



City Attorney's/City Prosecutor's Department – Civil Division

Briefing to Rental Housing Board Open Government and Open Meeting Laws

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OVERVIEW

City Attorney's/City Prosecutor's Department – Civil Division

- Orientation Manual Handout
- General overview of open government
- Brown Act Open Meetings
- Parliamentary Procedure
- Political Reform Act (conflicts of interest)
- Government Code 1090 Conflicts
- AB 1234 Ethics Training
- Public Records Act



The Brown Act in a Nutshell

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- All local legislative bodies must do the following:
 - > Meetings in public
 - Discuss, hear, deliberate & vote during a public meeting unless the item meets a narrow list of exceptions
 - > Timely notice of the matters to be considered at meetings
 - Sufficiently detailed agendas
 - Discuss only items on agendas
 - > Hold meetings within City boundaries
 - > Action by secret ballot is prohibited



Brown Act Public Participation

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- Meetings must be held in ADA-accessible facilities
- Allow members of the public to
 - > Attend meetings anonymously
 - > Directly address the legislative body during the meeting
- Public criticism of the Board cannot be prohibited
- The Board may remove a meeting attendee for substantially impairing the course of a meeting
- Provide public with an opportunity to review writings distributed to a majority of the body



Brown Act – Teleconference Rules

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- **Traditional Teleconference – GC Sec. 54953(b)**
 - > Quorum must participate in Pasadena
 - > Agendas identify - and posted at – telecom location(s)
 - > Public & ADA access and comment at each location
 - > All votes taken by roll call
 - > No limit to how many times used by Board member
 - > Participation may be by video or audio
- **COVID-19 State of Emergency (AB 361) relaxed rules**
 - > State of emergency ended; AB 361 no longer applies



Brown Act – AB 2449 Remote Meetings

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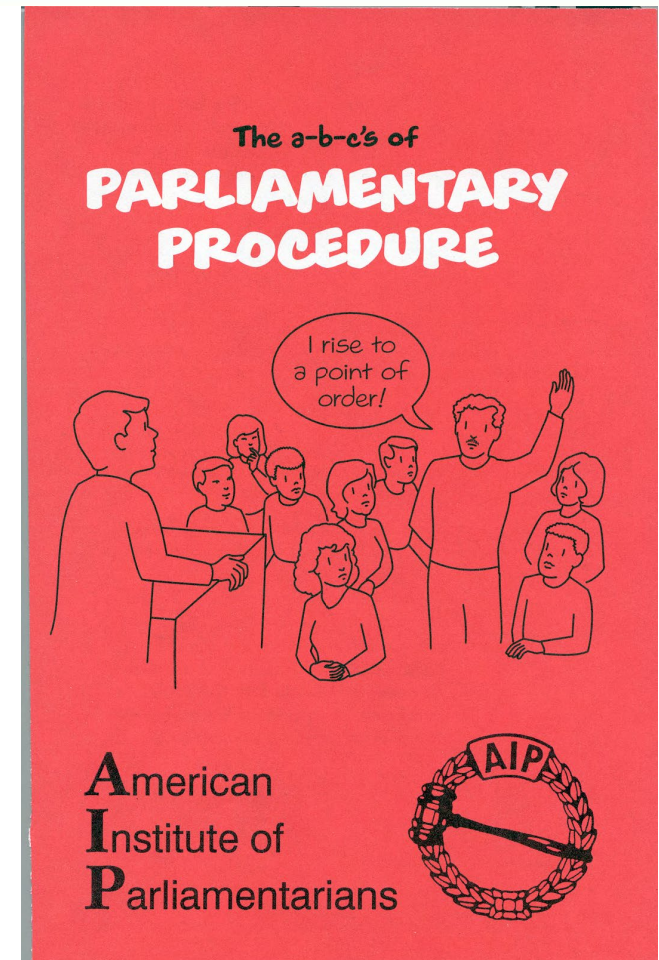
- Quorum must be in single physical, public location in City
- Public also must be allowed to attend and comment remotely
- All votes must be taken by roll call; broadcast disruption halts meeting
- Remote attending member must participate by video & audio
- Member must disclose whether anyone over 18 years old is present
- AB 2449 use limited to 3 months in a row or 20% of annual meetings
- Two types of attendance, “Just Cause” or “Emergency Circumstance”
 - > Just Cause – caregiving need, contagious illness, City travel
 - Can use only 2x per year; notify Body ASAP; public disclosure not required
 - > Emergency – family medical emergency
 - Member must generally describe emergency and request Body vote to approve



Parliamentary Procedure

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- City advisory bodies must conduct meetings in accordance with Robert's Rules of Order
- Brown Act and other laws supersede parliamentary rules
- Parliamentary procedural rules enforce the will of the majority & protect the rights of the minority
- Chair's rulings are final, unless overruled by majority
- Strive for courtesy and decorum





Parliamentary Procedure

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- **5 General Types of Motions:**
 - > Main Motions introduce subjects for consideration
 - > Subsidiary Motions amend or substitute Main Motions
 - Process the last motions first; Main Motions voted on last
 - > Privileged Motions (*e.g.*, “Move to adjourn”)
 - > Incidental Motions (*e.g.*, “Move to suspend the rules”)
 - > Motions that bring matters back before the Board
 - Motion to Reconsider
- **Tie vote = motion fails**



Suggested Format for Motions

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- **Announce the Agenda Item**
 - > Clearly state the subject
 - > Invite staff to report on the item
 - > Invite public comments (depending on rules)
- Invite a motion from Board members: “I move that...”; announce name of the maker; clarify
- Ask, “Is there a second?”
- Invite Discussion;[entertain amending motions, etc.]; close debate; repeat substance of motion[s]
- Vote and then announce the vote



Political Reform Act

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- Public Officials shall not participate in making or attempting to influence a government decision that may affect their private financial interests
- Economic interests (above various \$ thresholds):
 - > Business interests or investments
 - > Real property
 - > Sources of income
 - > Gifts



Political Reform Act (cont.)

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- **Political Reform Act Reporting Requirements**
 - > Form 700 Statement of Economic Interests (SEI)
 - > Penalties for late filing / failure to file
 - > Accurate reporting prevents conflicts, increases public confidence
 - > Failure to report an interest raises suspicion among the FPPC, the public and the press



Government Code Section 1090

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- Public officials may not “make” contracts in which they are “financially interested”
 - > Includes direct and indirect financial interests
 - > Making a contract is broadly interpreted to include negotiations, discussions, design, planning, etc.
- Severe penalties for violations—felony, can't hold office, etc.
- Exceptions for remote interests and non-interests
 - > e.g., nonprofit entities; public employment



Common Law Conflicts of Interest

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- Law made by court decisions
- Public officials are impliedly bound to exercise the powers conferred on them with disinterested skill, zeal, and diligence for the public's benefit
- Officials should not place themselves in a position where either financial or non-financial personal interests may come into conflict with their duties



Due Process in Quasi-Judicial Proceedings

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- Examples of quasi-judicial proceedings – petitions for individual rent adjustment, appeals to the Board, etc.
- Reasonable notice & opportunity to be heard
- Fair and impartial decision-maker
- Disqualification from taking any part in discussion or vote on a matter required if Board member has a personal interest or involvement in the outcome or a relationship with any participants



AB 1234 Ethics Training

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- Assembly Bill 1234, passed in 2005, requires public officials receive two hours of ethics training within one year of taking office & every two years thereafter
- The City Attorney's office provides training
- Public perception of ethical officials bolsters confidence in the agency
- We have a personal and a political stake in the integrity - actual and perceived - of the agencies we serve



Use of Public Resources

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- Personal use of public resources (including staff time, supplies, agency equipment, and City seal, logo, or other marks) prohibited
- Political use of public resources prohibited
- No solicitation of campaign contribution from City employee while working



Public Records Act – Overview

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- > What is the Public Records Act?
- > Requests can take many forms
- > What are records?
- > Some exemptions
- > Make reasonable effort to gather records
- > Respond to requests





What is a Public Record?

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- Public Records include:



“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 characteristics”





What is a Writing?

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Not just documents:



✓ e-mails

✓ text messages

✓ Video



Instagram posts and comments

✓ Tweets

✓ Facebook posts and comments



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Exemptions

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- Preliminary Drafts
 - > Drafts, notes not retained in ordinary course
- General Public Interest Exemption
- Attorney-Client Privileged Records
- Right to privacy
 - > Social security information never disclosable
 - > Personal information should be redacted





Responding to a Request

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- Policy and state law requires help for requestors
- Access during normal business hours
- Provide promptly, but City has 10 days to determine if the documents are public records
- In unusual circumstances, a 14 day extension
- If only part of the record is being disclosed, then the record is redacted to remove the exempt material



Resources

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- **Fair Political Practices Commission:**
 - > (866)-ASK:FPPC (275-3772) advice line Monday-Thursday 9:00-11:30
 - > advice@fppc.ca.gov to e-mail your inquiry
- **California Institute for Local Government:**
 - > www.ca-ilg.org - Has free resources to help officials with the state's various ethics laws, provides training, and assists local governments with community engagement tools.



Questions?

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