



BROWN ACT, CONFLICT OF INTEREST AND ETHICS TRAINING

City Attorney's Office

Budget Engagement Commission

March 12, 2020



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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 the 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.



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MEETINGS

INCLUDING:

- 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 e-mailing/texting 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 members.
- Does not require a collective concurrence to occur in order for there to be a violation.



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SERIAL MEETINGS

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 the members 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 that body's subject matter jurisdiction. The public also has a right to speak on a specific item **before** formal action is take.



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PROCEDURES WHICH REGULATE PUBLIC SPEECH

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 a 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 monitoring 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 FOR MATTERS NOT ON THE AGENDA BEING DISCUSSED

- Brief responses by members of the body and staff to statements or questions posed by the public.
- Questions for clarification.
- References to staff or other resources for factual information.



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EXCEPTIONS FOR MATTERS NOT ON THE AGENDA BEING DISCUSSED

- 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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BROWN ACT NOTICE REQUIREMENTS

- 72 hours notice for regular meetings
- 24 hours notice for special meetings

BUT WAIT!



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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.



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SUNSHINE ORDINANCE

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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EXCUSE OF SUNSHINE NOTICE REQUIREMENTS

- There is a need to take immediate action on an item to avoid a substantial impact that would occur if the matter is deferred.
- The immediate action relate other governmental agency legislation or action or grant.
- The item is purely ceremonial.



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PROCESS FOR EXCUSE

In order to act on a matter outside the Sunshine Ordinance, the local body, by a 2/3 vote of the members present, adopts a motion determining that, upon consideration of the facts and circumstance it was not reasonably possible to meet the additional notice requirements.



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SUPPLEMENTAL MATERIALS

You can supplement the agenda or agenda related materials no later than 72 hours before a regular meeting but only if to:

- Add an item due to an emergency
- Delete a matter from the agenda
- Provide additional information or materials that was not known to staff or considered relevant at the time the agenda was published.



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SUPPLEMENTAL MATERIALS

- Correct errors or omission or change a stated financial amount
- Continue an item to a future agenda

Again, in order for the supplemental materials to be included, they must not have been available or considered relevant at the time of publishing the agenda.



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QUORUM

A majority of the Commission positions constitutes a quorum in order to hold a meeting.

- Example, you have 18 Commissioners but only 12 are currently filled (six are vacant) the quorum is still 10 and not 7.
- If you do not have a quorum present you cannot start or conduct a meeting. Even to discuss procedural matters.



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MOTIONS

- Types of Main Motions
 - Regular
 - Substitute
 - Call the Question
- Voting
 - Aye
 - Nay
 - Abstain



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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 disqualifying financial interest.



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WHAT IS A FINANCIAL INTEREST?

A public official has a disqualifying 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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ARE YOU A PUBLIC OFFICIAL?

A public official is every member, officer, employee or consultant of the local government.



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THE FOUR STEP TEST

- Step One: Is it reasonably foreseeable that your decision will have a financial effect on your financial interests?
Financial interest includes:
 - 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.



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THE FOUR STEP TEST

- Real property interest 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 \$500 or more received by or promised to you within 12 months prior to making of decision.



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THE FOUR STEP TEST

- Step Two: Will the reasonably foreseeable financial effect be material?
 - If the involvement is one of the interests listed in Step One, then the effect is almost always material.



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THE FOUR STEP TEST

- Step Three: Will the material financial effect on you be the same as the effect on the general public?
 - Even if your economic interest will be materially effected by a decision, you do not have a conflict of interest if the effect of the decision on your interest is substantially the same on most other people in your jurisdiction.



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THE FOUR STEP TEST

–Example, a decision to impose a city sales tax will affect you no differently than other residents of the City. However, the City acquiring or improving land close to your business or residence may effect you differently than a member of the general public. You may financially benefit from that transaction.



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THE FOUR STEP TEST

- Step Four: If you have a conflict per Steps One through Three then you can not participate in making, or in any way attempt to use your position to influence a governmental decision.
- Exception: You are legally required to participate.



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COMMON LAW BIAS

- This test is commonly known as the “smell” test.
- Common Law Bias
 - Strong personal interest
 - Public perception
 - Contact by developers, applicants, residents who will be directly impacted by your decision



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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.



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DISQUALIFICATION AND DISCLOSURE

- 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.
- 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.



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DISQUALIFICATION AND DISCLOSURE

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

- Section 202 of the City Charter required the City adopt a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions and committees. Such was adopted in 2005
- In 2016, City Council created a new Code of Ethics in the Riverside Municipal Code, Chapter 2.78.



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WHO DOES IT APPLY TO?

- It 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.



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PURPOSE

- Divided into two areas: Core Values and Prohibited Conduct
- 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.



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CORE VALUES

- 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.



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PROHIBITED CONDUCT

The Prohibited Conduct are actions that public officials of the City shall not engage in and are subject to the complaint procedures. Some of the prohibited conduct include:

- Use of official title or position for personal gain.
- Use of City resources for non-city purposes.
- Endorsements for compensation.
- Knowingly assisting another public official in violating Code of Ethics and Conduct.
- 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.



APPEAL PROCEDURES

- A decision by the hearing panel finding a violation of the Prohibited Conduct section shall be automatically appealed to the City Council for final resolution.
- A decision of no violation may be appealed by either party.



SANCTIONS

- The City Council may imposed any of the following sanctions:
 - A. Elected Officials.
 - 1. Public censure.
 - B. Appointed officials of Boards, Commissions and Committees.
 - 1. Referral to the Board, Commission or Committee of which the appointed official is a member for public censure;
 - 2. Public Censure by the Mayor and City Council; or
 - 3. Removal from office by a majority of the Mayor and City Council.



THE END

