

01-27-21

RTC#21-134



Salary Setting Commission

**Overview of the Brown Act
and Public Records Act**

January 27, 2021

POST MEETING MATERIAL



The Brown Act

- State law, passed by the State Legislature in 1953
- Incorporated into the State Constitution in 2004
- Intended to:
 - Provide openness and transparency
 - Ensure that the public has meaningful access to its agencies
 - Provide the public with the means to provide their input



- Core tenet of the Brown Act: “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, except as otherwise provided in this chapter.” Gov’t. Code § 54953(a)
- Is Santa Clara a “local agency?” YES
- Is the Salary Setting Commission a “legislative body?” YES



- What constitutes a meeting? (GC § 54952.2)
 - A majority of the Commission to be present
 - The Commissioners must be in the same location at the same time (teleconference included)
 - The purpose is “to hear, discuss, deliberate, or take action on any item”
 - The item being discussed or decided is within the subject matter jurisdiction of the Commission



- Exceptions to the definition of “meeting”
 - Attending a conference
 - Attending a community meeting
 - Attending an open/noticed meeting of another local agency legislative body
 - Attending a social/ceremonial event
- DO NOT discuss Commission business
- Also, communications of less than a majority



- What is a “serial” meeting?
 - A series of communications of any kind (including any type of electronic means), either directly or through intermediaries, to discuss/deliberate/decide an issue within your jurisdiction
 - Daisy Chain (A to B, then B to C, then C to D, etc.)
 - Hub and Spoke (A to B, then C, then D, or intermediary contacts A, then B, then C, etc.)
 - Most common error: EMAIL (no “Reply All”)



- **NEW LAW** AB 922
 - Went into effect January 1, 2021
 - No “discussions” on social media
 - Cannot respond in any way (including posting comment or using the “like” button) to a post by another commissioner relating to something within the subject matter jurisdiction of the CSC



- How can we make meetings “open and public?”
 - First, we provide notice via published agendas
 - Second, public can provide their input
 - Public comment allowed both generally (“Public Presentations”) and specifically as to each item on the agenda
 - Third, no substantive non-agendized discussions
- Quorum required, majority vote for decision
- Covid-related changes to meeting requirements



- **Open vs. Closed Session**
 - Default is that everything is on open session
 - Certain issues may be discussed in closed session – litigation exception
 - Confidentiality
- **Penalties/Enforcement**



Robert's Rules of Order

- City Code § 2.10.020 requires that City Council meetings be conducted pursuant to Robert's Rules of Order and Boards & Commissions follow this requirement as well
- The purpose of such rules is to promote orderly conduct, clarity, and protect the rights of the minority by facilitating discussion



- Establish Quorum with Roll Call
 - Quorum = minimum number to make decision
 - If only a quorum is present, the meeting may continue, but all motions must be unanimous to pass
 - Charter Section 1003, “The affirmative or negative vote of a majority of the entire membership of such board or commission shall be necessary for it to take action.”



- Format for each agenda item:
 1. Chair reads the agenda item description
 2. Chair asks for staff report/presentation
 3. Members can ask questions of staff
 4. Chair invites public comment on the item
 5. Chair invites a motion and second
 6. Chair asks Members to discuss motion
 7. Vote is taken



Public Records Act

- Followed the Brown Act, same policy intent
- Enacted in 1968, modeled on FOIA
- Was incorporated into the Cal Const.
- Basic tenet: Governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so
- As a legislative body of the City, the work of the SSC is subject to the PRA



- **What is a public record?**
The PRA defines “public records” as “*any writing* containing information relating to the *conduct of the public’s business prepared, owned, used, or retained* by any state or local agency regardless of physical form or characteristics.”
- **Record retention requirements**
- **Penalties/Enforcement**



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