. Another type of serial meeting is the hub-and-spoke meeting, in which one member or a staff person contacts all other members. The Brown Act is violated if several one-on-one conferences leads to a discussion, deliberation or action by a majority of the members of the legislative body. Communications among a majority of members in person or through e-mail, text or by telephone may result in a "meeting" for purposes of the Brown Act.

Remedies for Brown Act Violations: The District Attorney or any interested person can file a civil action to compel a local agency to comply with the Brown Act. Persons who wish to invoke the Brown Act's civil remedies must first provide the legislative body the opportunity to cure its actions. An interested person who successfully invalidates a legislative body's action can recover attorney's fees and costs from the local agency (not the individual members). However, a violation of the Brown Act by a member of the legislative body who acts with improper intent is punishable as a misdemeanor. The member must intend to deprive the public of information to which the member knows or has reason to know the public is entitled in order to be found guilty of a misdemeanor.

FPPC Form 700

California law and the City's regulations require that members of the City's boards, commissions and the Keep Hayward Clean and Green Task Force periodically file a Statement of Economic Interest, also known as a Form 700. The information that must be disclosed on the Form 700 is determined by the disclosure categories to which the member's board, commission or task force has been assigned. The City's conflict of interest code and its disclosure categories are established by the City Council and reviewed every two years. The City Council is scheduled to review the City's current conflict of interest code at its meeting on October 23, 2012.

Every City board, commission and task force member is required to file a Form 700 upon assuming office, annually thereafter, and upon leaving office. Because the types of disclosure varies, as do the economic interests of the City's appointed officials, it is beyond the scope of this memorandum to discuss Form 700 specific requirements. The FPPC has prepared a reference pamphlet to assist public officials in completing the form, and staff in the City Clerks' office and the City Attorney's office are available to answer questions. The City Clerk's office will notify members when a Form 700 filing is due.