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# Public Service Ethics and Laws

Brown Act and Procedures for Meetings  
and Public Hearings

City Council – March 2, 2020



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# State Ethics Laws

- 1. **Brown Act and open government laws** ☐
  - 2. **Meeting & Public Hearing Procedures** ☐
  - 3. **Personal financial gain and perks** ☐
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# Ethics Versus Ethics Laws

- **Ethics** = what we *ought* to do
- **Laws** = what we *must* do
  - Minimum standards
  - Penalties for violation



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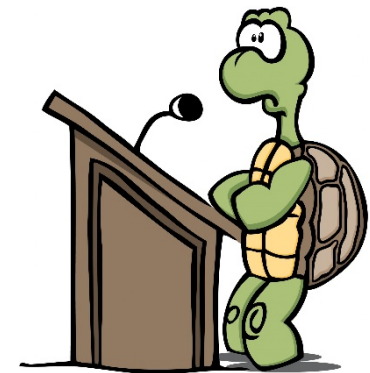
# What We *Ought* to Do = Values

- ✓ Trustworthiness
  - ✓ Loyalty
  - ✓ Responsibility
  - ✓ Respect
  - ✓ Fairness
  - ✓ Compassion
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# Goals of Meetings & Public Hearings

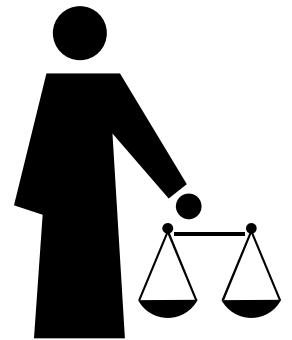
- Comply with the law
- Have fair and respectful procedures that balance efficiency with public input
- Alleviate meeting/public speaking “anxiety”
- Deal with disruptive people
- Allow all Council Members to voice an opinion



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# Types of Meeting Laws

- Brown Act: noticed written agenda; discuss only items on agenda at a public meeting; allow public comment
  - Public hearing statutes (heightened due process rules such as published notice)
  - Due process/unbiased decision makers (quasi-judicial or quasi-adjudicatory)
  - First Amendment – no content-based regulations other than to preserve purpose of the meeting (e.g. speakers can complain)
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# Public Hearing Procedures

- Staff presents a report to the Council
- Council Members ask staff questions
- Mayor/Chair opens Public Hearing
- Applicant or project proponent makes statement
- Other supporters and opponents make statements
- Applicant makes a rebuttal or closing statement
- Mayor/Chair closes Public Hearing
- Council deliberates
- Council makes a decision



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# Due Process

- Be careful of *ex parte* (“from one side”) communications and site visits with quasi-judicial decisions (e.g. land use)
- Can refuse to meet, talk or email one-on-one
- If meet in person or electronically, then
  - Forward communications to Deputy City Clerk to retain as possible public record
  - Disclose fact of meeting during public hearing
  - Disclose any new information not part of public record
  - Don’t indicate how vote (Brown Act)





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## Due Process (con't)

- Pay attention during meeting
- Avoid expressing views prior to hearing because you are an unbiased decision maker
- Avoid financial or other interests that prevent unbiased decision (e.g. family, business, conflicts of interests)
- If biased then don't participate



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# Robert's Rules of Procedure

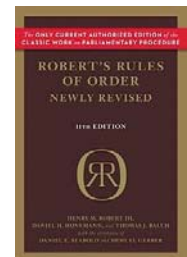
- Basic concepts of Robert's Rules:
  - One person speaks at a time
  - Every speaker is recognized by the Chair/Mayor before speaking
  - Mayor/Chair is responsible for keeping discussion on point



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# Robert's Rules of Procedure (con't)

- **Quorum** – sufficient number of members present (3 out 5 members)
  - Disqualification for conflict of interest not counted to quorum
  - Abstention counts to quorum (effect of going along with majority vote)



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# Robert's Rules of Procedure (con't)

- **Motions** – proposed course of action:

- *“I move to . . . ”*
- *“I second that motion.”*

*not to be confused with Smokey Robinson's “I second that emotion”*



- *“friendly” amendment: “I move to amend the motion by. . .”* (maker of motion must agree to amendment)
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# Robert's Rules of Procedure (con't)

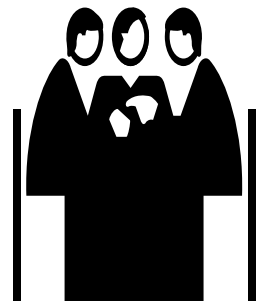
- **Debate** – typically Mayor/Chair will offer opinion last to gauge if there is a consensus and if Council ready to consider a motion
- **Vote**
  - Majority of quorum (but need at least 3 votes per State law for Council)
  - Tie vote fails



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# Brown Act – Open Government

- A majority of the Council may not meet outside of noticed meeting
  - **Not** in-person
  - **Not** through an intermediary (spoke-and-wheel meeting) – be careful about media, developers and neighbors asking how you intend to vote)
  - **Not** serially (A talks to B who talks to C)



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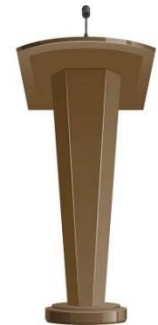
# Brown Act – Open Government (con't)

- Exceptions:
    - Closed sessions typically with the city attorney but still need to be noticed and certain announcements made
    - Noticed and public meeting of another agency
    - Conference or social event if not an excuse to caucus
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# Brown Act – Open Government (con't)

- Allow public to participate in meetings
  - Can ask for name and contact information but can't mandate
  - Reasonable time limits for speakers
  - Twice time if translation needed





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# **Brown Act – Open Government** (con't)

- To discuss something that is not on agenda:
    - Raise during the meeting under Council comments
    - If a majority of the Council agrees after minimal discussion that worthy for longer discussion, it will be put on a future agenda
    - However, staff remains guided by the City Council's Workplan until amended
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# Public Records

- Public records = Any writings prepared, owned, used or retained by Agency

- Emails
- Texts



- Documents (including emails) provided to a majority of Council are public records
  - Provide copies of documents and emails to Deputy City Clerk to retain if not using City server/email address
  - Documents provided at meeting to Council Members should be available to public
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## Key Things to Remember

Focus on

- The *merits* of decisions
  - Providing *fair* decision-making processes
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