

# SFMTA Board Legal Training

San Francisco City Attorney's Office

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# Part I

## Role of the SFMTA, the SFMTA Board and the Parking Authority



# SFMTA Organizational History

- Under the 1932 Charter, Muni was part of the San Francisco PUC. In 1993, a Charter Amendment created the Public Transportation Commission (PTC).
- In 1999, Prop. E combined the PTC and the City's parking and traffic functions under a single agency, the SFMTA. In 2002, DPT officially merged into the SFMTA.
- In 2007, Prop. A increased the SFMTA's autonomy including authorizing the Agency to: issue bonds, adopt parking and traffic regulations, receive a larger allocation of General Fund revenues, and adopt a two-year budget.
- In 2009, the SFMTA began taxi regulation.



# Exclusive Jurisdiction under the Charter is Broad But Limited in Key Ways

## SFMTA Jurisdiction

- Exclusive Authority over
  - acquisition, construction, management of its property;
  - to legislatively adopt, and enforce parking and traffic regulations
  - to adopt fares, fines and fees
  - contracting, leasing, and purchasing for the Agency

## Board of Supervisors Authority

- SFMTA must comply with City's ordinances of general application
- Has review of certain SFMTA decisions related to parking and traffic
- Charter Section 9.118 requires BOS approval of contracts greater than 10 years and \$10 million
- CEQA appeals go to Board of Supervisors



# Role of the SFMTA Board

- Provide policy direction to the Agency
- Appoint/remove Director of Transportation and Secretary
- Approve settlements recommended by the City Attorney
- Approve fares, fines and fees
- Approve MTA Budget
- Approve contracts and collective bargaining agreements
- Inquire into any matter within the MTA's jurisdiction



# Unique Authority of SFMTA Board Over its Budget

- MTA must submit balanced 2-year budget to Mayor and Board of Supervisors by May 1 in even numbered years;
- In odd numbered years, MTA must submit a budget amendment only if it seeks increased appropriations, fare increases, or route abandonments
- Budget is approved by operation of law unless rejected by 7/11 vote of Board of Supervisors
- Requested increase in general fund spending over guaranteed base amount requires normal budget approval from Mayor and Board;
- Fare changes must be presented as part of the budget or budget amendment



# Delegation Policy

- The SFMTA Board has a Delegation Policy that specifies that certain actions can be taken by the Director of Transportation;
- The Board last updated the Policy in June 2024;
- Any contract or contract Amendment that must be approved by the Board of Supervisors must first be approved by the SFMTA Board of Directors;
- There are dollar thresholds for other contracts and contract amendments including for various expenditure contracts, revenue contracts, real property contracts, grant agreements and others.



# SFMTA Board - Individual v. Board Action

- Board members must set policy and make decisions as a body
- Individual members cannot exercise the powers of the MTA Board
- Board may act only at a noticed meeting attended by a quorum of members and by means of a vote





# SFMTA Board–Administrative Interference

- The MTA Board and individual members may seek information from the Director about MTA operations
- With approval from the Director, individual Board members may seek information from subordinate staff
- Dictation, suggestion, or interference by a Board member in the administrative affairs of the MTA, other than through the Director, is official misconduct



# Parking Authority- Purpose, History, and Status

- Parking Authority was created to finance parking garage construction to support the downtown commercial core
- Parking Authority Commission originally appointed by BOS, included representatives of downtown merchants; under Prop E, SFMTA Board members currently sit *ex officio* as the PA Commission
- Charter amendments that created Dept. of Parking and Traffic in 1987 and SFMTA in 1999 consolidated management of (then) 6 Parking Authority, 12 City-owned garages, and 22 lots, but Parking Authority staff continued to manage all parking facilities



# Use of Parking Authority Properties

- State law requires the Parking Authority to use its properties for parking and limits developing or using properties for anything other than minor “related” ancillary activities, such as coffee and sundries shops
- SFMTA can develop non Parking Authority parking facilities for non-parking use, subject to Charter 9.118 (revenue contracts over \$1M; ground lease and development agreements with a term over 10 years)
- Board of Supervisors’ supermajority approval is required under State law to transfer Parking Authority properties to SFMTA
- Moscone Center Garage and the Performing Arts Garage were transferred to the SFMTA in July 2017 to facilitate their development



# Part 2

## Public Meetings & Sunshine and Public Records Requirements



# Public Meetings

- All meetings and subcommittee meetings are subject to the Brown Act including notice and the right of the public to attend and comment
- The Board can take action only at a noticed meeting
- Meetings can include:
  - Retreats
  - Site visits
  - Social gatherings before or after a noticed meeting



# Impermissible Meetings

- Impermissible meetings can occur in several ways:
  - When a majority of the Board discusses a topic within its jurisdiction outside of a noticed meeting, including over e-mail or text
  - “Seriatim” meetings can occur even when a majority of members are not present in one place at one time but information is shared or exchanged between a majority.



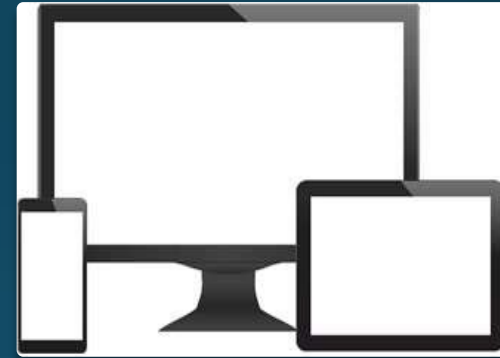
# Examples of Seriatim Meetings



“Chain” meetings:  
Member A talks to  
member B, who talks  
to Member C ...



“Hub-and-Spoke”  
meetings: A talks to  
B, then C, then D...



Through technology:

- Text
- Email
- Phone, etc.



# Social Media

- Board members may communicate on social media platforms to:
  - Answer questions
  - Provide information to the public
  - Solicit information from the public regarding a matter within SFMTA's jurisdiction
- Board members may not use social media platforms to:
  - Discuss business that is within SFMTA's jurisdiction with other Board members
  - Respond directly to any communication on a subject within SFMTA's jurisdiction that is *made, posted, or shared* by any other Board member.





# Public Records Laws & Purpose

- California Public Records Act
- San Francisco Sunshine Ordinance
- Purpose: **“The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy,** and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information.” (San Francisco Administrative Code 67.1(d))
- Certain Record Retention rules apply to government documents



# What is a Public Record

The term "public record" includes:

- any writing
- containing information relating to the conduct of the public's business
- prepared, owned, used, or retained by any state or local agency
- regardless of physical form or characteristics.

(Cal. Gov't Code 7920.530)



# “Writing” is broadly construed

- Includes any “handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, ....” (Cal. Gov’t Code 7920.545)
- Includes e-mail attachments.
- And text messages and possibly social media posts or records



# Personal Electronic Devices

- When a Director uses a personal account to communicate about the conduct of public business, the writings may be subject to the PRA
- Only communications that relate to your jurisdiction/role are public records
- Directors may be required to search their personal electronic devices and retrieve possible public records
- Existing record retention policies apply to communications made using personal electronic devices, but Directors may transfer public records to government-owned devices



# Exemptions

- Attorney client communications
- Attorney work product
- Some aspects of the competitive procurement process
- Some investigations
- Trade secrets
- Privacy
- Pending litigation
- Misc. other exemptions



# Practice good e-mail and document etiquette

- DO: Be succinct
- DO: Be clear
- DO: Be professional
- DO: Communicate for City business only from designated accounts
- DO NOT: mix non work-related purposes in work-related e-mail or texts.
- DO NOT: express personal thoughts or opinions
- DO NOT: continue to forward long chains
- DO NOT: REPLY ALL with other Directors



# Avoid this:



# New this year

- The “Restricted Source” rule for gifts has changed; a restricted source includes: contractors , permit applicants, and those who attempt to influence and lobbyists;
- State law exceptions REMOVED if from restricted source
  - Travel for speeches/panels, Travel funded by non-profits
  - Home hospitality
  - Gifts exchanged on birthdays and holidays of equal value
  - Reciprocal exchanges
  - Wedding attendance and gifts
  - Bona fide dating relationship
- Former \$25 exception from contractors is eliminated and now only provides for “routine office courtesies” provided at the restricted source’s place of business to carry out City business
- Limited exceptions for fundraisers, events and “widely attended conferences”





# Things to remember

1. Remember that your work in City Government is subject to Public Meeting laws, Sunshine and PRA
2. Pause before pushing “send” or “reply all”
3. Practice good e-mail and document management etiquette
4. Call our Office with any questions



# Questions

