
The Brown Act & Planning Commission Rules and Procedures

City of Rancho Palos Verdes
Planning Commission



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ATTORNEYS AT LAW

Part I: 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)



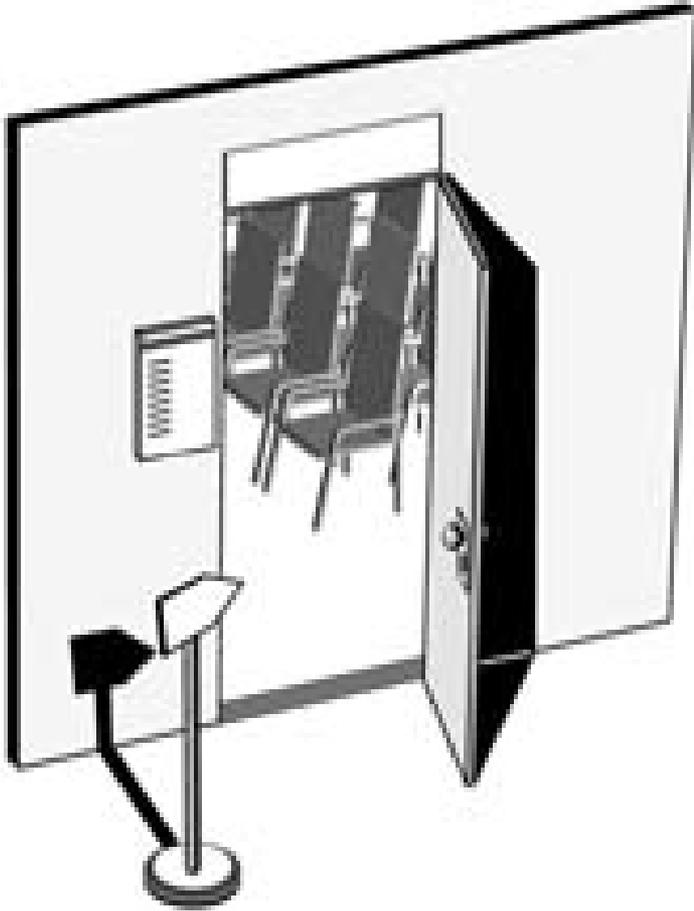
APPLIES TO “LEGISLATIVE BODIES” AND ADVISORY BODIES

- Commission and committee bodies.
 - Does *not* apply to bodies of less than a quorum.
 - 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!***

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!



Agendas

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).

Public Comment

- Public has the right to talk about anything they want that's not on the agenda. We do that 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 each and every item as it comes up before deliberations have been made.



The Brown Act

PENALTIES: Failing to Comply

- Injunction, Mandamus & Declaratory Relief—and a violation may cause City to pay attorney fees of the plaintiff.
 - Voidability of Decision.
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Part II: Planning Commission

Rules and Procedures

- P.C. Resolution 2011 – 25: Applies to the conduct of all business before the Planning Commission
 - Role of Chairperson
 - Quorum/Recusals
 - Order of presentation at public hearings
 - Oral evidence
 - Evidence received outside a hearing (disclose!)
 - Motions
 - Decision making
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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



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.

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:

Amended Motion

- A motion on the floor may be amended at any time before adoption or rejection.
- Amendments shall be voted first, then the main motion as amended—Vote backwards: last motion is voted first.

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 staff report 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 shall be made by motion and roll call vote.
 - 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.
- A Commissioner abstaining due to reasons of conflict, for purpose of the item under consideration, shall not be considered for purposes of a quorum.

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.**