



BROWN ACT, CONFLICT OF INTEREST AND ETHICS TRAINING

City Attorney's Office

Planning Commission
Agenda Item: 5
April 19, 2018

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BROWN ACT



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BROWN ACT

"...the Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."



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BROWN ACT

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 by law.



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BROWN ACT WHO IT APPLIES TO

- City council meetings.
- Commissions, Committees and Boards.
- Entities created by a City Council or over which a City Council retains authority.



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BROWN ACT Requirements

- The Brown Act creates certain minimum procedural requirements for conducting meetings.
- One of these rules requires this Commission to adopt rules as to the conduct of business of the Commission, which includes the time and place for holding regular meetings.



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MEETINGS

- A “meeting” includes any congregation of a majority of the members of the Commission at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter of the Commission.
- Except as part of an open and noticed meeting, the Brown Act prohibits any use of direct communication, by personal intermediaries, or technological devices by a majority of the Commission to develop a collective concurrence as to action to be taken on an item.
- A majority of the Commission may not e-mail each other to develop a collective concurrence as to action to be taken by the Commission.



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SERIAL MEETINGS

- A serial meeting is a series of communications, each of which involves less than a quorum of the Commission, but which taken as a whole involves a majority of the Commissions' members.
- Does not require a collective concurrence to occur in order for there to be a violation.
- City staff is allowed to engage in separate communications outside of a public meeting with members of the Commission in order to answer questions or provide information regarding a matter that is within the subject matter of the Commission provided that staff does not communicate to members of the Commission the comments or position of any other member or members.



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PUBLIC SPEECH

The public has a right to address the legislative body or commission at any meeting on any subject that is within the Commission's subject matter jurisdiction.



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PROCEDURES WHICH REGULATE PUBLIC SPEECH

The Commission:

1. May impose reasonable restrictions upon public comment at meetings so long as such restrictions are not too broad and do not constitute "prior restraints."
2. May prohibit a member of the public from speaking on a matter not within the Commission's subject matter jurisdiction or from addressing their comments to one member rather than the Commission as a whole.



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PROCEDURES WHICH REGULATE PUBLIC SPEECH

3. May require members of the public wishing to address the Commission to fill out a speaker's card.
 - The public cannot be required to give names or sign a register as a condition of attendance.
 - Many cities do ask for names and addresses during oral communications in order facilitate staff responses or the preparation of minutes. This practice is certainly allowable if it is identified as being voluntary.



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PROCEDURES WHICH REGULATE PUBLIC SPEECH

4. May regulate the total amount of time on particular issues and for each individual speaker, subject to the requirements of due process.
 - Time limits of 3 – 5 minutes are most common.
 - The chair is responsible for enforcing the time limit and depending on the board or commission may also monitor the time.



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AGENDA REQUIREMENTS AND OTHER PROCEDURAL ISSUES

- The agenda must specify the time and location of the meeting and a “brief general description” of each item of business to be transacted or discussed.
- If a matter is not on the agenda, it may not be discussed or acted upon.



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EXCEPTIONS

- Brief responses by members of the legislative body and staff to statements or questions posed by the public.
- Questions for clarification.
- References to staff or other resources for factual information.
- Requests to staff to report back on an issue at a subsequent meeting.
- Requests to agendize a matter of business for some future meeting.
- Brief announcement by members of the body or staff and brief reports on their activities.



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SUNSHINE ORDINANCE

The Sunshine Ordinance was adopted October 6, 2015. It can be found in Title 4 of the Riverside Municipal Code.

- It is applicable to the City Council, City Council Standing Committees, and all Boards and Commission.
- It requires posting a copy or image of the agenda and all reports and presentations in a location freely accessible to the public no later than 12 days before the date of the meeting.



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QUORUM AND MOTIONS

- A majority of the Commission constitutes a quorum for the transaction of business.
- Types of Main Motions
 - Regular
 - Substitute
 - Call the Question
 - Limit the Debate
- Abstention



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CONFLICTS OF INTEREST



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THE BASIC RULE (POLITICAL REFORM ACT)

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



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WHAT IS A 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 "economic interest."



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THE EIGHT STEP TEST

- Step One: Are you a public official?
 - Board and Commission members are public officials.
- Step Two: Are you making, participating or influencing a governmental decision?
 - Examples include voting, either at a Council meeting or at a committee, presenting a report which requires the exercise of judgment and is meant to influence a decision, or by contacting staff or other public officials regarding a decision.



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THE EIGHT STEP TEST

- Step Three: Do you have an economic interest in the decision? Such interests include:
 - Personal finances of you or your family.
 - A business in which you or your family have invested \$2,000 or more.
 - A business in which you are a director, officer, partner, manager, etc.
 - Real property worth more than \$2,000.
 - Sources of income of \$500 (or more) made, received or promised to you within 12 months prior to making decision.
 - Gifts valued at \$470 or more received by or promised to you within 12 months prior to making of decision.



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THE EIGHT STEP TEST

- Step Four: Is your economic interest directly or indirectly affected by the decision?
 - Examples of direct: the source of income files an application for a permit which you must decide on.
 - Or, your property is located within 500 feet of property which is the subject of a proposed decision.
 - If there is no direct involvement, then your interest is “indirectly” involved, and still must be analyzed under this test to determine materiality.



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THE EIGHT STEP TEST

- Step Five: Is the effect on your economic interest material?
 - If the involvement is direct, then the effect is almost always material.
 - “Indirectly” involved interests require further analysis. There are different tests for business entities, real property interests, sources of income, leaseholds and gifts.
 - The best thing to do is to consult with the City Attorney’s Office at the earliest possible point to determine if there is a conflict.



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THE EIGHT STEP TEST

- Step Six: Is it reasonably foreseeable that your economic interest will be affected?
 - Whether there is a financial consequence to your decision must be examined on an individual basis.
 - An effect is considered to be reasonably foreseeable if there is a substantial likelihood that it will occur.
 - Certainty is not required.



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THE EIGHT STEP TEST

- Step Six: Is it reasonably foreseeable that your economic interest will be affected?
 - Whether there is a financial consequence to your decision must be examined on an individual basis.
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 - Certainty is not required.



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THE EIGHT STEP TEST

- Step Seven: Will the financial effect on you be the same as the effect on the general public?
 - Even if your economic interest will be materially affected by a decision, you do not have a conflict of interest if the effect of the decision on your interest is substantially the same as its effect on most other people in your jurisdiction.
 - For example, a decision to impose a city sales tax will affect you no differently than other residents of the City. Contrast this with the acquiring of or improving land close to your business or residence. In that instance, the effect will be different on you than on a member of the general public.



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THE EIGHT STEP PROCESS

- Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?
 - “legally required participation” rule applies only in certain circumstances in which the government agency would be unable to act.



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COMMON LAW BIAS

- This test is commonly known as the “smell” test.
- As a member of the Commission, you should avoid all appearances of impropriety.
- Common Law Bias
 - Strong personal interest
 - Public perception
 - Contact by developers or applicants



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DISQUALIFICATION AND DISCLOSURE

- A Commission member who has a disqualifying conflict of interest is not counted towards achieving a quorum on a particular vote.
- In addition, the member with a conflict must, immediately prior to consideration of the decision:
 - Publicly identify the financial interest in detail sufficient to be understood by the public except that disclosure of the exact street address of a residence is not required.



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DISQUALIFICATION AND DISCLOSURE

- Non-financial conflicts of interest do not require a detailed disclosure by the member. (e.g., a parent of member owns property as their sole and separate property and applies for a rezoning).
- Recuse himself or herself from discussing and voting on the matter.
- Leave the room until after the decision has been made, unless the matter is on the consent agenda.
- The only exception is that the member with the financial conflict of interest may speak on the matter as a member of the general public.



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CODE OF ETHICS AND CONDUCT



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CODE OF ETHICS AND CONDUCT

- In 2004, new adopted City Charter section created the requirement that the City adopt a Code of Ethics.
- In 2005, City Council adopted a Resolution establishing the Code of Ethics and Conduct.
- On April 5, 2016, City Council created a new Code of Ethics in the Riverside Municipal Code, Chapter 2.78.010.



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WHO DOES IT APPLY TO?

- It applies to the Mayor, members of the City Council, and to all members of the boards, commissions, and committees appointed by the City Council, the Mayor, or the Mayor and City Council, including any *ad hoc* committees.
- Also applies to the Mayor and members of the City Council at all times during their term of office as elected officials of the City.
- It applies to all members of the boards, commissions, and committees only while they are acting in their official capacities or affecting the discharge of their duties.



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PURPOSE

- To achieve fair, ethical, and accountable local government for the City.
- Public officials are expected to comply with the provisions of the Code of Ethics and Conduct established pursuant to the expressed will of the people.
- Divided into two areas: Core Values and Prohibited Conduct



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PURPOSE

- The Core Values are intended to provide a set of principles from which public officials in the City can draw upon to assist them in conducting the public's business.
- The Core Values are directory in nature and are not subject to the complaint procedures.
- The Prohibited Conduct are actions that public officials of the City shall not engage in, and, as such, are subject to the complaint procedures.



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CORE VALUES

- To strive to create a government that is trusted by everyone.
- To strive to make decisions that are unbiased, fair, and honest.
- To strive to ensure that everyone is treated with respect and in a just and fair manner.
- To strive to create a community that affirms the value of diversity.
- To strive to ensure that all public decisions are well informed, independent, and in the best interests of the City.
- To strive to maintain a nonpartisan and civic minded local government.
- To strive to ensure that all public officials are adequately prepared for the duties of their office.
- To strive to ensure that appointed members of boards, commissions and committees attend regularly scheduled meetings.



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PROHIBITED CONDUCT

- Use of official title or position for personal gain.
- Use or divulgence of confidential or privileged information.
- Use of City resources for non-city purposes.
- Advocacy of private interest of third parties in certain circumstances.
- Endorsements for compensation.
- Violation of Government Code sections 87100 *et. seq.*
- Certain political activity.
- Display of campaign materials in or on City vehicles.
- Knowingly assisting another public official in violating Code of Ethics and Conduct.
- Negotiation for employment with any party having a matter pending.
- Ex parte contact in quasi-judicial matters.
- Attempts to coerce official duties.
- Violations of federal, state, or local law.



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COMPLAINT PROCEDURES

- Only Prohibited Conduct violations shall be grounds for a complaint against any public official.
- Complaints are submitted on forms available from the City Clerk alleging the specific conduct.
- Complaints and all required information and tangible evidence shall be filed with the City Clerk.
- Complaints acted on by the Board of Ethics.
- Currently revising these procedures.



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BOARD AND COMMISSION MEMBER DUTIES



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DUTIES

- Make recommendation to City Council
 - Examine the facts
 - Gather information
 - Resolve potential conflicts
- Hold yourselves to the highest ethical standards
- Respect for Others
 - Treat fellow officials, staff and the public with courtesy
 - Focus on the merits in discussion
 - Listen carefully and ask questions that add value to the discussions
 - Never debate an issue with an applicant or a member of the public



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DUTIES

- Responsibility
 - Come to meetings prepared
 - Refrain from an action that might appear to compromise your independent judgment
 - Consider the City's vision when acting on a proposal



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Meeting Procedures

- Respect the Chair at all times
- Chair identifies the item to be discussed
- Staff makes their presentation
- Applicant makes their presentation
- Public is invited to speak
- Applicant is entitled to rebuttal
- Commissioners ask questions



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Meeting Procedures

- Close the public hearing or continue the matter
- Deliberations
- Adding conditions - Advisory
- Motion made
- Announcement of appeal period



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