



# Information Item

**Date: February 16, 2011**

To: Mayor and City Council

From: Marsha Jones Moutrie, City Attorney

Subject: Communications Between Council Members, Board and Commission Members, and the Public

## **Introduction**

At its annual retreat on [February 13, 2011](#), the City Council discussed legal and ethical concerns, raised in *Western City Magazine*, about individual Council members participating in boards and commission meetings as liaisons. The value of the City's many boards and commissions was not in doubt; the bodies are essential elements of Santa Monica's robust citizen participation process, are generally well-functioning, regularly provide good counsel, and are appreciated by the Council. However, in order to conform to legal and ethical best practices, Council voted to eliminate the liaison program and committed to fostering even more robust, informal communication and information-sharing network linking Council, the boards and commissions and the public. To help achieve that goal, Council directed staff to disseminate information and guidance about the many ways in which Council members can continue to appropriately communicate with Board and Commission members and the public. This Information Item responds to that direction.

## **Background**

As explained in the staff report prepared for consideration at the retreat on February 13<sup>th</sup>, members of the City Council have long served as liaisons to boards and commissions, attending and participating in their meetings from the dais. This practice

began in a time when options for sharing information were much more limited - before agendas and minutes were routinely posted on line and before any meetings were televised and streamed. In those days, the liaison program helped the Council and boards and commissions to stay in touch and abreast of one another's work. However, the Council never defined the role of the liaisons or adopted standards for their participation in board and commission meetings.

In the wake of the scandals in Bell and other cities, the League of California Cities has increased its ongoing efforts to provide more information and training about best practices in public process and governmental ethics. The December 2010 article, entitled "[\*Ethical Hazards of Attending Other Board or Commission Meetings\*](#)" is part of this effort. The article explains the hazards of Council members attending and participating from the dais in the meetings of subordinate bodies. These hazards arise partly because city councils appoint board and commission members, have the authority to remove them, and review their decisions and recommendations. Among other things, the article notes both the legal hazard of a Due Process violation resulting from prejudgment and the possibility of the councilmember asserting undue influence that might interfere with the subordinate body's formulation of its best, independent recommendation.

At the retreat, Council noted the concerns summarized in the article, discussed the purposes of the liaison program and the many alternative means of communication, and concluded that, in order to conform City process to best legal and ethical practices, the liaison program should be eliminated. However, Council also committed to maintaining and enhancing relationships and dialogue between Council members, the boards and commissions, and the community. Council members emphasized that they welcome contacts, whether formal or informal, from board and commission members, whether speaking as a representative of the body or as an individual, seek opportunities to build relationships with members, and regularly gain knowledge and perspective by attending meetings. In order to continue to reap these benefits, yet maintain best legal and

ethical practices, Council directed staff to provide information about avenues of communication and any applicable legal limitations.

## **Discussion**

Fortunately, many avenues exist, and they are unimpaired by Council's decision to eliminate liaisons. The basic alternatives are listed and discussed in this section along with the few applicable legal constraints.

### Communication at Meetings

Council members and board and commission members wishing to stay abreast of, and participate in one another's work, may attend each other's meetings, speak and answer questions. The Brown Act is not implicated at all if the number of members attending the meeting is less than a quorum of their body. And, an exception to the Brown Act's general prohibition allows a majority of the members of one local body to attend another body's meeting so long as the majority members do not discuss, amongst themselves, matters within their jurisdiction.

This means of communication -- attending meetings -- is already commonly utilized by board and commission members. Many attend Council meetings, both to monitor Council's work and to provide input during public hearings. When they speak at Council hearings, board and commission members generally state whether they are speaking for their board or commission or speaking independently. When speaking for their board or commission, the member's comments are not subject to the two-minute time limit for public comment. This exception to the time limit helps facilitate communication between Council and boards and commissions and a mutual understanding of their work.

Likewise, Council members attending board and commission meetings may speak during hearings either as appointed Council representatives or as individual members of the public. However, if the matter is quasi-judicial and may later come to Council, the

Council member should be aware of the possibility of a pre-judgment claim which could necessitate recusal. And, even on policy matters, the Council member should be sensitive to the possibility of exerting undue influence which theoretically could hinder the board or commission in forming an independent policy recommendation for Council. (This risk was identified in the *Western City* article, but it is probably significantly diminished when the Council member is merely speaking from the floor on a single item.)

Similarly, Council and board and commission members should be sensitive to possible issues of prejudgment or undue influence when they attend community meetings, including meetings organized by the City. These meetings are often organized to develop consensus and formulate recommendations for Council and boards and commissions. If Council members attempt to steer the discussions at these community meetings, the resulting recommendations may not give the Council the benefit of independent, community-based input.

Another consideration is the Brown Act, which provides no exception for this type of meeting. Thus, a majority of the members of a legislative body may not attend community meetings organized by the City. In contrast, if the meeting is organized by a community member or group, and not by the City, a majority of members of a legislative body may attend and participate so long as they do not discuss issues within their jurisdiction amongst themselves.

Finally, whatever the context, when a member of the Council or a board or commission speaks individually about that body's work at a public meeting, he or she should be cautious about interpreting the actions taken by the whole body. Policy is set by the body as a whole (not by individual members) and (in the Council Manager form of government) is interpreted and effectuated by staff with Council exercising oversight.

### Personal Communications

The ability to have direct contact with one's elected officials is a cornerstone of democracy, and a valued component of Santa Monica's political process. At the retreat, Council members emphasized that they welcome and respond to all contacts from board and commission members and from members of the public. Council members noted that such communications both develop relationships and inform the Council members about City issues. Currently, members of Council and boards and commissions can and do frequently communicate personally both orally and in writing.

The law protects such contacts. The state and federal constitutions protect everyone's right to express his or her views to others, especially to their public officials. Public officials do not give up their individual rights when they take office (though legal and ethical prohibitions may constrain the simultaneous exercise of individual rights and official powers.) Moreover, the Brown Act does not prohibit any one-on-one communications. Therefore, like other members of the community, board and commission members and Council members may continue to communicate individually with one another as they see fit.

Additionally, members of the Council and boards and commissions can communicate in groups larger than two, so long as the communication does not involve a majority of either body. However, all local officials should bear in mind the possibility of a Brown Act violation arising from a serial meeting including a majority of members of a body. This risk is increased when communications take place between groups as opposed to individuals.

### Information Made Available by the City and Staff Members

There are also a number of things that staff already does, and more that it can do, to facilitate information sharing and communications amongst public officials and within the community. Board, commission and Council members already have available a wealth of information about one another's work. Like all other community members, they can

readily access meeting agendas, staff reports, and meeting minutes, which are very easy to locate and search on line. Moreover, they can watch or listen to many meetings on radio, television or on line.

Additionally, if one body has questions about another's work, it can ask staff to gather and present information. A staff member attends every board or commission meeting. And, the staff member's duties include providing the information that the body needs to do its work. Or, the body could obtain information or input directly from another board or commission by directing an inquiry, sending a representative to another body's meeting(s) or even conducting a joint meeting.

Also, new board and commission members routinely receive information from the City Manager and City Attorney about how staff can assist in their body's work and about Brown Act requirements. This training can be enhanced to ensure that the many options for communication and the few limits on those opportunities are well understood and that communication is maximized to facilitate an even more robust public process.

### **Summary**

Given the many opportunities that exist for open communication and the sharing of ideas and information, the Council's decision to eliminate Council liaisons in order to avoid the pitfalls identified in the Western Cities article, need not diminish the robust public process and high level of engagement by Council, boards and commissions, and the community that is one of the City's defining characteristics. Obviously, transitions in process often generate questions. Should specific process questions arise during this transition period, or at any other time, members of the City Attorney's and City Clerk's offices are available to provide answers and advice.

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