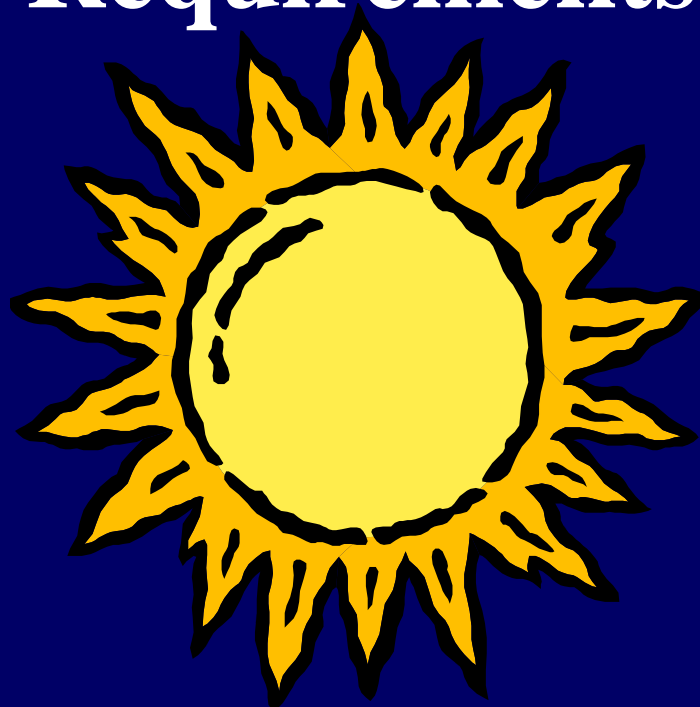


Open Government Requirements



Basic Principles

“ The people ... do not give their public servants the right to decide what is ... and 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. ”

- Ralph M. Brown Act

Two Core Concepts: The Right of the People . . .

- To observe their government
- To participate in their government

Three Basic Rules

- Policy bodies operate in public meetings
- Public notice of meetings required
- Public comment right at meetings

What is a Meeting?

- A meeting occurs whenever a majority of the members of a policy body come together at the same time or place

Meetings may be:

- Formal or informal
- Planned or unplanned; unplanned meeting = illegal meeting
- Discussion or action
- Advisory in nature, or involve exercise of power

Examples

- Retreat
- Site tour
- Meal gathering before, during, or after a formal meeting.

Unlawful Meetings

- Pre- or Post-meetings
- Seriatim meetings
- Sequential meetings: Director A calls Director B, Director B speaks to Director C, Director C emails Director D
- Simultaneous meetings: Director A, B, C, and D have a joint phone conversation

Seriatim Meetings Can Occur Via:

- Technology
 - Phone
 - Fax
 - E-mail
 - Text messaging
- Human intermediaries

Non-Meetings

- Attendance of majority at
 - Regional/state/national conference
 - Local meeting open to the public
 - Social, recreational, ceremonial event not sponsored by or for the body
- **PROVIDED** no discussion of MTA business

Agenda Items

- Must have meaningful description:
 - “ [S]ufficiently clear and specific to alert a person of average intelligence and education whose interests are affected. . . that he or she may have reason to attend the meeting . . .
- Must identify item as action or discussion

THE MTA BOARD
CANNOT DISCUSS OR ACT
ON ITEMS NOT ON THE
AGENDA.

Very Limited Exceptions

- Public health/safety emergency
- Immediate need to avoid serious injury to public interest
- Item on previous agenda, and continued to next meeting no more than 5 days later

Other Exceptions

- Commendations
- Announcements
- Request to agenda future items
- Direction to staff
- Limited follow-up to public comment by:
 - Asking a question for clarification
 - Providing a reference to staff or other resources for factual information
 - Asking staff to report back at a subsequent meeting

Types of Public Comment

- Specific: Any agenda item
- General: Any matter within MTAB jurisdiction

Specific Public Comment

- Any agenda item – discussion or action
- Timing
 - before conclusion of consideration of item (discussion item)
 - before action taken (action item)

General Public Comment

- May schedule for any time in meeting
- May limit to matters not on the agenda
- Members may not discuss or respond substantively

Rights of the Speaker

- Equal time
- Anonymity
- Freedom to criticize policy body, its members, and its staff

Limits on Public Comment

- “Up to” three minutes on an item
- No right to speak off-topic
- No right to disrupt
- No right to a response from MTA Board or staff members
- No right to discriminate against or harass city employees

Closed Sessions

- Personnel matters
- Pending or anticipated litigation
- Instruct labor negotiator
- Instruct real estate negotiator

Closed Session Requirements

- Public comment before motion to go into closed session
 - Whether to go into closed session
 - Subject matter of closed session
- Stay on topic
- Limit attendance

Requirements After Closed Session

- Notice of certain final actions
 - Announce
 - Post
- Vote in public whether to disclose any discussions

Confidential Information

- No current or former officer or employee of the City and County shall disclose any confidential or privileged information
- Confidential or privileged information is information not subject to the Public Records Act or the Sunshine Ordinance

Brown Act Enforcement

- Willful violation: A crime
 - Action taken in violation of Brown Act
 - Intent to deprive the public of information to which it is entitled
- Unauthorized disclosure of closed session discussion can result in removal from office

Additional Remedies for Brown Act Violation

- Voiding of action taken in violation of Act
- Injunction or declaratory relief to stop or prevent violations of Act
- Prevailing plaintiff may get attorneys' fees and costs

Sunshine Ordinance

- Willful failure to follow the Ordinance is “official misconduct”
- Can lead to:
 - Removal from office
 - Finding of violation after hearing before Sunshine Ordinance Task Force