

Brown Act & FPRA & Code of Conduct Training

May 5, 2021



PRESENTATION TOPICS



- Brown Act – Government Code 54950-54962
- FPRA – Government Code 81000-81016; California Code of Regulations Sections 18110-18997
- Town Council Code of Conduct Policy Number 2-04

What are the three major principles of the Brown Act?

- Notice to the public.
- Opportunity for the public to be heard.
- Transparency in decision-making.

BROWN ACT



Preamble: Doing the People's Business

- "... Councils . . . 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."
- "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."

BROWN ACT



What is a Brown Act meeting?

- A meeting is a gathering of a majority of members to hear, discuss, or act on any item related to Town business.
- A meeting under the Brown Act does not have to include action.
- It can simply be the exchange of information.

BROWN ACT



What is NOT considered a Brown Act meeting?

A majority of the body may attend the following so long as they do not discuss official business by themselves:

- Conferences.
- Community meetings.
- Meetings of other legislative bodies, such as the County Board of Supervisors.
- Social or Ceremonial events.

BROWN ACT



What is a serial meeting and are they allowed under the Brown Act?

- Serial meetings are not allowed.
- Serial meetings occur when a majority of the commissioners have communicated about an issue and have developed a collective concurrence.
- A collective concurrence is developed when:
 - Members have either directly or indirectly heard each others opinion on a topic enough to collectively develop or begin to develop an agreement on an issue.

BROWN ACT



Does the Brown Act apply to emails, social media, and blogging?

The Brown Act applies to any form of communication, whether it is in person, over the telephone, by email, or through other online and social media sources.

BROWN ACT



Use of Personal Email

- California Supreme Court has held that messages sent or received from personal email accounts by public officials and employees that relate to the public's business are considered "records" under the California Public Records Act.
- Council Members must refrain from communicating with one another through email and should never use their personal email account to conduct Town business.

BROWN ACT



Regular Meetings

Conditions for a regular meeting:

- Written notice posted at least 72 hours prior to the regular meeting in a site freely accessible to the public.
- Notice must include the time and place of the meeting, and a brief description of all business to be transacted or discussed.
- Cannot consider business that is not mentioned in the notice.
- Notice is required even if no action is taken at the meeting.
- Every regular meeting must allow for a public comment period.

BROWN ACT



Special Meetings

Conditions for a special meeting:

- Written notice posted at least 24 hours prior in a site freely accessible to the public.
- Notice must include the time and place of the meeting, and a brief description of all business to be transacted or discussed.
- Cannot consider business that is not mentioned in the notice.
- Notice is required even if no action is taken at the meeting.
- As with regular meetings, every special meeting must allow for a public comment period.

BROWN ACT



Closed Session Overview

- “Secret meetings” are closely scrutinized by the press and public.
- Only allowed when expressly permitted by law.
- Agenda description is required.
- No minutes or tape recording required.
- Public may comment before session.
- Some actions must be reported out
- Confidentiality required!

BROWN ACT



Permitted Closed Session

- Legal Advice on Pending Litigation.
- Instruct Real Estate Negotiators.
- Employee Performance Evaluation & Complaints (for TM and TA only).
- Labor Negotiations.

BROWN ACT



What are the consequences of violating the Brown Act?

- Enforced through civil lawsuits brought by private citizens.
- Violations can also be criminally prosecuted, but the prosecutor must prove a knowing violation of the Brown Act with the intent to deprive the public of information.

BROWN ACT



What does FPRA stand for?

- Fair Political Reform Act.
- The Act's major provisions regulate political activities in campaign finance, lobbying registration and conflicts of interest.
- Every member, officer, employee, or consultant of a state or local government agency is a public official for purposes of the Act.

FPRA



Purpose of FPRA?

To ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests.

FPRA



Fair Political Reform Act Requires

- All public officials to refrain from participating in decisions in which they have a financial interest.
- Requires designated officials to file financial disclosure statements (700 Form).
- Imposes limits on designated officials on the acceptance of gifts and honoraria.
- Imposes post-employment restrictions.

FPPRA



Fair Political Reform Act Conflict of Interest Summary

- Prohibitions
- Disclosure
- Disqualification

FPPRA



Two Prohibitions

- Gifts over \$520
 - From a Single Source
 - In a Calendar Year
- Honoraria
 - Payment for Speech or Attendance
 - Prohibited at Any Amount

FPRA



Gifts Include

- Meals
- Tickets
- Passes
- Discounts
- Travel

FPRA



Gifts Do Not Include

- Informational Materials.
- Gifts From Family.
- Inheritance.
- Personalized Plaques.
- Birthday & Holiday Gifts if Equal Value is Exchanged.

FPRA



Gifts Do Not Include

- Home Hospitality if Host is Present.
- Wedding Gifts.
- Travel & Lodging in California in Connection with Speech.
- Admission to & Refreshments at an Event at Which Council Member is Speaking.

FPPRA



Disclosure

- Gifts Totaling \$50 from Single Donor.
- Identify Donor and any Intermediary.
- Intermediaries Must Disclose Actual Source of Gifts.

FPPRA



Economic Interest in a Council Decision

- Economic/Financial Interest in a Council Decision Triggers Disqualification.
- Reasonably Foreseeable That Decision will have a material Financial Effect on your economic interests.
- Financial Interest of Council Member or Immediate Family.

FPRA



Financial Interests

- Investment of \$2,000 in Business Entity.
- Investment of \$2,000 in Real Property (1000 foot Rule).
- Source of Income of \$500 or More.
- Involvement in Business Entity: Director, Officer, Partner, Trustee, Employee, Manager.
- Donor of Gifts of \$440 or More.

FPRA



Disqualification Process

Unless Absent from Hearing

- Disclose on the Record at the Meeting.
- In Detail.
- Recuse from Discussion and Vote.
- Leave the Room.

FPRA



Town Council Code of Conduct Policy

- The Town Code of Conduct Policy holds Council Members to standards of conduct above and beyond what is required by law.
- The Policy requires Council Members to approach their work, each other, and the public in a manner that reflects ethical behavior, honesty and integrity.
- Town Council Members work is characterized by open constructive communication, innovation, and creative problem solving.

CODE OF CONDUCT



Town Council Code of Conduct Policy

The Policy requires Council Members to:

- Use formal titles.
- Practice civility and decorum in discussions and debate.
- Be respectful of others and diverse opinions and allow for the debate of issues.
- Honor the role of the presiding officer in maintaining order and equity.
- Comment and discussion should commence upon the conclusion of all public testimony and reserve decisions until all applicable information has been presented.
- Refrain from engaging the speaker in dialogue but may ask speaker questions.
- For purposes of clarification, Council Members may ask the speaker questions.

CODE OF CONDUCT



Town Council Code of Conduct Policy

When communicating and working with staff, Council is required to follow these guidelines:

- Treat staff as professionals with dignity, civility and decorum.
- Direct questions about policy, budget, or professional opinion to the Town Manager, Town Attorney or Department Directors.
- Do not direct policy/ program administrative functions and implementation.
- Communicate questions, corrections, and/or clarifications about agenda items to staff prior to Council meetings.

CODE OF CONDUCT



Town Council Code of Conduct Policy (Cont.)

When communicating and working with staff, Council is required to follow these guidelines:

- Do not direct the Town Manager to initiate any action, change a course of action, or prepare any report without the approval of Council.
- Do not attend Department staff meetings unless requested by the Town Manager.
- All Council Members should have the same information with which to make decisions. Information requested by one Council Member will be shared with all members of the Council.
- Concerns related to a Town employee should be directed to the Town Manager. Council Members should not reprimand employees.

CODE OF CONDUCT

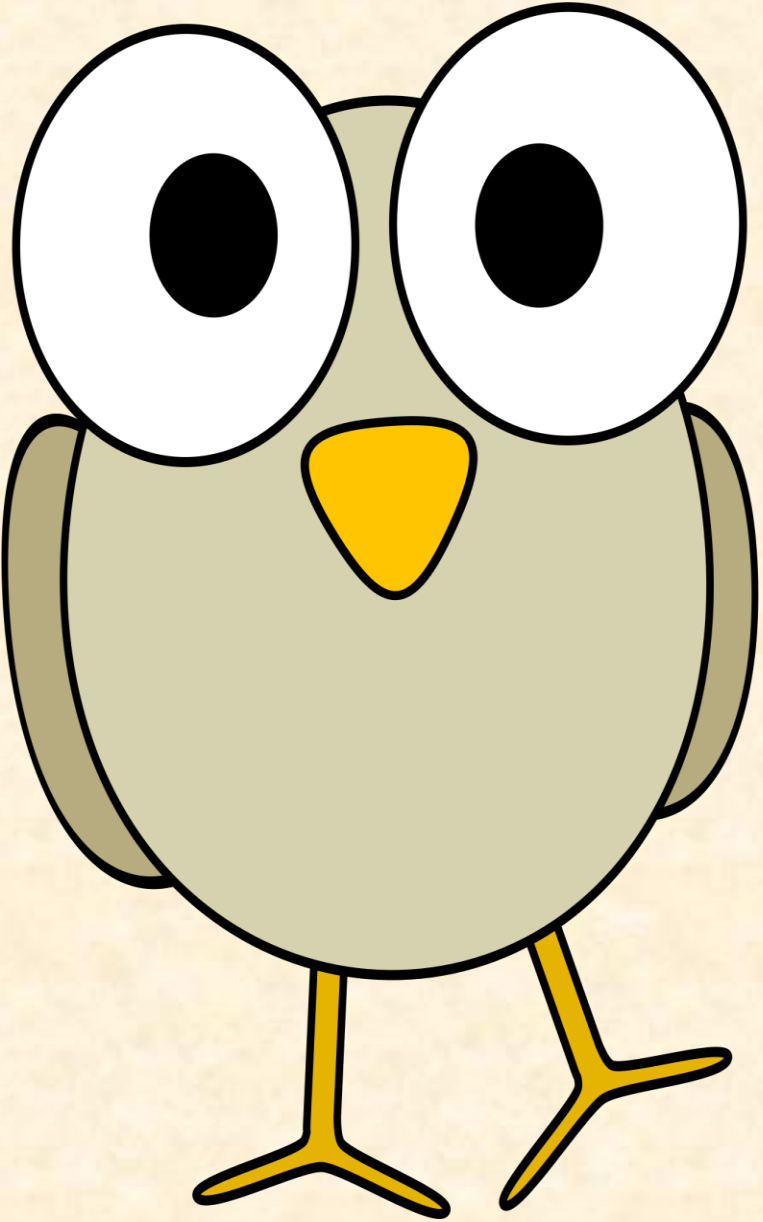


Code Compliance

- Part of the "executive" powers delegated to the Town Attorney.
- Town Council's role is ordinance adoption or modification and budgetary in nature.
- Town Council cannot give direction as to what action should be taken in specific cases
- This division of power is because executive/administrative officers are immune from any liability for enforcing the code.

CODE
COMPLIANCE





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QUESTIONS?

