

**Community Board 8
Orientation/Conflicts of Interest Training/Open Meetings Law
1291 St. Marks Avenue
Brooklyn, NY 11213**

August 23, 2018

The orientation meeting/Conflicts of Interest Training/Open Meetings Law meeting was called to order at 6:20 PM by Ms. Nizjoni Granville, Chairperson. Also in attendance were speakers Robert Freeman from the Committee on Open Government; Alexander Kipp from the Conflicts of Interest Board; and the following CB 8 members: Robert Witherwax, James Ellis, Brian Saunders, Tamika Gibbs, Desmond Atkins, Kwasi Mensah, Adam Sachs, Drew Gabriel, Edison Stewart, Sheryl Vassell, Greg Todd, Meredith Staton, Adelaide Miller, Sasha Ahuja, Irsa Weatherspoon, Lisa Lashley, Glinda Andrews, Dian Duke, and Fred Frazier. Michelle George, District Manager, and Julia Neale, Community Coordinator, were also in attendance.

NYS Dept. of State Committee on Open Government – Mr. Robert Freeman, Executive Director

Mr. Freeman announced that the NYS Dept. of State Committee on Open Government (COOG) is the only one in the world, and it is their duty and responsibility to offer advice and guidance on Freedom of Information Law (FOIL) and open meetings law. Their only goal is to give the correct answers under the law. All of their cases and text of opinions since the mid 90's are available on their website at <https://www.dos.ny.gov/coog/>. Also, if you have a questions regarding open meetings law, please go to their website or call 518.474.2518.

Open meetings law says that all meetings of public bodies should be open to the public unless having an open meeting would cause harm (a confidential identity would be exposed or an entity harmed). A public body is any entity of two or more persons that are government related. A meeting is a gathering of the majority of the public body for the purpose of conducting business of the body. A quorum requires 51% of the membership and must be achieved for any official work to be conducted. Furthermore, notice must be given to the community; it must be posted in public locations and sent to local news publications at least one week in advance unless a meeting is supposed to happen within 72 hours, then posted giving as much notice as possible. Mr. Freeman noted that it is not the onus of the government body to ensure that notices sent to news outlets be published; rather, it must simply be given.

In response to a question about 'private' meetings, Mr. Freeman said that there is such a thing as 'executive session,' during which the public can be excluded from part of the meeting. However, it is a portion of an open meeting, because there is no such thing as a "closed meeting." The only people that have the right to have executive session are members of the body. Executive Committee meetings are not executive sessions, so Executive Committee meetings are by essence, open to the public. No meeting can open as executive session, and before you can enter executive session, a motion must be made by a member to go into executive session, the

discussion points must be made public, and the majority of the members present with a quorum must vote to approve executive session.

In an effort to define executive session, Mr. Freeman explained that executive session enables the board to discuss its litigation in private. However, the public must have valid information to believe that there is a need to go into executive session. He explained in brief the 8 grounds under which you can go into executive session, all of which are available on COOG's website.

Mr. Witherwax stated that the Board has committees that take positions the full board ratifies. However, in the summer, there are committees that are delegated with executive authority. He asked if it is legal for the committee to make determinations on behalf of the full Board when the Board is not in session to ratify the determination. He was informed that if the full Board votes by majority opinion in an open meeting to give such permission to the committee with the public given all requisite information on why the committee has to be given such authority, it is legal, and the committee's determination is valid.

Mr. Freeman gave a little known fact to those present: there is no requirement to approve minutes. However, the only requirement is that they must be made available within two weeks of the meeting having taken place. If the Board's By-Laws require that minutes must be approved, they can be posted and made available and marked as draft until such time as they are approved. At a minimum, minutes must include a summary of all action taken at the meeting, voting items, etc. Voting roster records must be maintained and the public must have access to them if requested. Comments do not have to be written verbatim unless specifically stated by the person making the comment. Additionally, anyone has the right to record meetings and take photos so long as the use of audio visual materials is not disruptive to the proceedings. They do not need to announce or obtain permission from the Board or any member. As a participant in an open meeting, your mere presence allows for you to be recorded and photographed.

Mr. Staton asked if we have to apply to do video recording. He was informed that we do not, and that all meetings can be videotaped and broadcast.

Mr. Witherwax questioned the legality of video-conferencing and if it is possible for us to institute it for use in our meetings. He was informed that meetings can be held in two ways: physical presence, or virtual presence by means of video-conferencing. Telephone conference calls are **not** acceptable because, under open meetings law, the public has the right to attend, listen, and observe the performance of the participants. One cannot observe telephone calls, but they can observe video-conferencing. Meeting notices involving meetings that contain video-conferencing must indicate locations where video-conferencing will be held, where the participants will be, and anyone can participate in that particular location. Therefore, if a member will participate in a meeting from home or a location on a beach resort, the location of their home or their beach resort must be posted as a site to participate in the meeting. Any member of the public must have access. He suggested that if you did not want other people in your home or private space, not to engage in video-conferencing, as by doing so requires that you open your space to others and publicize it.

Ms. Vassell asked if you could participate via platforms such as Facetime, Skype, Hangouts, etc. She was informed that again, the location must be published and the participants must be in full view of everyone that is watching.

Mr. Ellis referenced two committees that have pre meetings without the presence of applicants under review and prior to the official start of the meeting. He asked if there is an obligation to give advance notice to applicants that the committee would be reviewing their application without them being there. He was informed that advanced notice was not necessary, but if you want to do the right thing, you can inform them as a courtesy. He also stated that if there is no valid reason for entering executive session before meetings by having “pre-meetings,” if you can hash out the details in the pre-meetings via email. He repeated that as a governing body, notice of the actual time the majority of members will be present must be given to the public even if no action will be taken. Any gathering majority is a meeting covered by open meetings law even if no action will be taken, which is the case of the pre-meeting. Per open meetings law, you also cannot get together via a conference call. However, without a quorum, you are not having a meeting. Mr. Freeman reminded everyone that Robert’s Rules of Order is not law, and none of its entreaties are valid in New York State. According to the By-Laws of the Board, all committee meetings must be open to the public, including these discussion portions.

Ms. Granville thanked Mr. Freeman for the very informative information and asked for an update from the Conflicts of Interest Board.

Conflicts of Interest Board – Mr. Alexander Kipp

Mr. Kipp stated that for many, what he would say is a review from the training received at Borough Hall with a few clarifications. He stated that in today’s media environment, conflicts of interest are generally thought of as bad people doing bad things. However, that is wrong way to think about conflicts of interest. The Conflicts of Interest Board (COIB) has laws in terms of community boards and their members that might involve members being affected by outside interests.

To clarify, Mr. Kipp stated that you can always participate in a discussion on a matter regardless of your conflict if one is present. While you can participate in the discussion, you may not participate in the vote if you are set to benefit from it or your employer will benefit. Prior to the discussion, you have an obligation to do the 3 D’s: 1. Disclose the interest; 2. Discuss that matter during the discussion period; and 3. Do not vote. You must announce that you will be recusing yourself from the vote at the outset of the discussion.

Mr. Kipp also stated that the definition of a “direct benefit” is very specific, and entails a direct financial effect. For instance, if you are a restaurant or bar owner, an affirmative vote on your liquor license will directly benefit you. Consequently, if you are eligible to vote, you must recuse yourself after disclosing the interest. If you are a real estate agent working for a company that will be retained as the sole broker for a property that must receive variances, you are set to benefit directly from the approval of the variances. Therefore, you cannot participate in the vote. If you work for a city agency that is seeking approval, i.e., the Dept. of Homeless Services, that is seeking to open a shelter, you cannot vote because your agency will directly benefit, as will

you by default. **City agency employees cannot vote on ANY item that is based on the agency you work for.** It is not a matter of geography (location of the project), but the agency. If you work for the agency, you cannot participate in the vote pertaining to any of that agency's items. If a chairperson has a conflict, they must step down as chair for the entire meeting. On the flip side of direct benefit is the gray area. As an example, he stated that if you are a property owner next door to a development site, you have no direct gain from either approving or disapproving of the application. Granted, there may be some residual benefit or ramifications, but they are not immediately known. Direct financial gain or benefits is immediately known.

When you are entitled to vote, you can vote "yes," "no," or "abstain." Abstaining is kind of like a no vote because you have to have more yes than no and abstention votes combined. If you must recuse yourself, you must do so at the start of the discussion of the item. As far as gifts are concerned, he stated that members cannot accept gifts as a member under any circumstances. As a member, you cannot take a hookup on something because of the position you have. If you are friends with the person beforehand, it becomes a gray area. You should still not accept it, but you can so long as it does not affect your vote, or be determined as a gift to sway your vote. Mr. Kipp provided numerous examples of the gift concept and the gray areas.

Knowing that Community Boards are comprised of many different people with a myriad of affiliations, responding to a query of representation with an interest, he stated that a member cannot represent private clients before the board in capacity as a member.

Gifts given to agencies cannot be taken home individually. An office can donate them to the city or an organization, share between all staff members, or any number of equitable division processes. However, he stated very clearly that no agency or member can accept anything from a developer or anyone with a major interest. If something is offered, it is the responsibility of the member and the agency to call COIB immediately.

Ms. Granville asked if it is ethical for a member to use the board's mailing list to promote their private enterprises. She was informed that City resources are for city things and should not be used for any other purposes aside from the community board business. However, if a person creates their own list with the same exact information, that is not deemed a conflict. The Board has a responsibility not to share its list with members for things other than the promotion of Board projects. However, if a member approaches committee members and community members and creates their own listserve with the same information as the city agency, they have appropriated the information legally and can use it. When responding to a question about CB8s use of Google Groups to send meeting notices and dispense information, he stated that the Board itself has put itself in a gray area because it is using a public utility rather than a city service. However, anyone that uses the Google Group, if they use their private emails, if the Board is subject to a FOIL request, any person that posts in the Google Group from that individual's private account will be subject to the FOIL as well. He suggested not using the Google Groups that have been created for Board usage for personal matters. It is best to avoid any perceived conflict rather than risking it.

Ms. Granville also stated that she works for MTA/NYC Transit and asked if the same rules apply to her as they do city agencies. She specifically asked if she could vote on Transit issues such as

Select Bus Service or bus lanes, etc. Mr. Kipp responded that the rules do not apply to her and she does not have to recuse herself because the MTA is a state agency, and therefore, she can vote on their projects.

Ms. Granville thanked Mr. Kipp for the information and clarification and asked Mr. Witherwax, 2nd Vice Chair, to give a brief presentation on Parliamentary Procedures.

Parliamentary Procedures – Mr. Robert Witherwax, 2nd Vice Chair

Mr. Witherwax called members' attention to the powerpoint presentation contained in their packages on Parliamentary Procedures. In the essence of time, he encouraged everyone to review the material, and he focused on the main areas where the Board tends to struggle: voting.

Mr. Witherwax stated specifically that if a motion does not pass on the first vote, no position is taken by the Board. For instance, if the committee recommends supporting an item and the full Board does not support its recommendation, it does not automatically entail that the Board voted to deny the item. Instead, someone has to make an amended motion on the item until something passes. Members must ask under what conditions they would be support something if the committee's recommendation does not pass.

Also, in terms of competing motions, the order is layered: one vote is made, but another member states they would like to amend the motion or separate the item into two or more votes. Then perhaps a third person makes a motion for something else. If all three motions are seconded, they become live motions unless someone withdraws their motion. If none of the original three motion makers withdraws, then all three motions must be voted on. Because it is a layer, the first motion is at the bottom and the third is at the top. Therefore, the third motion is the first to be voted on, followed by the second, and then the original. First one in is the last one out. Motions and votes must be taken until the Board has a position. In the event of a tie vote, the vote must continue to be taken until something passes. If no member changes their vote, then a new motion must be made, different from the tied motion, and so forth, until the Board takes an official position. He reiterated that there is no mandate that the full recommendation of the committee must be voted on all in one. A motion can be split into parts.

After a brief question and answer period, Ms. Granville thanked Mr. Witherwax for the information and went over basic housekeeping rules for members. She then adjourned the meeting at 8:20 PM.