

North Fair Oaks Community Council Member Training

November 15, 2018

Office of the County Counsel

Agenda

1. NFOCC Bylaws
2. Brown Act
3. Public Records Act
4. Ethics + Conflicts of Interest
5. Public Meeting 101

Bylaws

1. Council purpose and scope

- Represent the community and advise the BOS on matters related to the NFO community
 - Public health, safety, welfare, public works, policy, planning, community dev., program dev., services
- Study options for gov't of NFO (annexation)
- Encourage and coordinate citizens' input
 - Public health, safety, welfare, public works, policy, planning, community dev., program dev., services

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Bylaws

2. Membership

- 5 to 9 members appointed by BOS
 - Residents of NFO; or
 - Reps or owners of businesses, institutions, or other agencies located in NFO
- Youth member (gets to vote!)
 - Alternate youth member

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Bylaws

3. Quorum

- A majority of the actual membership
 - The minimum number of members needed for business to be legally transacted
- All decisions and actions of Council require:
 - At least a majority of the quorum present;
 - But never fewer than 3 votes

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Bylaws

4. Officers

- Chairperson
 - Preside at all meetings
- Vice Chairperson
 - Perform duties of chair if absent

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Ethical Value to Government Transparency Laws

1. Trustworthiness:

The public trusts a process that it can observe.

2. Respect:

All perspectives have a right to be heard and considered in the public decision making process.

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The Heart of Government Transparency Laws

The conduct of the
public's business IS
the public's
business

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In the news...

- "District attorney confirms Brown Act violation by school board"
 - Documents not made available to public
- "Brown Act violation may postpone Menlo Park library talks until 2019"
 - Social conversation?
- "Discussion during Oxnard council meeting in violation of state open meeting law"
 - Item not on agenda

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The Right to Open Government

- Proposition 59 of 2004 – the right of the people to open meetings and public records is now in the State Constitution.
(Cal. Const. Article I § 3(b))
- Courts will likely construe the public's rights broadly and the government's right to conduct secret business narrowly.
- New legislation must justify reason for exception to public access.

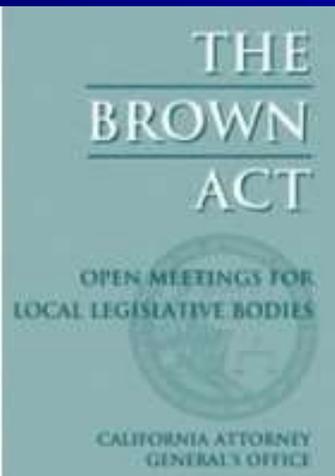
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Brown Act - Legislative Intent

“The people of this State **do not yield their sovereignty** to the agencies which serve them. The people, in delegating authority, **do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.** The people **insist on remaining informed** so that they retain control over the instruments they have created.”

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Ralph M. Brown



Brown Act

1. To Whom Does it Apply?
2. What is a Meeting?
3. The Agenda Requirements
4. The Public's Rights
5. Closed Sessions
6. Consequences for Violations

11/15/2018

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Public Meetings

- Purpose: public business done in public meetings

1. To Whom Does it Apply?

- Applies to “legislative bodies”
- “Legislative body” means:
 - (a) governing board of local agency
 - (b) governing board committees created by formal action of the governing board
- Does not include individual decision makers e.g. department heads

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Committees NOT subject to Brown Act

- Ad hoc advisory committees made up solely of governing board members and constituting less than a quorum
 - No continuing subject matter jurisdiction
 - Limited term
- Committees not created by formal action of legislative body

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2. What is a meeting?

- Any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss, or deliberate on any matters within its jurisdiction.

What this means: A majority may not consult outside an agency-convened meeting.

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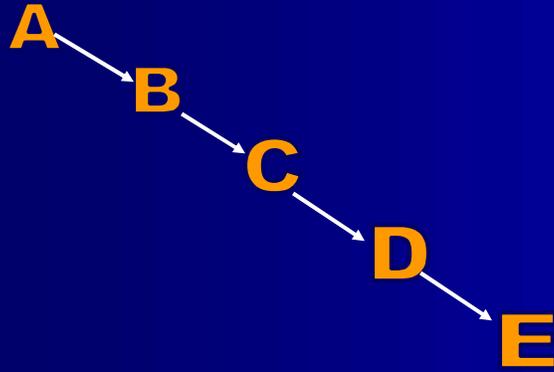
Brown Act Illegal Meetings

A majority of members may not “develop a concurrence as to action” on business through serial meetings, intermediaries, communication, or other means of subterfuge.

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Illegal Meetings (cont'd)

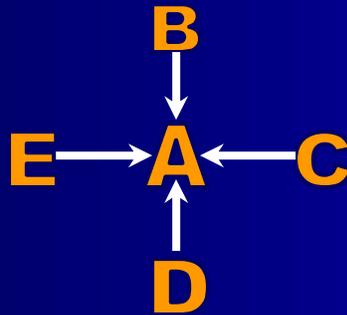
Basic "Serial" Meeting (5 members)



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Illegal Meetings (cont'd)

Intermediary or "hub" meetings (5-members)



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What is NOT a meeting?

- Individual contacts between council members and another person
- Majority of council* at
 - conference open to public
 - social or ceremonial occasions
 - public meeting on topic of local community concern

* as long as majority does not discuss council business

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3. Agenda Requirement

- Regular meeting - Agenda posted 72 hours in advance
- Special meeting - Agenda posted 24 hours in advance
- Limited exceptions where business not on the agenda may be transacted
- Must contain a brief description of every item to be discussed
- Closed session items must be listed
- Must include time for public comment

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No Consideration of Matters Not Properly Agendized Unless

- Majority vote determines emergency exists
- Two-thirds vote determines need to take immediate action if the matter came to agency's attention after agenda posted

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4. Rights of Public

- Right to be notified of items on agenda
- Right to attend without identifying oneself
- Right to record the meeting
- Right to speak before or during consideration of an item
- Right to see council materials
- Right to say anything, even if unrelated to agency business

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Limited Circumstances Where Boards and Commissions May Speak To Items NOT On The Agenda

- Brief response to statements or questions
- Brief announcement or report on own activities
- Ask questions for clarification
- Refer to staff for information
- Request staff to report back
- Direct staff to place matter on future agenda

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5. Closed Session

- **Allowed:** Litigation, personnel, real property, labor negotiations
- Must report out in open session “action taken”

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Announcing The Votes

- New requirement began in 2014
- Requires legislative bodies to report the individual votes of every council member present for all actions taken

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6. Consequences of Brown Act Violations

- Lawsuit brought by the DA or any interested persons
- Violations may be stopped by civil lawsuit
- Some actions, if not “cured”, may be declared void
- Criminal sanctions for intentional violations (up to 6 months in jail/\$1,000 fine)
- Attorney’s fees

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Public Records - Writings

- Proposition 59 created a constitutional right of access to public records
- Council records and files are open to the public under Public Records Act
- Brown Act: Materials distributed to the Council, except privileged items, are public records and must be made available for inspection and copying “without delay”

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Principle Behind Public Records Act

“Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process” CBS Ins. v. Black (1986) 42 Cal. 3d 646, 651

“To contribute to public understanding of what government is up to.” (U.S. Supreme Court)

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What is a Public Record?

- "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
 - Definition is very broad
 - Includes emails, calendars, etc.
- Request for public records can be made orally or in writing
- Public records shall be open for public inspection

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Email

- Assume email is public information
- Don't send anything you don't want to read in the newspaper
- Less is more

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What is NOT a Public Record?

There are **29 specific exemptions** where records may be withheld and not disclosed to the public.

MOST OFTEN USED SPECIFIC EXEMPTIONS:

- Some preliminary drafts that are not retained in the ordinary course of business
- Pending litigation records
- Some private personal information if disclosure would constitute unwarranted invasion of personal privacy (e.g. social security number, medical information, tax information)
- Some law enforcement records

CATCH-ALL EXEMPTION:

- “where interests are balanced and need for secrecy outweighs interest in disclosure”

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Public Records

- If agency receives a public records request it is required to...
 - Respond to request in writing within 10 days (not produce records)
 - Assist the member of the public in making a focused and effective request, if the request is unclear
 - Turn over copies of documents within a reasonable time
 - OK to charge a member of the public the actual cost of duplication

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Public Records

If you receive a request for public records consult with County Counsel quickly in order to respond within the 10 day requirement.

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Public Records

- The consequences for failing to turn over public records are serious.
 - Lawsuit
 - Paying plaintiff's court costs
 - Paying plaintiff's attorney's fees

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Information on Personal Devices

- Information kept on a home computer or phone **related to government business may be subject to disclosure** unless exempt. This includes email and appointment calendars.
- Personal information is **not** subject to disclosure and may be redacted to protect privacy interests.

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Best Practices

Assume all information is public or will become public

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Ethics + Conflicts of Interest

1. A key responsibility of Board and Commission membership is maintaining a high standard of ethics. Members are expected to demonstrate the highest degree of principle and integrity.
2. <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html>

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Political Reform Act

California voters passed the Political Reform Act (the “Act”) in 1974 declaring that “[p]ublic officials, **whether elected or appointed**, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Gov. Code 81001(b).)

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Conflicts of Interest

- Officials must disqualify themselves from participating in decisions which may affect their personal economic interests.
- Four conditions for a conflict to exist:
 - The individual makes, participates in, or uses his/her official position to **influence a government decision**;
 - It is foreseeable that the decision will **affect the individual's economic interest**;
 - The effect of the decision on the individual's economic interest is **material**;
 - The effect of the decision on the individual's economic interest is **distinguishable** from the effect on the general public.

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Conflicts of Interest

- Qualifying economic interests include:
 - Investments in/positions (inc. board of directors) with businesses
 - Investments in real property*
 - Source of income (>\$500)
 - Source of gifts (>\$420)
 - Personal financial effect (official or immediate family member)

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Conflicts of Interest

- Land use decisions affecting property near your home or business:
 - Within 500 feet: **material** → RECUSE
 - More than 500 feet: **it depends**
 - Would a reasonably person believe the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property?
 - Exception: when decisions affect the official the same as the public generally

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Conflicts of Interest

- Even the appearance of a conflict of interest can damage the public's trust in an institution
- Contact County Counsel

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Public Meeting 101

Goal: enforce will of majority; protect rights of the minority

- Rosenberg's Rules of Order
- Encourage discussion + facilitate decision making
- Framework for orderly meetings
- Invite public to be part of the process

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Consideration of Agenda Item

- Presentation
- Council Questions to Staff
- Public Comment*****
- Council Deliberation
- Motion, Second, Vote (Item closed)

- Chair is generally responsible

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Motion + Vote

- Chair: “A motion would be in order” or “A motion that . . . would be in order”
- Member: “I move that . . .”
- Member: “I second the motion.”
- Vote: need to be able to clearly identify how each member votes (roll call?)