



Redwood
Public Law

**Councilmember Brown Act and
Governance Training
January 13, 2025 Worksession**
Richard D. Pio Roda, City Attorney

Training Agenda

- Brown Act (Open Meeting Laws)
- City Council Roles and Responsibilities
 - Applicable Rules and Laws
- Parliamentary Procedure
 - Roberts' Rules of Order
- Rules of Decorum

Brown Act

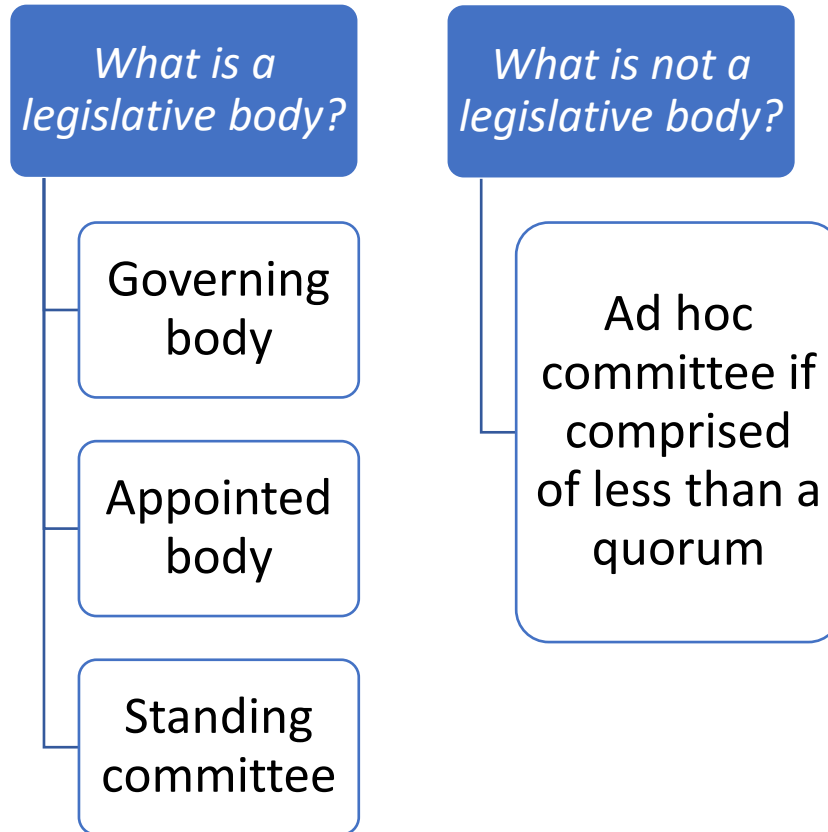
Open Meeting Requirements

- Meetings...
- Of Legislative Bodies...
- *Shall be open and public*



Brown Act

Legislative Bodies



Brown Act

Definition of “Meetings”

- A congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on an item of business within the agency’s subject matter jurisdiction
- Exceptions:
 - Conferences
 - Community meetings
 - Social or ceremonial occasions
 - Individual contacts
 - Standing committees
 - Meetings of other legislative bodies



Brown Act

Avoiding “Serial Meetings”

- A majority may not, outside a meeting, use a series of communications to discuss, deliberate, or take action on any item of business
 - Does not prevent employees and officials from engaging in separate conversations outside of a meeting provided that the comments or positions of other members are not communicated



Brown Act

Avoiding “Serial Meetings”

Examples

Hub and spoke

A staff member (the hub) communicates with members of a legislative body (the spokes) one-by-one for input on a proposed action and in the process reveals members’ positions to other members in advance of the meeting.



Brown Act

Avoiding “Serial Meetings”

Examples



Daisy Chain

Member A contacts Member B,
Member B contacts Member C,
Member C contacts Member D
and so on, until a quorum has discussed,
deliberated or acted on an item within the
legislative body’s subject matter jurisdiction.



Brown Act

Avoiding “Serial Meetings”

Examples

Emails

Informal nature of email communication is ripe for inadvertent Brown Act violations



Brown Act

Social Media



- Government Code section 54952.2
 - Members of a legislative body may not respond directly to any communications posted on the internet by other members of the same legislative body regarding a matter within the jurisdiction of the legislative body.
 - This includes comments and digital icons (emojis)
- Applies to all generally accessible social media platforms



Brown Act

Closed Sessions

- Closed session discussions are confidential
- Required to publicly report certain actions taken in closed session

Examples of Permissible Closed Session Topics:

- Real estate negotiations
- Threatened or existing litigation
- Initiation of litigation
- Personnel
- Labor negotiations
- Public security



Brown Act

Posted Agendas

- Posting requirements:
 - ***Regular meetings*** must be posted **72** hours before meeting
 - ***Special meetings*** must be posted **24** hours before meeting



- ***Exceptions***
 - Emergency
 - Urgency → need for immediate action came to agency's attention after posting the agenda



Brown Act

Public Participation Rights

- Regular meetings must provide an opportunity for the public to speak regarding any matter within the body's jurisdiction
 - Legislative body may briefly discuss these items and refer matters to staff, ***but cannot take action***
- Public can address the legislative body on matters on the agenda before or during consideration of the item



Brown Act

Public Participation Rights



Brown Act

Teleconference- Traditional Rules

- Agenda posted at all locations, with teleconference locations specifically identified
- All locations open to the public with public participation possible at each location
- At least a quorum of legislative body member must participate from locations within City boundaries
- Roll call votes only



Brown Act

Teleconference- Traditional Rules

- No limit on number of meetings it can be used
- No requirement to provide similar option for public
- Can participate by phone or video



Brown Act

AB 2449

- Provides alternative teleconference procedures
- At least a quorum of the legislative body must participate in person from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the local agency;
- A member may only teleconference for publicly disclosed "just cause" or in "emergency circumstances" approved by the legislative body; and
- A member may only teleconference for a limited number of meetings.



Brown Act



AB 2449

- Qualifying Circumstances:
 - "Just cause" means: (1) childcare or caregiving need; (2) contagious illness; (3) physical or mental disability needs; or (4) traveling on official City business.
 - "Emergency circumstances" means a physical or family medical emergency.
- Allowed for 7 meetings per year (new change enacted by AB 2302)
 - Of this limit, "just cause" can only be used twice per year



Brown Act

AB 2449

- Member must make request to participate remotely as soon as possible.
 - For emergency circumstances, Council must vote to approve member's participation
 - Must provide general description of reason
 - Identify any adult in the room with the member
 - Member must participate through both audio and visual technology
- Must provide public the option of participating in the meeting through similar audio/visual technology



Brown Act

Consequences for Violating the Brown Act

- Nullification of a decision made in violation of the Brown Act's requirements;
- Willful violation could incur criminal penalties;
- A possible award of attorneys' fees to the party successfully bringing a Brown Act lawsuit;
- Loss of public confidence.



City Council Roles & Responsibilities

- Legislative Role
- Quasi-Judicial Role
- Best Practices



City Council Roles and Responsibilities

- Legislative Body that:
 - Establishes City ordinances and regulations
 - Approves City budget and contracts (above \$100,000)
 - Determines City goals and policy priorities
 - Hires, appoints, and evaluates City Manager and City Attorney



Mayor & City Council Roles

- Councilmember have no individual authority to bind or act on behalf of City Council
- Mayor has no greater authority than other Councilmembers except under Charter Section 305:

(a) recommend City policy;

(b) recommend to the Council appropriate and necessary legislation;

(c) recommend programs for the physical, economic, social and cultural development of the City;

(d) be responsible for public relations activities and represent the City for ceremonial purposes;

(e) represent the City in intergovernmental relations, personally or by delegated representative, at the direction of the Council;

(f) preside at meetings of the Council;

(g) establish and dissolve ad hoc committees, subject to approval by the Council;

(h) possess the authority to suspend implementation of any action taken by the Council by filing with the City Clerk, within three days after such Council action, a notice of suspension thereof. Such suspension shall constitute a motion for reconsideration of the action taken, to be voted upon by the Council at its next regular meeting;

(i) provide leadership and marshal citizen participation in City activities;

(j) report to the public from time to time on the affairs of the City;

(k) possess the authority and attributes of a Council Member;

(l) possess such authority and perform such duties as are granted or required by this Charter or by the Council.



Council - City Manager

- Council is responsible for setting goals and policy, adopting ordinances and administrative procedures; City Manager is responsible for implementation, personnel, and day-to-day operations
- City Council as a body, not individual members, can give direction to City Manager
 - Neither the Mayor nor any Council Member shall interfere with the execution of the powers and duties of the City Manager, or order, directly or indirectly, the City Manager or any department head to appoint or remove any person to or from any office or employment with the City. Except for the purpose of inquiry, the Mayor, and Council Members shall deal with the administrative service under the City Manager solely through the City Manager and neither the Mayor nor any Council Member shall give orders to any subordinate of the City Manager, either publicly or privately.

(Charter Section 345)



Council - Staff

- The Council may not direct staff
- Requests for information should be directed to the City Manager
- If City Manager authorizes Councilmembers direct communication to staff, City Manager should be copied on any communication with staff, which should be limited
- Caution is critical because staff may misinterpret requests, questions, or comments from the Council



Public Communications

- Council members must clearly identify when they are speaking on behalf of themselves as a Councilmember
 - Members should pass along communications concerns and inquiries to City Manager for Public Information Officer consideration and/or assistance
- Mayor on behalf of the City Council and City, and City Manager (or staff designated by City Manager) are generally the only individuals authorized to speak with media on behalf of City
 - Comments must be consistent with City Council approved policies, legislation and/or actions



Public Communications

- If Council members are speaking at external agencies or boards, comments and positions should be upon approved City Council legislation, policies, or actions
 - If speaking in an individual capacity, Councilmembers must specifically identify that they're speaking on behalf of themselves as a Councilmember and not on behalf of the Council
 - When serving as the City's representative on a regional Board or JPA, member should keep Council informed of important issues and when necessary or as advised by the JPA, seek Council approval on significant policy decisions or positions



Electronic Communications

- When sending written correspondence as a representative of the City, Members are encouraged to refer the draft correspondence to the City Manager for input and advice
 - Council members should forward any response to the City Manager
- Reminder: Email communications are subject to the Brown Act & Public Records Act



Required Trainings for Councilmembers

- Form 700 Economic Disclosure form must be filed every year
- AB 1234 Ethics Training must be completed every two years
- Sexual Harassment Prevention Training must be completed every two years.



Public Records Act

Basic Rule

Record
defined
broadly

- Any tangible thing 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.

All non-exempt, state and local government agency records in any form or medium are subject to public inspection during office hours or copying upon payment of duplication costs



Public Records Act

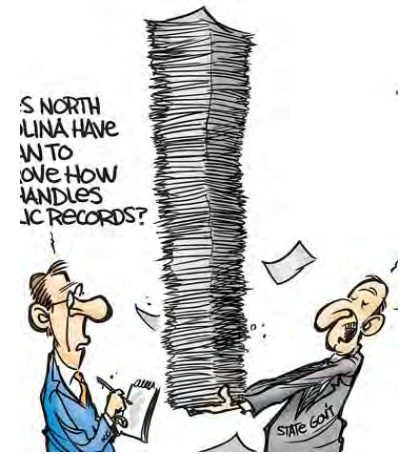
Duty to Assist Requestors

Agencies are required to

Assist requestors with identifying records and information that are responsive to requests or to the purpose of the requests

Describe the information technology and physical location in which the records exist

Provide suggestions for overcoming any practical basis for denying access to the records or information sought.



Public Records Act

Exemptions

Drafts

Pending litigation

Personnel records

Medical, dental, and other insurance records

Closed session minutes and legal memoranda
and other materials distributed in a closed session

Records protected by the attorney-client privilege



Public Records Act

- » Emails and Text message about public business on personal phones, devices and accounts
- » CA Supreme Court held that these records are subject to disclosure in response to a Public Records Act request
 - » *City of San Jose v. Superior Court*



Use of Social Media Considerations

- Social media use by public officials constitutes state action only if the public official (1) possessed actual authority to speak on the City's behalf, and (2) purported to exercise that authority when spoke on social media.



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Court's recommendations:

- Confirm that you have no authority to speak on behalf of City.
- Include a label or disclaimer on your social media account making clear that it's personal.
- Avoid making announcements of governmental actions exclusively on your social-media account. Linking or sharing otherwise available information is okay.
- Be careful about blocking users and removing comments. **If you aren't authorized to speak on behalf of the City and include a personal label/disclaimer, likely free to block and remove comments from private citizens.**

(Lindke v. Freed, 144 S.Ct. 756)



Common Law Bias Prohibitions – Duty to Act Fairly and Impartially

Elements:

A public officer...

Must exercise the powers conferred on him or her with disinterested skill, zeal, and diligence, and primarily for the benefit of the public

- ❖ *One cannot be tempted by personal or pecuniary interests*
- ❖ *Applies to non-financial interests*
- ❖ *Disqualifies one from participating in a discussion or action*



Acting in a Quasi-Judicial Capacity

- Substantive Due Process
- Fair and unbiased decision maker
- No conflicts of interest with the opposing party or their representatives
 - Political Reform Act conflicts, Common Law Bias conflicts
- Procedural Due Process
- Notice and Opportunity to be Heard
- City followed its codified process and procedure
 - Charter, Municipal Code, Zoning Code, Administrative Code



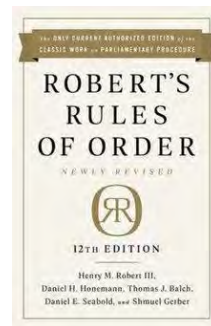
Parliamentary Procedure *Robert's Rules of Order

• Basic Principles

- Quorum
- All members have equal rights, privileges and obligations
- No person should speak until recognized by the Chair
- Only one question at a time, and only one person may have the floor at any one time

• General Procedures

- Member makes a main motion
- A second is required
- Motion to amend
 - Council custom and practice is to suggest friendly amendments to maker of motion e.g. adding words, striking words, striking and inserting words
- Substitute motion on the current item or question requires a second
 - Takes precedence over main motion



Rules of Decorum

In meetings:

When Debating motions:

Listen to the other side

Focus on issues, not personalities

Avoid questioning motives

Be polite

Follow your decorum guidelines card

- Council-Manager Relations;
 - You are not alone. Not your job to solve specific problems as an individual council member
 - Council sets policy and hire competent staff to carry it out.
 - City Manager provides the Council with an orderly way to handle community concerns. Rely on that process and communicate to constituents that staff will handle their complaints according to Council policy.



Rules of Decorum

- Compromise
 - Negotiation and compromise = effective governance
 - Focus on shared interests
 - Staff are duty-bound to carry out Council decisions.
 - Disagreement on a Council directive, collectively resolve the issue so that it is clear to all parties
- Model Civility and Listen Well
- Focus on the Long-Term
- Prepare yourself and others
 - Ask staff questions before the meetings, even if you want the information provided at the meeting.
 - Don't spring surprises on staff at Council meetings: They are on your team.



Rules of Decorum

- Communicate through the City Manager
 - This helps ensure all Councilmembers receive the same information
- Keep Cool during Turbulence
 - Fires, earthquakes, pandemics, social unrest, heavy rain events happen. Stay calm and trust the professional emergency managers.
 - Expect the City Manager to keep you informed, but don't interfere or get into the trenches.
 - Show the public that you have confidence in the City's ability to respond.
- Consider the entire community's interests when making decisions.
- While an elected official, learn something every day
- Council retreat
 - To review operations, City's strategic plan, and governance norms.
 - Review collegial teamwork, norms, and practices.
- Keep the community in mind
 - Always consider the right thing to do for the well-being of the community, and City organization



Special considerations – Workplace Bullying

January 1, 2025 Western City Magazine, Danielle Drossel

- Councilmembers hold a unique and influential role
 - Pew Research Center* found that toxic behavior on the dais erodes public trust and the effective functioning of government institutions
- Steps to Prevent Bullying in Public Meetings:
 - Be Prepared
 - Ask questions, but don't interrogate
 - Lead by example
 - Use neutral language
 - Show appreciation
 - Do not make things personal
 - Remain objective, and focused on the issues



Workplace Bullying cont.

- Allegations of bullying outside of public view
 - Understand the distinct role of the Council-Manager form of government, which is the norm in California
 - City Council enacts laws and sets policy; City Manager is charged with overseeing the daily operations of staff and implementing Council policies
 - City Manager's role is the conduit for communication between the Council and staff
 - Maintains clear lines of authority and preventing undue influence from individual Councilmembers
 - Separation of Powers.
- If you experience or witness workplace bullying
 - For staff, behavior is reported to management or human resources
 - Upon a report, an investigation should be initiated promptly to determine what occurred and whether the behavior constitutes a policy violation
 - Intervene by telling the bully that his or her behavior is inappropriate and must stop.



Questions?

