



City of Los Altos All Commissioners Training Session

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Topics

- Brown Act
- Public Records Act
- Due Process/Conflicts of Interest
- Gifts



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Transparency Laws

Brown Act Basics

- Open and public meetings
- Public comment
- Types of meetings
- Meeting facility must be accessible to the public, even when participating by teleconference
- Requirement to post agenda



Brown Act: What is Permitted

- Individual contacts/conversations between a member and another person
- Individual expression of an idea
- One-way informational communication to members of legislative body



Brown Act – Illegal Serial Meetings

SERIAL MEETINGS

Use of:

- direct communication;
- intermediaries; or
- technology

to develop a collective concurrence outside of a meeting is expressly prohibited.



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The Brown Act in Cyberspace

- Blog/Newspaper/Facebook commenting
 - Serial meetings in cyberspace are “open and public”?
 - Has the Brown Act been satisfied?
 - Race to be first to comment?
 - Is “openness” the critical factor?



Trevor Bryant

Where's everyone staying in Austin for SXSW?

13 minutes ago · Like · Comment



Josh Constine I'm at the SF Embassy

10 minutes ago · Like



Me too [Josh Constine](#) ! You'll have to come by @trev



Trevor Bryant



Brown Act: Best Practices

- Do not hit “reply all,” especially to messages sent to the entire commission
- Do not send message to the entire commission
- Do not comment on online posts, especially if another member of the commission already has



Transparency Laws

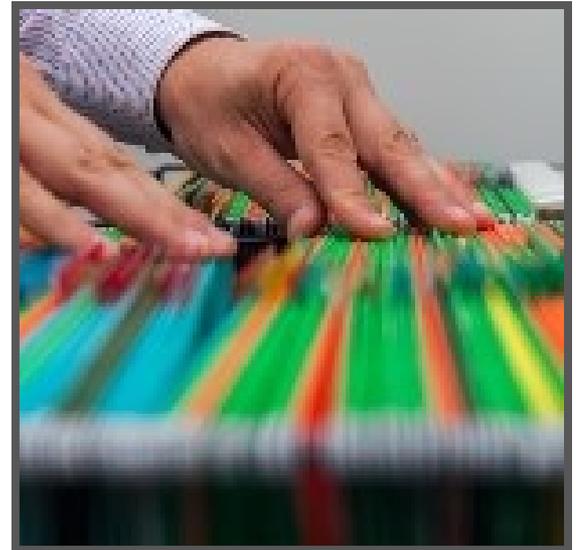
California Public Records Act (CPRA)

Every person has a right to inspect public records of any state or local agency.

What is a public record?

Any writing containing information related to the conduct of the public's business retained by any public agency regardless of physical form or characteristics

This covers paper, e-mails, text, drawings, tapes, CDs, DVDs, MP3s , etc.



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Public Records Act

City of San Jose v. Superior Court (2017) 2 Cal.5th 608

Records relating to public's business, regardless of physical form and characteristics, sent or received by city officials via personal devices are available for public inspection and copying.



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New Law – AB 119

Cal. Gov. Code Section 6254.3

- Extends the existing exemption from public inspection and authorization for disclosure to the personal email addresses of employees of public agencies unless the personal email address is used by the employee to conduct public business or is necessary to identify a person in an otherwise disclosable communication. The bill also prohibits this provision from being construed to limit the public's right to access the content of an employee's personal email that is used to conduct public business.

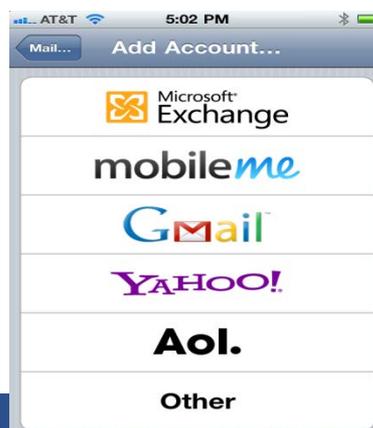


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Public Records Act Best Practices

- Use official agency e-mail account for agency business
- Do not use official account for personal business
- Do not have all accounts filter into one e-mail account where each is indistinguishable



Practice Questions

HYP0 1:

All five members of a city commission are attending a conference. Three of the members go out to dinner.

Is this a Brown Act violation?

Maybe.

If the members discuss City business.



Practice Questions

HYPO 2:

During a commission meeting, 3 of 5 members frequently look down into their laps. A local blogger later asks if they violated the Brown Act by sending texts or e-mails to each other about agency business.



- Was the Brown Act violated?
 - Yes, if concerned public business
- Public record?
 - Yes, if concerned public business



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Practice Questions

HYP0 3:

During a commission meeting, a local resident texts 3 of the 5 members of the commission asking them to vote a certain way.

- Has the Brown Act been violated?
 - Only if the three commission members all respond to the group text
- Public record?
 - Yes



Political Reform Act

Types of Economic Interests:

- ✓ Business Investment
- ✓ Source of Income
- ✓ Business Position or Employment
- ✓ Real Property
- ✓ Gifts
- ✓ Personal Finances



Fair Process Political Reform Act

- Recusal Procedures When a Member Has a Conflict
 - Publicly identify financial interest
 - Leave the room
 - Consent Agenda Exception
 - Public comment to speak on one's own interest



Other Fair Process/Recusal Issues: Due Process

“No state shall deprive any person of life, liberty or property without due process at law”

- U.S. Constitution Amend XIV, sec 1
- What does Due Process mean?
 - Notice
 - Opportunity to be heard
 - Fair and impartial decision-maker
- *Ex parte* contacts



Fair Process

Best Practices for Decision-Makers

- If you can't be fair, don't participate
- Avoid statements before the close of a hearing
- Make decisions based on administrative record
- Avoid the appearance of bias
- Pay attention
- Above all, you will be judged by your fairness and integrity



Practice Question

HYPO:

Planning Commissioner Smith rents an apartment month to month next to a property whose owner is seeking a variance to build a home that will interfere with his ocean views. Smith opposed the variance application before the zoning administrator which approved it. Smith appealed and now the matter is before the Planning Commission.

Can Commissioner Smith participate in the decision by the Planning Commission?



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Should Commissioner Smith participate?

No. The member would not be a neutral and fair decision maker, denying the applicant procedural due process.

Due process concerns.

- Bias.
- Lack of impartiality.
- Personal, private stake in the outcome



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Practice Question

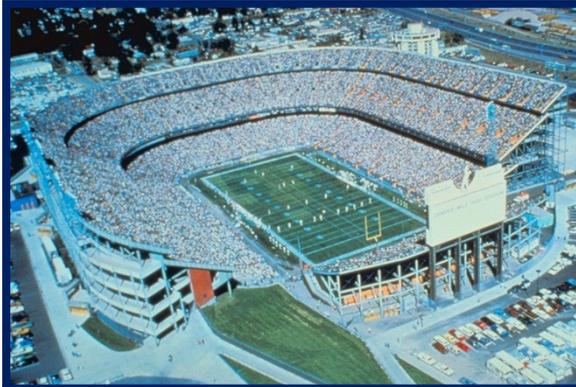
- **HYPO:**
- Planning Commissioner Jones wrote a blog post stating that a controversial development proposal would impact critical wildlife habitat and important views in the community.
- *Can Commissioner Jones participate in the decision by the Planning Commission?*
 - *Probably not. Does article advance a position against the project or seek to rally public opposition?*



Personal Advantages and Perks *Gift Laws*



Meals



Entertainment



Travel

A gift is anything of value that provides a personal benefit for which adequate consideration was not provided.



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Personal Advantages and Perks *Gift Laws*

Disclose
\$50+

Disqualify
\$470/12mos.

Refuse
\$470+

Bottom Line: Watch your calendar

- **Estimate**
- **Track**
- **If Gift Exceeds Limit: Return, Pay or Donate**



Gifts:

Common Exceptions

- Gifts to public agency
- Gifts returned unused or donor reimbursed within 30 days
- Gifts from family members
- Gifts of hospitality
- Reciprocal exchanges
- Tickets/passes to certain fundraisers
- New personal gifts



Personal Advantages and Perks

Rules of the Road

- Acceptance of passes or discounts from transportation companies is prohibited.
- Informational exception to gift rules does not include travel – exceptions apply.
- Travel may be subject to gift limits. Evaluate on a case-by-case basis – source, purpose.
- Travel paid by using agency funds is totally exempt from limits and disclosure if for agency business.





Thank you for attending

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