

Planning Commissioner Training

Planning Commission Regular Meeting
June 25, 2018



Lisa Storck
Assistant City Attorney

Brief History of Planning Commission

- Established by City Charter section 909-910 (one of original 3 Commissions)
- Part of the City's system of boards, commissions, and committees which provides a way for residents who have special experience or interests to participate in the City's decision-making process by advising the City Council on certain issues

Planning Commission Membership

- Charter Section 910 sets forth the powers & duties, including: periodically review the City's General Plan; make studies & plans for future civic land use; annually review the City's capital improvement program solely for consistency with the General Plan; exercise such functions as to land subdivisions, zoning, and other City planning as may be prescribed by ordinance

Attributes of an Effective Commission Member

- Balanced, level-headed, and practical
- Understands the community and public process
- Has no conflict of interest = objective, open-minded & not tied to special interests
- Sincere desire to be engaged and involved in the community

Relationship with Staff

- City staff may work with the Commission, but they are accountable to the City Manager
- It is generally not within the Commission's authority to direct City staff work. It is not within your authority to tell staff to prepare an amendment to the Code, how to approach an issue or how to process an application.
- Such recommendations should be shared with the council member who appointed you

Consent Calendar

- All items listed under the consent calendar are typically enacted by a single motion without discussion
- If any member wishes to speak on a consent calendar item, he or she may request that it be removed for separate action
- Consent calendar is ordinarily approved before new business items

General Meeting Format for Business Items

1st – Chair announces agenda item and clearly states the subject.

2nd – Commission hears presentation of the staff report on the item.

General Meeting Format for Business Items (Cont.)

3rd – Chair invites a motion on the item and announces name of member making the motion (motion is a request that the commission take action = approve an item)

4th – Chair invites a “second” to the motion and announces name of member making the second (if no second, does not proceed)

General Meeting Format for Business Items (Cont.)

5th – Chair re-states the motion and presides over discussion and debate by members; members should be recognized by Chair before speaking

6th – Only one person speaks at a time. After all have spoken, Chair should repeat motion on the floor, especially if discussion is lengthy

General Meeting Format for Business Items (Cont.)

7th – Chair calls for a vote on the item
(yes/aye, no, or abstain)

8th – Chair announces the result of the vote;
seeks clarification from individual
members of their votes if necessary; the
motion “carries” by affirmative vote of a
majority of members; otherwise fails

Planning Commission Bylaws

- Chair presides at meetings and is responsible for seeing that agenda items are considered in an efficient & thorough manner
- Bylaws govern meeting conduct and procedures for Commission in general

Meetings are “Open and Public”

- Ralph M. Brown Act requires local government business to be conducted at open and public meetings
- Applies to governing body of a local agency (city council) and any commission, committee, or board that is created by formal action of the city council
- Does not apply to *ad hoc* (or temporary) committees with less than a quorum

Good Public Policy

- California (like some other states) has concluded that there is more to be gained than lost by conducting public business in the open
- Governmental action taking place behind closed doors is viewed as unresponsive and untrustworthy
- Transparency is the foundational value

What is a Meeting?

- Meeting is any gathering of a majority of members to hear or discuss any item of city business or potential city business
- Requires notice, an agenda, and a time for public comment
- Unless a majority gathering falls into one of the Brown Act's exceptions to the definition of a meeting, it will be considered a meeting subject to the Act

Face-to-Face Gatherings Only?

- Meetings subject to the Brown Act are not limited to face-to-face gatherings
- Also include any communication medium or device through which a majority of the body discusses, deliberates, or takes action on a business item outside of a noticed meeting – includes emails/texts

Social Media is awesome, BUT

- The internet never forgets
- Perception IS reality
- Anything you say can and will be held against you
- Once you say it, you can't take it back
- Mistakes are magnified
- Online conduct can be used as evidence in litigation

Social Media

- The City of Santa Ana has a prime interest and expectation in deciding what is “spoken” on behalf of the city on social media sites.
- You are personally responsible for the content you publish on Facebook, Twitter, Instagram, or any other form of social media. You should not post obscenities, slurs or personal attacks.

Social Media

- If posting to personal networking or social media sites and speaking about the City of Santa Ana, you can identify yourself as a City of Santa Ana commissioner, but use a disclaimer to make it clear that the opinions expressed on the site are your own and do not reflect the views of the City.

Social Media

- Use common sense when posting on social media sites, remember that what you write is public, may be public for a long time, and may spread to large audiences. Refrain from posting information that you would be embarrassed to see in the newspaper or on television.

Social Media

- What you say or show on social platforms becomes part of your digital footprint. As a public official, your posts, whether personal or professional, reflect not only upon you, but also upon the City.

Social Media

- As a Commissioner, the line between public and private is blurred
- Social media use by a City or its officials raises numerous First Amendment issues, as well as Public Record Act and Brown Act concerns

Teleconference

- Definition: Meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio, video, or both.
- At least a quorum of the body must participate from locations within the local agency's jurisdiction.
- Each teleconference location must be specifically identified in the notice and agenda, including a full address and room number, as applicable.

Teleconference

- Agendas must be posted at each teleconference location, even if a room or residence.
- Each teleconference location must be accessible to the public and have technology, such as a speaker phone, to enable the public to participate.
- All votes must be by roll call.

Brown Act Exceptions: Individual Contact

- Act does not apply to individual contacts between a member of the body and any other person (e.g., phone or other conversation with any other person, including staff, constituents, press, etc.)
- BUT individual contacts cannot be used to do in stages what would be prohibited in one step
- The concept of a “serial meeting”

Serial Meeting Prohibition

- Under the Brown Act, “[a] majority of the members of a legislative body shall not, outside a meeting . . . use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body”
- May not develop a collective concurrence

Problem with Serial Meetings

- Deprives the public of an opportunity to observe and participate in decisionmaking
- May occur by either a “daisy chain” or “hub and spoke” sequence
- Daisy Chain: Member A contacts Member B, B contacts C, etc. until quorum has discussed and taken action on an item
- Hub and Spoke: A sequentially contacts B, C, D, etc. and shares ideas with majority

Avoiding Serial Meetings

- Direct contacts about city business with fellow members are the clearest means by which a serial meeting can occur
- If one participant discloses the views of the other participant to a third or fourth member, etc., a serial meeting results
- Best way to avoid is to refrain from discussing agency business with a quorum or sharing views of others outside meeting

Communications with Staff and Serial Meetings

- Members of a body may consult with city staff outside of a meeting for questions or information about a matter
- Staff and commissioners should be very careful not to disclose the comments or position of any other member
- This can facilitate a collective concurrence outside of a noticed and open meeting and result in a Brown Act violation

Other Brown Act Exceptions

- Attendance at seminars and conferences open to the public and of general interest
- Attendance at community meetings that are open and publicized
- Attendance at meetings of other legislative bodies or social or ceremonial occasions
- CAVEAT: if majority present at any of these, cannot discuss any items of city business or else a meeting results

Notice & Agenda Requirements

- For regular meetings, agendas must be posted in a place freely accessible to the public and on the city website 72 hours in advance, although Santa Ana requires 96
- For special meetings, agendas must be posted at least 24 hours in advance
- Meeting agendas must contain a brief general description of each item of business; not to exceed 20 words

Discussion of Non-Agenda Items: Limited Exceptions

- Members may briefly respond to public comments or questions and provide a referral to staff or other resources
- Members may ask questions for clarification
- Members may report on own activities
- Members may request staff to report back on a matter or issue

Public Participation

- Brown Act require two types of public comment periods
- General audience public comment, during which public may comment on any non-agenda item
- Comments pertaining to specific agenda items, which must be heard prior to consideration of the item

Enforcement of Brown Act

- Violation can be a criminal misdemeanor but most often Act is civilly enforced to invalidate actions taken in violation of Act or to stop or prevent future violations
- One can only seek judicial intervention after making a written demand on the body to cure or correct the alleged violation
- Compliance results more often from regular training and self-regulation

Enforcement of Brown Act

- Member cannot be criminally liable for a violation of Brown Act unless it is shown that member intended to deprive the public of information to which it is entitled
- Relatively high standard to satisfy; filing of a criminal complaint at discretion of district attorney
- Criminal prosecutions are relatively uncommon

How to Resolve a Brown Act Violation?

- Act does not specify how to cure or correct a violation
- Best method is usually to rescind the action being complained of and start over

Thank you!

- We appreciate the time and energy you invest to serve as a Planning Commissioner while providing a valuable service to the City Council, staff and the community of Santa Ana.