

Brown Act & Public Records Act Training

Visit Morgan Hill

November 18, 2019



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Owners' Association Definition

“Owners Association means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section an owners’ association shall comply with the Ralph M. Brown Act, at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act, for all records relating to activities of the district.”



Brown Act

California Government Code §§ 54950-54963

The public's right to attend and participate in meetings of local legislative bodies.

Basic Requirements of the Brown Act

- Deliberation in public – Meetings open to public
- Allow public to speak
- Provide accommodations for individuals with disabilities
- Notice of meetings – Post agendas in advance in public and online
- Only discuss items on agenda

Rights of the Public

- All meetings of the Visit Morgan Hill Board of Directors and certain committees shall be open to the public and all persons shall be permitted to attend any meeting
- Members of the public:
 - May record, broadcast, and participate in any meeting
 - With disabilities must be provided accommodations
 - Are not required to register their name or provide any other information to attend or participate in a meeting
 - May request a copy of agenda and packet by mail

Who does the Brown Act Apply to?

- All local public agencies, including City Councils/Boards of Supervisors
- Their board and commissions, committees and subcommittees (except ad hoc committees)
- Private corporations or entities created by the City Council/Board of Supervisors
- Entities that receive funding from City/County and a Councilmember/Supervisor is appointed by the City Council/Board of Supervisors and is a voting member of the entity's Board
- **Entities directly required pursuant to statute or ordinance (VMH)**
- Newly-elected members who have not yet assumed office

Who does the Brown Act not apply to?

- A temporary advisory committee (ad hoc committee) that:
 - Serves a limited or single purpose and that will be dissolved once its specific task is completed
 - Is composed solely of directors
 - Is less than a quorum of the Board
- VMH employees (administrative staff, executive director)

What is a Meeting?

Congregation of
a majority of the
members

Direct
communication
(serial meetings)

Personal
intermediaries
(serial meeting)

Technological
devices

No secret ballots

Types of Meetings

- Regular meetings
- Special meetings
- Emergency meetings
- Adjourned meetings

Meeting Exceptions

- Individual contacts
- Conference/seminar
- Community meetings
- Other legislative bodies
- Standing committees
- Social or ceremonial events
- Grand jury testimony

Conference Call Meetings

- All votes by roll call
- Must post agendas at all teleconference locations, agendas must identify all teleconference locations, all locations must be open to the public
- At least a **quorum** of the Board shall participate from locations within the MHTBID boundary

Location of Meetings

Generally, all meetings of the Board must be held within the boundaries of the MHTBID. There are exceptions to this requirement, such as:

- Meeting in the closest meeting facility if the Board has no meeting facility within the MHTBID boundary.

Agenda Components

- Brief general description of each item of business (generally not exceeding 20 words)
- Specify the time and location of the meeting
- Opportunity for public comment
- Public notice
- Items not on the agenda cannot be discussed at the meeting

Agenda



Location

Public Comment

BOARD OF DIRECTORS REGULAR MEETING
BAHIA RESORT HOTEL: DEL MAR ROOM
998 West Mission Bay Drive, San Diego, CA 92109
Friday, March 7, 2014
9:00 a.m.

Call to Order / Introductions:

Chairman C.Terry Brown

Public Comment:

Public Comment for ALL items on or not otherwise on the Agenda.

Brown

Consent Items:

Brown

1) **Authorize Amicus Brief – Existing Litigation:**

Authorization for Colantuono & Levin to file an amicus brief in *The Inland Oversight Committee v. City of Ontario; City of Rancho Cucamonga* (Super. Ct. San Bernardino County, Rancho Cucamonga Dist., 2013, No. RS1304541).

Information Items:

Brown

Action Items:

Brown

1) **Approval of Minutes:**

February 28, 2014 SDTMD meeting minutes will be reviewed, discussed and considered for approval.

2) **FY2015 Board of Directors Election - Slate of Candidates:**

Per the approved FY2014-2015 board election timeline: The slate of candidates, including received self-nominations, for the FY2015 director vacancies will be reviewed, discussed and considered for approval.

7) **FY 2015 SDTMD Consolidated Budget:**

The Draft FY 2015 SDTMD Consolidated Budget using the recommended FY2015 funding allocations will be reviewed and considered for approval.

Adjournment of Board Meeting:

Brown

BROWN ACT: Government Code 54950 (The Brown Act) requires that a brief description of each item to be transacted or discussed be posted at least 72 hours prior to a regular meeting. Action may not be taken on items not posted on the agenda. Meeting facilities are accessible to persons with disabilities. If you require special assistance to participate in the meeting, notify Lorin Stewart at (619) 209-6108 at least 48 hours prior to the meeting.

Brief

Description

Public Notice

Posting the Agenda

- Agenda must be visible for all, **72 hours** prior to regular meetings and **24 hours** prior to special meetings
- In a location freely accessible to the public and on the website
- If meeting by teleconference—agenda must be posted at all teleconference locations and identify all teleconference locations

Agenda Items

No action or discussion of items not on agenda. However, Directors may:

- Briefly respond to public comment.
- Ask a question for clarification, brief announcement, or brief report on their own activities.
- Provide reference for factual information, request report to the Board at a future meeting concerning any matter, or place a matter on a future agenda.

Items Not on Agenda (Exception 1)

Emergencies

- Defined as work stoppage, debilitating activity, disaster, mass destruction, terrorism
- Provide one hour notice before meeting
- Telephone local news outlets that have requested notice of emergency meetings
- May meet in closed session if agreed to by 2/3 of Board
- Minutes:
 - Contain list of those the Board attempted to notify, copy of roll call vote, and any action taken
 - Shall be posted in a public place for 10 days as soon after the meeting as possible

Items Not on Agenda (Exception 2)

Item came to the Board's attention subsequent to posting the agenda

- The Board finds by 2/3s vote that there is a need to take immediate action on an item and the need for action came to the Board's attention subsequent to the posting of the agenda

Closed Session

The Brown Act authorizes the Board to meet in closed session for certain matters including:

- Existing/anticipated litigation—lawyer-client privilege
- Some employee matters. (Appointment, performance evaluation, discipline)

Executive Compensation

A recent change to the Brown Act requires the Board to orally report a summary of compensation for executive staff prior to approving the compensation.

Emails

- No “Reply All”!!
- Majority of Board shall **not** use any type of communication to discuss, deliberate, or take action on any item of business, outside of a meeting
- Staff may provide information to the entire Board, however no communication as to positions of other Directors

Penalties

Criminal

- Misdemeanor



Civil

- Injunctive relief
- Voidability of action
- Attorney's fees

Public Records Act

California Government Code §§ 6250-6276.48

Access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the State.

Public Records Act

- Public has right to documents unless covered by an exemption
- Documents including emails sent/received to all or a majority of the Directors in connection with a matter to be discussed or considered at an open meeting
- Must request documents in writing - Must reasonably describe any identifiable record(s)
- District has 10 days to respond with ability to increase timeline to 24 days

Public Records Exceptions

- Preliminary drafts, notes, and inter-agency memos that are not retained in the ordinary course of business
- Records pertaining to pending litigation or claims
- Personnel and medical files

Updates to Public Records Act

In 2017, the California Supreme Court ruled that the Public Records Act applies to electronic communications sent on private devices from private accounts.

It is important to update your organization's record retention policy to comply with this change in the law.

Questions?

Thank you!

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