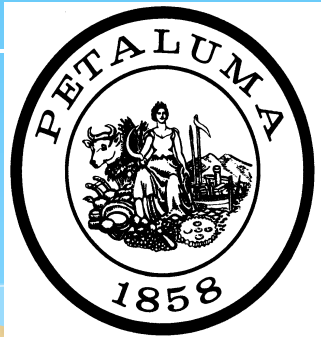


Transparency

The Brown Act, and Brief Discussions on
Public Records Act & Ethics Training



Ralph M. Brown Act



Open and Public

"All meetings of the legislative body of a local agency shall be **open and public**, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."

Government Code § 54953(a)

Topics

- * **What is a “meeting”?**
- * **What is a “legislative body”?**
- * **What rules apply to meetings?**
- * **Agenda requirements?**
- * **What are the remedies for a violation?**

Who is subject to the Brown Act?

Legislative Bodies

- Legislative Bodies
 - Governing body (City Council)
 - Boards and commissions
 - Standing committees
- Who is NOT a Legislative Body?
 - Temporary advisory committees or ad hoc sub-committees of less than quorum of the legislative body
 - A group of employees; a group of citizens that is not appointed by the legislative body.

What is a “meeting”?
Gov. Code section 54952.2(a)

Meetings

- * **Majority of Body**
- * **Collectively (same time and place)**
- * **Hear, Discuss, Deliberate or Take Action**
- * **Within Subject Matter Jurisdiction**



What is not a “meeting”?

Individual Contacts



Conferences and Seminars



Conferences and seminars must be open to the public and limited to issues of general interest.

Members of the body should not discuss City business.

Community Meetings



Need to be open to the public and publicized.

Recommended to avoid any direct participation or at the very least don't discuss items within your subject matter.

Social Events



A majority can attend social or ceremonial events, but don't talk about city business.

Remember optics

Other Exceptions

- * Meetings of the governing board or other commissions of the Agency
- * Ad Hoc Sub-Committee Meetings
- * Observation ONLY of standing committee meetings of your body which are noticed
- * Recommended only attend as observers

Illegal “meetings”

- Collective briefings (more than a quorum together with staff)
- Retreats or workshops on City business
- Serial meetings (Daisy chain and Hubcap)
- Technological conferencing and social media

Serial Meetings are Illegal

- * **Direct or indirect communication**
- * **Majority participation**
- * **To discuss, deliberate, get consensus, or take action**
- * **Chain, hub, email, social media**

Staff Briefings ONLY OK IF

- * **Informational**
- * **No views of other members shared to other members.**



STAFF BRIEFINGS **NOT** OK IF

- * It's a Collective Briefing – majority present
- * It's a Serial meeting
- * Results in a 'discussion, deliberation, or a decision on a proposed action' between members

Rules Governing Meeting Notice

Two Basic Requirements

1. **Effective Notice**
2. An **Agenda** that adequately describes the items to be considered

Types of Meetings

1. Regular
2. Special
3. Adjourned
4. Emergency



All require different noticing

Regular Meeting

- * Agenda: posted 72 hours in advance
- * Brief description
- * Freely accessible location



Special Meeting

- * Called by presiding officer or majority
- * Agenda: Post 24 hours in advance
- * Written notice: Members and Press
- * Discussion limited to agenda items

Adjourned Meeting

- * Specific time and place
- * Less than a quorum
- * Notice: Post within 24 hours
- * If less than 5 days: No additional notice required

Emergency Meeting

- Severe impairment
- Dire emergency
- One hour notice

EMERGENCY

Remember!

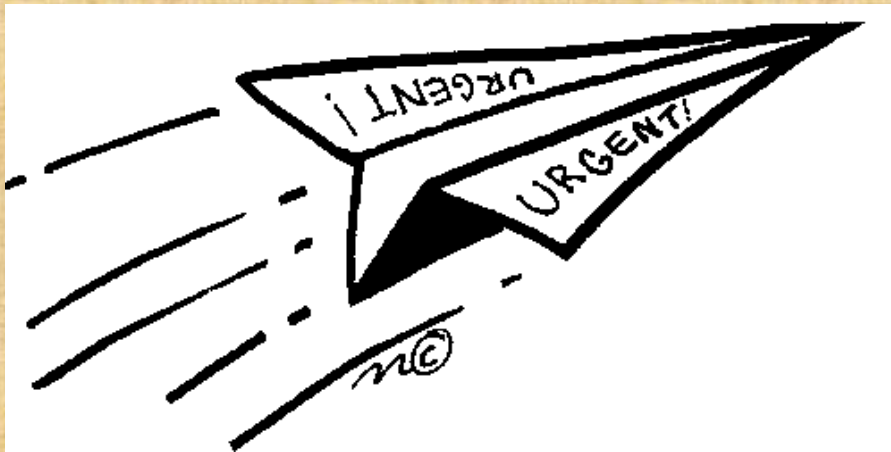


Don't discuss items not on the agenda.

Except ...

- * Brief response
- * Clarification
- * Brief announcements
- * Requests for future report
- * Placement of items on future agenda

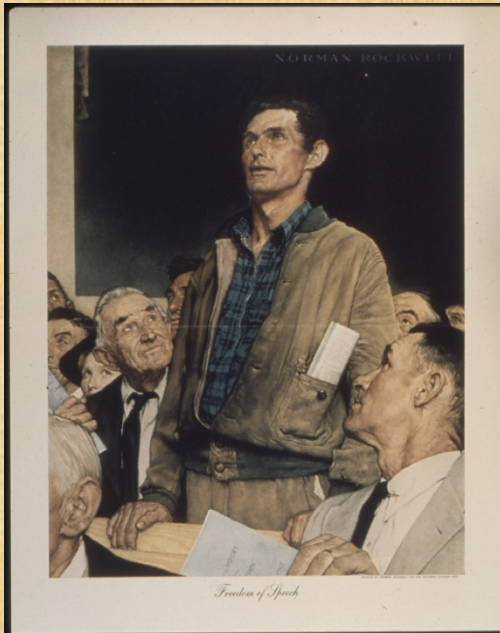
Adding Items to the Agenda



- * Issue arose after posting
- * Need to take action immediately
- * Two-thirds vote required

Public Participation

Public Comments



- * Freedom of Speech
- * Criticism of agency or individuals allowed

Rules and Decorum



- * Speaker cards
- * Rules of decorum
- * Time limits
- * Recording

Closed Sessions

Closed Session Meetings



- * Personnel/labor
- * Real property
- * Litigation

Enforcement

Enforcement & Consequences

- * Notice and opportunity to cure
- * Civil action for invalidation of actions
- * Attorneys fees and costs
- * Criminal prosecution:
 1. Action taken at a meeting
 2. In violation of the act
 3. With intent to deprive public of information

What about COVID-19?

- * Executive Order N-29-20 relaxed some of the Brown Act Requirements to practice social distancing.
- * Teleconferencing requirements have relaxed.
- * Also, all members of the legislative body may receive simultaneous updates regarding COVID-19 from officials.

Further Resources

- * California League of Cities, Open Government Resources:
<http://www.cacities.org/Resources/Open-Government>



PUBLIC RECORDS

What is a Public Record

Defined: “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 characteristic.”

- 1) A writing
- 2) With content relating to the conduct of people’s business
- 3) Prepared by OR
- 4) Owned, used, or retained by any state or local agency

Responding to PRA Requests

Staff receive PRA requests via a number of sources:

- ❖ Online via <https://cityofpetaluma.org/question/how-do-i-submit-a-public-records-request/#/city/answers/city-clerk/how-do-i-submit-a-public-records-request>
- * Email
- * Phone
- * In-Person (public meetings, front counters, etc.)
- * The PRA Coordinator searches for any responsive records
- * This typically includes requesting an email search by IT and conducting a thorough search of all city email
- * Reaching out to any staff, elected officials, etc. for any responsive records on personal devices

City's Duty to Respond

- * Right to inspect- by any person
- * Right to copy-by any person
- * Assisting the Requestor
- * Locating the Records
 - * Reasonable effort to search and locate requested records, including by asking probing questions of city staff and consultants.
 - * Relating 'to the conduct of the public's business' and is 'prepared, owned, used or retained by' a public entity'

City of San Jose v. Superior Court

- * Facts: Request for disclosure of 32 categories of records from city staff and elected officials, including emails and text messages sent or received on private electronic devices. City disclosed communications using City Phones but did not disclose communications using individual's personal device or personal accounts.
- * Held: a city employee's writings about public business are not excluded from disclosure simply because they have been sent, received or stored in a personal device or account.



Labor & Workforce Development Agency v. Superior Court

- * Whether disclosure of documents and communications relating to the decision to enact a new bill was limited due to the deliberative process privilege.
- * Third court of appeal concluded that the disclosure of pre-decisional communications would discourage candid decision-making, for fear of rejected thoughts and ideas “becoming subjects of public discussion”.
- * Court held documents and communications even if purely factual “are exempt from public scrutiny if it is ‘actually related to the process by which policies are formulated’ or inextricably intertwined with policy-making process.”
- * **Decision-making is the primary function of the legislature; disclosure of pre-decisional communications would undermine its ability to perform this function.

What is the City's responsibility?

- * **Respond** to PRA requests
 - * Does not permit an agency to delay or obstruct the inspection or copying of public records.
 - * Assist the Requestor who has trouble focusing the request.
 - * Locating Records
 - * Conducting a reasonable search
 - communicate the scope of the information requested to the custodians of its records/ employees/ officers in question.
 - agency may reasonably rely on elected and employees to search their own files on personal devices so long as appropriately trained
- (how to distinguish between personal records and public records, exemptions)*

What to do if you receive a request?

- * Maintain the security of records
- * Promptly respond to requests made by staff
- * Undertake reasonable effort to search for and disclose all public records that you can locate with reasonable effort.
- * Certify the search
- * Surrender the records
- * Notify the Clerk, City Manager or City Attorney if any request is received by you.

What if there is no response to the request?

- * Employees/ officials who do not reply to the request?
Is it a refusal?
- * The agency can report to the requester that a request to search, locate and disclose has been made and no response was received.

CONFLICT OF INTEREST

May You Participate?

THE BASIC PROHIBITION

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know that he or she has a financial interest.

California Government Code Section 87100

FINANCIAL INTEREST

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally on the official, a member of his or her immediate family, or on any of the enumerated economic interests.

California Government Code Section 87103

RECUSAL AND DECLARING THE CONFLICT

Whenever a financial conflict of interest exists, the public official shall recuse himself/herself from participation by announcing the specific nature of the conflict, stepping down from the dais and leaving the room.

Code of Ethics and Conduct

(and other rules!)

What is the decision maker's role?

- Ensure that you are a quasi-judicial decision maker that is free of bias. Ensure your conduct and words do not evidence bias.
 - **A biased decision maker is constitutionally unacceptable**
 - (*Nasha, LLC v. City of Los Angeles* (2004) 125 Cal.App.4th 470)
 - (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012)
- Ensure that the process leading to the decision is legal and fair, resulting in a reasonable, supported decision.

Beware of consequences for violation: invalidating the decision and state and federal lawsuits.

Ethics and Conduct Policy

- Purpose: To assure the public and ensure the integrity of local government and its effective and fair operation.
- Ethics: Fair, ethical and accountable local government.
 - Act in the public interest (not private interest)
 - Comply with the law
 - Conduct above reproach and avoid appearance of impropriety
 - Respect the process
 - Conduct at public meetings
 - Conflicts of Interest

Contacts/Questions

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