



# **The Brown Act, PRA, and Conflicts Capitola Council and Planning Commission**

February 26, 2025



# The Brown Act

“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

**Basic Rule:** All meetings of the legislative body...must be open and public.

- **Legislative body:**
  - The governing body of a local agency or any other local body created by State or federal statute;
  - Any advisory or decision-making commission, committee, board, or other body created by charter, ordinance, resolution, or formal action of a legislative body;
  - Standing committees, regardless of their composition, that have either:
    - 1) continuing subject matter jurisdiction; or
    - 2) a meeting schedule set by ordinance resolution or formal action.
- **Meeting:**
  - Any congregation of a majority of the members of a legislative body;
  - At the same time and location;
  - To hear, discuss, deliberate or take action on any item within its SMJx

# Brown Act: Notice

- Regular meetings – 72 hour notice required
- Special meetings – 24 hour notice required
- Emergency meetings – limited application, but can be as little as 1 hour notice to media  
(Council must determine there is an emergency, generally that impairs public health or safety, or poses immediate threat)

# Brown Act: Agenda

- Must be circulated in advance of meeting
- Action or discussion on any item not appearing on the posted agenda is generally prohibited.
- For items not on agenda, Councilmembers may only:
  - Briefly respond to public statements or questions;
  - Ask a question for clarification;
  - Make a brief announcement;
  - Make a brief report on his or her activities;
  - Provide a reference to staff or other sources for factual information; or
  - Request staff to place the matter on a future agenda and report back to the legislative body in a subsequent meeting.

Gov. Code § 54954.2(a)(2)

# Brown Act: Public Participation

- The public must be allowed to speak **on any item within the subject matter jurisdiction** of the City Council.
- Comment on specific items must be permitted before or during the Council's consideration of the item.
- At special meetings, comments may be **limited to agenda items only**.
- Mayor may impose content-neutral time limit on comment.
- What about clapping and other disruptions?



# Improper Meetings: Daisy Chain and Hub and Spoke

- Daisy Chain: Member A contacts Member B, and Member B contacts Member C, and so on, until a quorum has been involved.
- Hub and Spoke: An intermediary contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the Council.

# Brown Act: Conferences

- Attendance by a majority of members at a **conference** that is related to the business of the City that is **open to the public**;
- *Provided that* a majority of the members do not discuss amongst themselves business “of a specific nature” that is within the subject matter jurisdiction of the agency.

Gov. Code § 54952.2 (c)(2)





# Brown Act: Community Meetings

- A majority of the Council may attend an open and public meeting held by another organization to address a topic of local community concern.
- But a majority may not discuss business of a specific nature within the Council's subject matter jurisdiction.

# Limited Social Media Exception



- A member of a legislative body **may** communicate on social media to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body, ***provided that a majority*** of the members of the legislative body ***do not*** use the internet-based social media platform ***to discuss amongst themselves agency business***.
- A member of the legislative body **may not respond** directly to any communication on a social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared ***by any other member of the legislative body***. Cal. Gov. Code § 54952.2(b)(1)(3)

# Brown Act: Closed Sessions

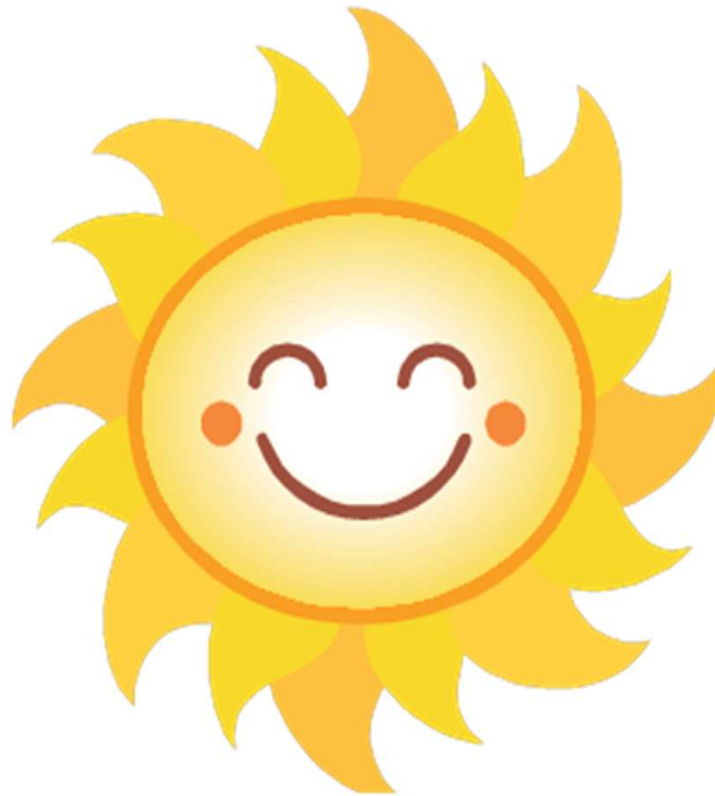
- Closed sessions are an **exception** to the rule that City meetings must be open and public.
- Only topics authorized under the Brown Act may be discussed in closed session.
- Most common closed session topics :
  - Litigation (Existing or Potential);
  - Real Estate Negotiations;
  - Personnel Matters;
  - Labor Negotiations.

Gov. Code § 54954.3

# Closed Sessions

- Disclosure of confidential information is prohibited unless the legislative body authorizes the disclosure of the information.
- “Confidential information” = communication made in closed session that is specifically related to the basis for the closed session meeting.
- Unauthorized disclosure could result in referral to a grand jury, disciplinary action by the City (censure, for example), or a court order enjoining disclosure

# California Public Records Act ("PRA")



# Public Records

- **“Public Record” means:**
  - 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 characteristic.

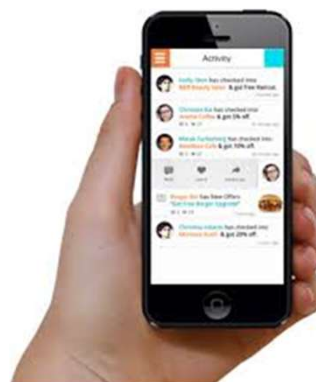


Gov. Code § 7920.530

# Personal Devices/Public Records

## *City of San Jose v. Superior Court*

City employees' or officials' communications regarding official City business may be subject to disclosure as “public records” retained by the City under the PRA, even if the employees used personal e-mail or text message accounts in their preparation or transmission.



# Public Records

- Not every document is a “public record.”
- Test:
  - Does it relate in some substantive way to the conduct of the public’s business?
  - Or is it primarily personal?
- Factors: content; context; purpose; audience; was the individual acting within the scope of their employment or office.



# Public Records



## Exceptions:

- Preliminary drafts not ordinarily retained where the public interest in withholding *clearly outweighs* the public interest in disclosure;
- Documents related to pending litigation,
- Personnel, medical, or similar files;
- Attorney-client privileged; or
- Catch-all (public interest balancing test).

# Conflict of Interest Rules

- **Political Reform Act**
  - Government Code § 87100, *et seq.*
  - FPPC Regulations, title 2, division 6, section 18109, *et seq.*
- **Contractual Conflicts**
  - Government Code § 1090
- **Common Law Conflicts**



# General Rule of Disqualification

- A public official may not:
  - make/participate in the making/or influence
  - a governmental decision
  - that will have a reasonably foreseeable material financial effect on
  - the official's or his or her immediate family's financial interests
  - that is distinguishable from the effect on the public generally
- Must consider financial interests of “immediate family,” which includes spouse and dependent children.

# Economic Interests

- Any source of income of at least \$500 received by the public official within 12 months before the decision is made.
- Any business entity, as defined in Section 82005, in which the public official has a direct or indirect investment worth at least \$2,000 or in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- Real property in which public official has an interest of at least \$2000 that is within 500-1000 feet of the site that is subject to the Council's decision.
- Indirect investments: economic interests of the official's spouse, child, agent, or business interest are imputed to the official.

# Leasehold Interests

The reasonably foreseeable financial effects of a decision on leased real property is material only if the governmental decision will:

- Change the termination date of the lease;
- Increase or decrease the potential rental value of the property;
- Change the official's actual or legally allowable use of the property; or
- Impact the official's use and enjoyment of the property.



# Exceptions to Potential Economic Interest Conflicts

- “Public generally”: Decisions that affect a **broad range of persons or interests** may be exempted: 25% of (i) all businesses, (ii) all real property, or (iii) all individuals. Eg: decisions involving rates or fees; changes to Zoning Code; placing a tax measure on the ballot; large projects that affect large portions of the community.
- “Legally required participation”: May apply if a conflict disqualifies so many officials that there is no longer a quorum to make a decision. Does not apply if: (1) quorum could later be met (ie Councilmembers who could otherwise vote are absent); (2) to break a tie vote.

# What Happens If Disqualified?

- If disqualified:
  - Identify the financial interest (with specificity).
  - Step down from the dais and leave the room (unless on consent calendar).
  - Refrain from any discussion or participation on the item, including with staff and other Councilmembers before it goes on the agenda.



**Exception:** You can participate as a member of public from the audience on matters affecting personal economic interests.

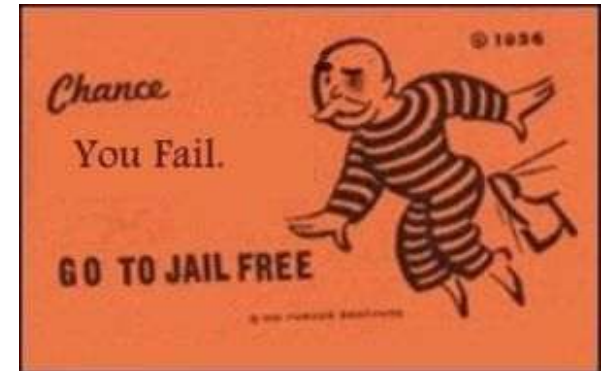
# Contractual Conflicts of Interest

- Section 1090 prohibits **officials** and **employees** from having **financial interests in contracts made by them in their official capacities** or any board of which they are members.
- **Rule:** Public officials are absolutely prohibited from having a financial interest in a contract made by them or their body. (Gov. Code § 1090.)



# Contractual Conflicts of Interest: Violations and Consequences

- Contract is void and unenforceable.
- Remedies are against the *Councilmember*.
  - Official must return any money, but City keeps the benefits received.
  - Violation is a felony (if willful):
    - Fine,
    - Imprisonment, and
    - Lifetime bar from holding office in California.



# Rosenberg's Rules

- Simpler, more streamlined alternative to Robert's Rules of Order
- Three basic motions:
  - Basic motion. (“I move that the Council host a carnival in April.”)
  - Motion to amend: changes the basic motion. (“I move that we amend the motion to host the carnival in July.”)
  - Substitute motion: replaces the original motion. (“I move a substitute motion that we host a crab feed in April.”)

# Rosenberg's Rules

- Friendly amendment: informal, quick procedure that modifies the original motion
  - Does not require a vote, just acceptance by the motion maker and member who seconded the motion.
- Multiple motions: taken last to first.

# Rosenberg's Rules

- General order:
  - Item called.
  - Staff report.
  - Clarifying questions from Council/ Commissioners.
  - Public comment.
  - Chair/ Mayor invites a motion.
  - Motion/ second.
  - Motion is clarified if necessary.
  - Discussion.
  - Vote
  - Chair/ Mayor announces result of vote.

# Rosenberg's Rules

- Other motions:
  - Motion to adjourn: simple majority; no debate.
  - Motion to recess: simple majority
  - Motion to fix time to adjourn: simple majority
  - Motion to table: puts an item on hold; simple majority
  - Motion to limit debate/ call the question: stops debate; super majority
  - Motion for reconsideration:
    - Simple majority
    - Must be made at the meeting where the initial item was voted upon.
    - May only be made a member who voted in the majority on the original motion.



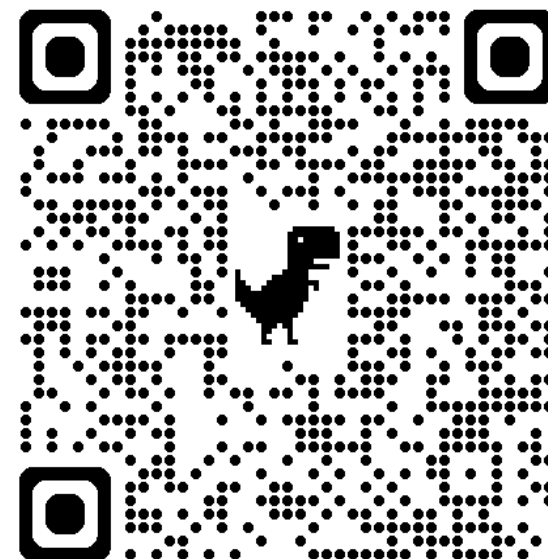
# CITY COUNCIL ONBOARDING

February 26, 2025



# City Administrative Policies

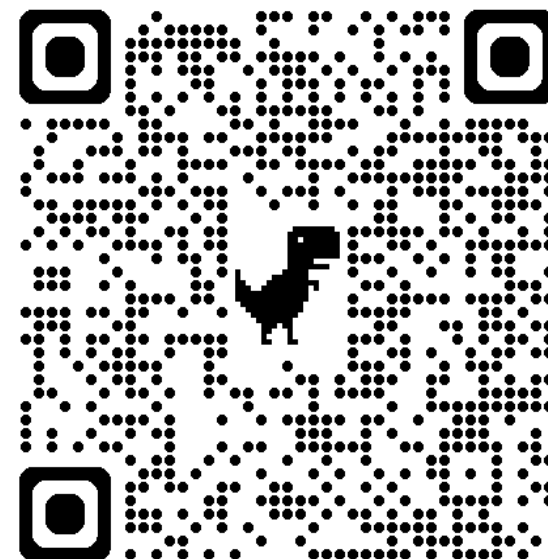
- I-31 Abstentions
- I-18 Social Media Use
- I-42 Code of Conduct
- I-20 Board & Commission Guide
- V-11 Cell Phone Use
- V-8 Blogs





# City Administrative Policies

- I-31 Abstentions
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# City Council Abstentions

- Administrative Policy I-31
  - 2013
- Works in conjunction with FPPC regulations
- Outlines consistent procedures for abstentions
- Policy states:
  - Councilmembers shall not abstain simply to avoid casting a controversial vote
  - If Councilmember has any legitimate basis for not voting on a particular item, Councilmember should follow FPPC regulations to recuse
  - It is inappropriate for Councilmember to participate in City Council debate, ask questions, express opinions and then abstain from voting



# Social Media Usage

- Administrative Policy I-18
  - ▣ Created/Adopted 2019
- How to appropriately use social media





# Different Types of Decisions

- Quasi-Judicial: applies rules or standards to an individual, project, or circumstance
- Legislative: establish public policy, apply rules to groups of property or people
- Does my decision affect one or many?

	<u>Acceptable</u>	<u>Potentially Acceptable</u>	<u>Discouraged</u>	<u>Against Policy</u>
<u>Action</u>	<ul style="list-style-type: none"> <li>• Sharing City-created social media posts</li> <li>• Sharing content regarding legislative proceedings, City policy, budget and events</li> <li>• Posting self-created content regarding legislative proceedings, City policy, budget and events</li> </ul>	<ul style="list-style-type: none"> <li>• Sharing or posting content regarding quasi-judicial City matters in a consistent fashion.</li> </ul>	<ul style="list-style-type: none"> <li>• Treating individual quasi-judicial matters differently. For example, only sharing content related to selected development projects and not others.</li> </ul>	<ul style="list-style-type: none"> <li>• Expressing personal opinions on quasi-judicial matters, prior to voting</li> <li>• Violations of the Brown Act</li> </ul>
<u>Remedy</u>	<ul style="list-style-type: none"> <li>• No additional action</li> </ul>	<ul style="list-style-type: none"> <li>• Ex-parte Communications must be submitted to the City for inclusion in the record</li> </ul>	<ul style="list-style-type: none"> <li>• Ex-parte Communications must be submitted to the City for inclusion in the record</li> <li>• Official may need to recuse from voting</li> </ul>	<ul style="list-style-type: none"> <li>• Ex-parte Communications must be submitted to the City for inclusion in the record</li> <li>• Official must recuse from voting</li> </ul>

Capitola Recreation Presents

**FREE**

# FAMILY MOVIE NIGHT

@ THE CAPITOLA COMMUNITY CENTER  
**FRIDAY, OCTOBER 29**



capitolasoquelchamber



Hey you guys... join @capitolarecreation for Family Movie Night on Friday, Oct 29 at the Capitola Community Center at Jade Street Park. Doors open at 6pm, movie starts at 6:30pm.



Come for a frightfully fun family showing of the 1980's classic 'The Goonies'! Movie will be shown on the big screen outdoors, weather permitting (indoors in the event of rain).



Children are welcome to dress up for a Halloween costume contest that will take place just prior to doors opening.



This is a free, family friendly event. All are welcome. Fun treat bags will be available for the kids!



You'll want to stay cozy, so bring warm blankets, pillows and low back chairs. Come early, space is limited to 200 people.



Sponsored by @capitolasoquelchamber and Scott Joly, Realtor/Manager at @thunderbirdrealestate

#thegoonies #familymovienight #capitola #halloween #costumecontest #treats #familyfun #happyhalloween #capitolarecreation #capitolasoquelchamber



Liked by capitolaguards and others

OCTOBER 22, 2021



Add a comment...

Post

Acceptable - Encouraged

## Active Weather Pattern This Week

Weather Forecast Office  
San Francisco Bay Area  
Monday, March 6

PLAN > PREPARE > ACT



A period of moderate to heavy rain is *looking more likely* across the Bay Area and Central Coast for later this week (late Thurs-early Sat).



This potential is now 3-5 days away and confidence is *increasing*



When Will We Know More? | The evolution of forecast confidence

7+ Days

General weather pattern. Above/below normal trends for temperature and precipitation.

2-7 Days

General highs and lows, which days/areas might get precipitation.

<48 hours

Hourly temperatures, precipitation amounts for specific areas. Wind direction and speed for specific areas.



cityofredwoodcity



cityofredwoodcity Heads up everyone! It looks like we're in for some wet weather this week. There's growing confidence in an impactful rain event, so make sure to stay updated with weather forecasts as we learn more.

In the meantime, it's always a good idea to prepare for storms and potential flooding. Here are some tips to stay prepared:

- Have a kit with essentials like flashlights, batteries, and a first aid kit
- Keep an eye on local news and weather updates for any road closures
- Clear gutters and drains to prevent water from backing up and causing damage

For more tips and helpful resources, please visit [www.RedwoodCity.org/StormPrep](http://www.RedwoodCity.org/StormPrep).

Stay safe and dry out there, everyone! ❤️

#WetWeather #StormPreparedness

@nws

1h



Liked by davecohers and others

4 HOURS AGO



Add a comment...

Post

# Acceptable - Encouraged



**Councilman John** I don't normally post, but what do you think of the plans for a private playground at 123 East Street? Leave Comments here!

## Discouraged

**Why:** IF only posting on a SPECIFIC quasi-judicial items, the official is treating these items differently

**Result:** All communication (posts and any comments) must be submitted to City for inclusion in the records (same as Additional Materials)



**MayorJaneDoe** I oppose this housing application!  
Come to tonight's PC meeting to fight this project  
and make sure these are never built in Capitola!!!  
#NoOnAffordableHousing #NotInMyBackyard

## Against Policy

**Why:** Depicts an Officials' opinion on a SPECIFIC quasi-judicial item

**Result:** 1) Official should recuse from voting on item  
2) All communication (posts and any comments) must be submitted to City for inclusion in the records (same as Additional materials)





# Code of Conduct

- Administrative Policy I-42
  - ▣ Originally developed in 2020 and adopted in 2021
- Works in conjunction with legal requirements
- Core values for City Council members and appointed officials
- Procedures to investigate violations of the standards, and penalties



# Admin Policy I-42

- Transparency and decision-making standards
- Standards for relations with other councilmembers and decorum at public meetings
- Standards for communications with the public, boards and commissions, other governmental agencies, staff, and media
- Establishes guidelines for interactions between City Council, Appointed Officials, and City staff

# CMC: Agenda Setting and Meetings (2.04.140)



- The following have authority to place a matter on the council agenda:
  - *At an open meeting:* Mayor or any City Council Member
  - City Manager
  - The city council may, after the seventy-two-hour agenda-posting deadline has expired, add items to the agenda in the manner provided in Government Code Section 54954.2(b);
  - City Treasurer, City Clerk, or city attorney, provided the subject is reasonably related to their powers and duties and concerns a subject upon which the council has authority to act.
  
- Other persons must direct their agenda requests to the city council (at council meetings), the mayor, or the city manager. Agendas shall otherwise be prepared under the direction of the city manager and shall be posted, noticed and distributed in accordance with the Brown Act.



# CMC: Agenda and Meetings

- 2.04.170 Conduct of Meeting
  - ▣ Mayor (or Vice Mayor) presides over meetings.
- 2.04.190 Order of Business
  - ▣ Mayor can vary item sequence.
- 2.04.220-240 Addressing Council
  - ▣ Mayor introduces public comment
  - ▣ Nobody may speak to Council after motion is made/seconded unless the majority of the Council agrees
  - ▣ Remarks are made to body as a whole, not one person
  - ▣ No question shall be asked of a councilmember or staff member, except through the Mayor.

# CMC: Agenda Setting and Meetings



- Requirements to add item to agenda during meeting
  - ▣ Finding by a majority vote that an emergency situation (generally involving health and safety or “dire emergency”) exists; OR
  - ▣ Finding by a super-majority vote that there is need to take immediate action and that the need arose after the agenda was posted.
  
- Where items are placed on agenda (“Placement”)
  - ▣ Consent vs. General Government
  - ▣ Mayor and City Manager collaboration



# Public Comment

- General public comments (Oral Communications)
  - Anything within the jurisdiction of the legislative body
  - Items not on General Gov/Public Hearings
  - Items on Consent Agenda
  
- Public comment on agenda items
  - Required prior to Council vote
  - What's allowed, what's not
  
- Responding to public comment



# CMC: Agenda/Meetings

- How vote is conducted (2.04.250):
  - ▣ No member of the council shall be allowed to explain his or her vote or discuss the question while the roll is being called, and no member shall be allowed to change his or her vote after the vote is announced by the presiding officer.



# CMC: Boards/Commissions

- 2.04.010 Categories – establishment of boards/commissions
- 2.04.020.II City Boards and Commissions Policies
- 2.04.030-070: Authority to establish boards and commissions, referrals to boards/commissions, use of city personnel for boards/commissions





# Capitola's Advisory Bodies

- Art & Cultural Commission
- Commission on the Environment
- Finance Advisory Committee
- Historical Museum Board
- Planning Commission



# City Advisory Bodies

- Bodies that provide guidance and recommendations on specific topics
  - ▣ More details, hands-on decision making
  - ▣ Example : Council direction > board follow through
  - ▣ Subject to the Brown Act
- Made up of community members appointed by Council
- Council can refer an item to a board, commission, body, by motion passed by simple majority, at a Council meeting
  - ▣ Item being referred must be on an agenda
- Staff “Clerk” for each