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# **The Brown Act & Committee Rules and Procedures**

City of Rancho Palos Verdes



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# Part I: The Brown Act

*AKA: The Open Meeting Laws*



**“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the 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. ...”**  
**(Gov. Code § 54950)**

# The Brown Act

*AKA: The Open Meeting Laws*

**“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.”**

**(Gov. Code § 54953)**



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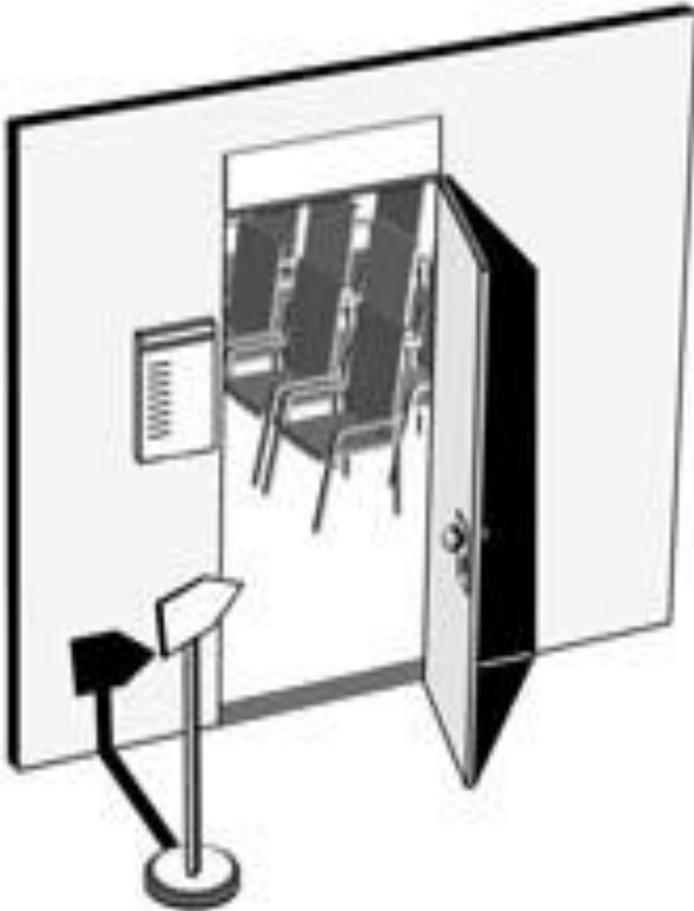
## APPLIES TO “LEGISLATIVE BODIES” AND ADVISORY BODIES

- Commission and committee bodies.
  - Does not apply to bodies of less than a quorum.
    - But DOES apply to standing committees
  - Body which is created by formal action to provide an advisory role.
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# “WHAT IS A MEETING?”

## Definition:

"Meeting" includes any gathering of a *majority* of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its subject matter jurisdiction*.



# “WHAT IS A MEETING?”

Means of Communication: A meeting includes *any use of direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body to *develop a collective concurrence* on action to be taken by members of the legislative body. (§ 54952.2)

- Meetings take place if quorum receives information on, discusses, or deliberates on any item on which the body may legally act.
- Serial and rotating meetings or polling prohibited.
  - ***Beware Email & Texting!***

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# ***MORE on Email & Texting***

- ✓ Remember, your emails and text messages may be subject to public disclosure under the Public Records Act.
- ✓ Does NOT matter if you're messaging from a personal device!
- ✓ Does NOT matter if you are using a personal email account



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# *Agendas I*

- A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.
  - Action or discussion on any item not appearing on the posted agenda is generally prohibited.
  - Posted within 72 hours.
  - Brief description sufficient to inform public of the nature of each item.
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# ***Agendas 2***

No discussion of any item not on agenda...

*Except:*

- Brief responses.
- Statements or questions.
- Questions for clarification.
- Reference to staff or other resources for factual information.
- Request staff to report at a subsequent meeting.
- Request Future Agenda items (but no deliberations).

# ***Agendas 3***

- All matters to be transacted or discussed on agenda
- Must include reasonable period of time for public comment before or during consideration
- To add a new matter body must find: (1) Body became aware of the need for action after agenda was posted, (2) immediate action is necessary, (3) there must be a 2/3 vote of membership—unanimous vote if less than 2/3 present.

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# ***Closed Session I***

- Existing/ Anticipated Litigation
  - Real Property Negotiations
  - Labor Negotiations
  - Personnel Matters
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# ***Closed Session 2***

- Confidentiality applies!
  - Must reconvene in open session and make any required disclosure
  - Cannot discuss funds, funding priorities, or budget, salaries, contract negotiations (unless labor negotiations).
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# Public Comment I

- Public has the right to talk about anything they want that's not on the agenda. Typically this happens at the start of the meeting.
  - Don't debate with public! You still have to stick to the agenda.
- Members of the public get to speak on every item as it comes up before deliberations are made.



# Public Comment 2

- Anyone can attend open meetings
- Cannot require names, questionnaires, or conditions to attendance
- Public may record proceedings by video, film or audiotape
- If meeting willfully interrupted or order cannot be restored by removing only the disrupting individuals, body may order room cleared



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## Failing to Comply

- Challenger must demand corrective action within 90 days of action -- or 30 days if agenda issue
  - 30 days to correct action before suit
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# Failing to Comply: Penalties

- Injunction, Mandamus & Declaratory Relief—and a violation may cause City to pay plaintiff's attorney fees.
  - Voidability of Decision.
  - Misdemeanor – intentional violations (6 months in jail/\$1000 fine)
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## **Most important take-aways**

- Deliberate and make recommendations in open session
  - Public comment is a crucial part of the process
  - Notice: the public needs to know when you're discussing what
  - If it's not on the agenda, don't touch it
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# **Part II: City Council Rules of Procedure**

- CC Resolution 2018-04: Applies to the conduct of all business before City Council, commissions, and committees
    - Agendas
    - Public participation
    - Public Hearings
    - Motions and voting procedures
    - Email policies
    - Code of conduct
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# Conduct of a Public Hearing

- ❖ Recusals? Conflict Statements.
- ❖ Staff Presentation
- ❖ Ask All Factual Questions of Staff
- ❖ Open Public Hearing
- ❖ Receive Testimony
- ❖ Close Hearing
- ❖ Ask Any Additional Questions of Staff
- ❖ Make Decision



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# Recusals Come First!

- Most often occurs where there's a conflict under the State Political Reform Act.
  - If you have a conflict, you cannot participate in the decision at all—in fact, you cannot even attempt to influence the matter through City staff or official colleagues.
  - This is true for all matters on the agenda—not just public hearings.
  - Leave the room!
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# ***When Do I Have A Conflict?***

- Beyond the Scope of this Presentation, but main pointers:
  - You must have a **FINANCIAL** interest in the matter before your legislative body.
    - Most common example: you own property within 500 feet of an area that is the subject of your body's decision.
  - Raise any possible conflict **EARLY & WELL BEFORE THE MEETING**. A conflict usually entails extremely complex laws that apply differently to every situation. If you don't raise a possible conflict issue well in advance of a meeting, expect to be told to abstain.
  - **The FPPC will also help you, for free, with specific conflicts questions at: 1-866-ASK-FPPC (1-866-275-3772).**
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# **Parliamentary Procedure**

## **Major Mistakes Made At Hearings**

- Commissioner expresses opinion prior to commencement of hearings.
  - Debating with speakers.
  - After the close of public hearing, members raise issues or facts not presented at hearing; citizens readdress Commission without Commission reopening public hearing.
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# Issues of Due Process

## Extra-Meeting Contacts with Developers and Citizens:

- Avoid initiation of contact.
- If you have contact, be polite, avoid stating viewpoint.
- At hearing, enter into record any information which will be relevant to hearing (i.e. site visit, meeting).

**Exception:** Restoration of Views Where Foliage is a Factor- *requires* Planning Commissioners to inspect site prior to public hearing.

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# MOTIONS:

Action upon an order, resolution, ordinance, or any other action of the Commission may be proposed by any Commissioner by a motion.

- The Chair may make a motion only after all other members have had an opportunity to make a motion on the question.
  - Before a motion may be considered, it must be seconded.
  - A motion may be withdrawn at any time by the maker with the second's consent. A second may be withdrawn and the motion lost unless the motion is seconded by another.
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# MOTIONS:

## Voting:

- Vote on the most recent motion first.
  - If motion passes, extinguishes motions below (except motion to amend)
  - If motion fails, then vote on the next motion one level down
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# **3 BASIC MOTIONS**

## I. Basic Motion.

- The basic motion puts forward a decision for the body's consideration. E.g., "I move to accept staff recommendation."



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# **3 BASIC MOTIONS:**

## 2. Amended Motion

- A motion on the floor may be amended at any time before adoption or rejection.
  - First, vote on motion to amend.
  - If motion passes, then vote on motion as amended.
  - Friendly amendment: if maker of the motion and second accept, a vote on motion to amend in addition to the vote on the amended motion is not needed. Only one vote follows a friendly amendment, a vote on the amended motion.
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# 3 BASIC MOTIONS:

## 3. Substitute Motion

- A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it.
  - The decision as to whether a motion is really a 'motion to amend' or a 'substitute motion' is left to the chair.
  - Substitute motions are voted first and, if passed, terminate the original motion.
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# **COMMON ACTIONS:**

## **Findings**

- On any matter for which state law or City ordinance requires the preparation of written findings, the resolution will contain written findings.
- Any motion rejecting the proposed findings should include a statement of alternative or modified findings, or should continue the matter for a reasonable amount of time for staff to prepare a new set of findings.

## **Continuances**

- Any member of the Planning Commission may move to continue a hearing. The decision can be made by consensus.
  - If a hearing is continued to a specific date (date certain) additional public notice is not required. If the hearing is continued to an unspecified date, additional public notice shall be given in accordance with state law.
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# VOTING:

- There may be a simple consensus, or a vote by roll call.
  - Roll call votes shall be required for adoption of ordinances, adoption of resolutions, approval of agreements and actions involving the payment of money.
- A Commissioner abstaining due to reasons of conflict, for purpose of the item under consideration, shall not be considered for purposes of a quorum.



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# **VOTING:**

- Majority vote of quorum passes a motion, including adoption of resolutions; majority of membership not required

## **Tie Votes**

- Tie votes shall be lost motions unless an additional motion is made that obtains a majority vote to break the tie.
  - A tie vote on an appeal results in the lower entity's (generally the director's) decision being upheld.
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# Best Practices



- **Think fairness and merit-based decision-making in your decisions.**
- **Planning Commissioners as team; respect each other and the public.**
- **Keep politics separate from relationships with agency staff.**
- **Avoid committing/commenting before the public hearing.**