

Operating Procedures and the Brown Act

There are many local, state, and federal laws protecting the democratic process as it is practiced at the municipal level. Town Boards, Commissions, and Committees (hereafter Commissions) must abide by the same regulations as the Town Council.

There are several legal issues that members of Town Commissions should be mindful of in fulfilling their roles and responsibilities in municipal government. Each is designed to protect fair access of the citizens to their government officials and due process (a fair hearing procedure).

Public Meetings

Meetings of legislative bodies are governed by the California Government Code (G.C. 36800, et seq., and 54952 et seq.). Legislative bodies in the Town of Los Gatos are the Town Council, and Boards, Commissions and Committees organized by a formal action of the Town Council. Such bodies are required by law to establish regular meeting dates, to appoint a Chair and Vice-Chair, to conduct meetings in conformance with established parliamentary rules (Robert's Rules), and to keep minutes of their actions.

All such meetings will be held in compliance with California Government Code (G.C. 54953) known as the "Public Meeting Law" or the "Brown Act". Whether the meetings are designated "study sessions" or "regular meetings" all meetings must be open to the public and agendas for such meetings posted in one or more established public places seventy-two (72) hours prior to the meeting.

There are three types of meetings at which formal (voted) actions can take place:

Regular Meetings: Held on meeting dates which are set forth in the original rules establishing the body. The agenda is set, posted, and distributed seventy-two (72) hours before a meeting. This meeting does not have to be "called" since it is done in a regular, established manner. This meeting can be adjourned at the end of the meeting by a motion or order of the presiding officer to a specific date, time and place.

Adjourned Meeting: A regular meeting cannot be adjourned past the next regular meeting date. An adjourned meeting can be conducted in the same manner as a regular meeting, with an agenda format similar to the regular meeting agenda. The agenda must be posted seventy-two (72) hours prior to the meeting.

Special Meeting: A special meeting can only be called by the presiding officer or a majority of the body, with notice being delivered to the members of the body and the media by mail or personally at least twenty-four (24) hours prior to the special meeting (G.C. 54956). A member of the body may waive his or her notice, and attendance at the special meeting is considered proof of notice.

There are two methods of adjournment:

(1) If a meeting is adjourned at the end of a regular meeting to another date and time, a notice of adjournment stating the date and time the meeting was adjourned and the date, time and place it was adjourned to, must be posted within twenty-four (24) hours on the door of the meeting room.

(2) If a regular meeting is not going to be held and is going to be adjourned to another place, date, and time, the staff person for such body must be present at the place, date, and time of the regular meeting and announce the adjournment of the meeting out loud, stating the new date and time of the proposed meeting. The notice of adjournment stating the date and time the meeting was adjourned and the date, time and place it was adjourned to, must be posted within twenty-four (24) hours on the door of the meeting room.

Agendas

The Brown Act prohibits a Commission, Committee or Board from discussing or taking action on an item that does not appear on the agenda for that meeting. The notice of the meeting must specify the time and place of the meeting and the agenda of specific items that are to be considered. Only items on the agenda may be considered, discussed, and acted upon.

Every agenda for a regular meeting shall provide an opportunity for members of the public to address the legislative body on items of interest to the public. It is recommended that the legislative body set aside a fixed period of time early in the meeting to receive public comment.

A member may request an item to be placed on a future agenda by speaking to the chair, the staff member assigned, or by consensus of the commission, board or committee.

The Brown Act allows only very limited discussion of items that are not included on the agenda. These would include short discussions about whether to place an item on a future agenda (which should avoid an in depth discussion of the merits of any issue) and questions to staff and short responses concerning items raised during verbal communications. To comply with the Brown Act, an item must appear on the agenda for action and discussion. Items raised under verbal or written communications cannot be acted on unless an action is specifically identified on the agenda.

Posting Agendas

Town Policy requires Town staff to post a copy of the Notice of the Meeting at least seventy-two (72) hours prior to the meeting on the Town Bulletin Board in front of Town Hall, in the cabinet outside the door to the Community Development Department, on the free standing bulletin board on the first floor of the Library, and on the Town website. Each legislative body shall also keep a log of the posting of the agendas so that, should a question arise, they will be able to indicate that the agenda was posted on a certain date and time at a particular location. (These logs are presently kept in the Clerk Office.)

Agenda Packets

Agenda packets detailing the items of business to be discussed and any communications to be presented will be prepared and delivered to the members of the body within a reasonable amount of time before the meeting. Although an agenda is provided for each meeting, the degree of background material will vary. In order to be prepared for meetings, members should read these packets and contact the chairperson or the staff liaison if there are any questions regarding information presented in the staff reports.

Motions

When a member wishes to propose an action be taken on an agenda item, the member must make a motion. This is the only way a proposal from a member may be presented to the body for discussion and possible action. A motion goes through the following steps:

1. The maker of the motion asks for recognition by the Chair.
2. After the individual is recognized, he or she will say "I move that we ... "
3. The Chair will ask if there is a second. Another member of the group must second the motion in order for it to be discussed. A second is made by saying I second the motion.
4. The Chair will recognize members who wish to comment on the motion. Only one motion may be discussed at a time. It is important that all members of the group are clear on what the motion is and what its effect will be.
5. At the end of the discussion period, the Chair will call for the question and put the question to vote through a consensus or roll call vote. A majority vote is needed for the motion to pass.
6. After the vote, the Chair announces the decision "The motion is carried" or "The motion fails" and states the vote.

Other common motions:

- | | |
|---------------------------|--|
| 1. Amending a motion | I move to amend the motion by... |
| 2. Delaying consideration | I move to table the motion until... |
| 3. Closing debate | I move the previous question... |
| 4. Requesting more study | I move to refer this to (staff or subcommittee) for further study. |
| 5. Objecting to procedure | Point of order. |

Action Minutes

Action Minutes of each meeting of a Town Commission are usually recorded by the Town staff person who is serving as the liaison. Written minutes, upon approval by the Board, Commission, or Committee, constitute the official record of its activities. It is the policy of the Town Council that minutes are not verbatim. They are, instead, action minutes, recording the essence of the decisions made and actions taken.

For the convenience of the recording secretaries, meetings may be recorded in order to facilitate the preparation of minutes. However, tapes of meetings, other than Council and Planning Commissions meetings, do not become part of official Town records and may be destroyed immediately after the minutes have been approved. Minutes of all meetings are to be forwarded to the Town Council for their information and shall be filed with the Clerk Department.

Additions and corrections of the minutes may be made only in public meetings, with the approval of the body. Corrections or additions should be made at the following meeting and require a motion, second and majority vote. If approved, the corrections are noted in the minutes of the current meeting.

Quorum

A quorum is the minimum number of members that must be present for a group to conduct business. Council Policy 2-11 states a majority of the total number of filled seats constitutes a quorum. If a regular meeting is not going to be held because of a lack of a quorum, the second method of adjournment previously stated in this section must be followed.

Subcommittees

In certain instances a Commission, Committee or Board may determine that it is necessary to form a subcommittee to study a particular matter relating to that body in some detail.

- A subcommittee may be formed by a majority vote of the Commission, Committee or Board members taken at a regular meeting and cannot be comprised of a majority of the members.
- Appointments to the subcommittee are made by the consensus of the Commission, Committee or Board.
- A subcommittee is a committee which will usually last until a specific date, but no longer than one year, has limited its purpose, and is considered an ad hoc committee. If a subcommittee becomes a standing committee, then it becomes subject to the requirements of the Brown Act.
- After a particular study is completed, and recommendations are presented to the Commission, Committee or Board, the subcommittee should be disbanded.

Formal Public Hearings

The public is entitled to comment on each item on the agenda. However, some items, such as increasing a development fee or approving a Conditional Use Permit (CUP), involve additional public notice and procedural requirements by State statute or Town Code.

In order for such hearings to be held, affected parties may be notified by mail as well as publication in newspapers and posting in various locations in Town. Usually, the notice has to be given at least 10 days before the hearing; sometimes the notice may be 45 or 60 days in advance.

Hearings held by an advisory body should be fair and impartial. If a member is biased or has a personal interest in the outcome of the hearing, that member should disqualify himself/herself and not participate. State law also restricts participation in specific matters that affect a member's financial interests. If a member has a question about a possible conflict, the member should contact the staff representative well before the meeting so that assistance from the Town Attorney can be obtained.

Persons and/or groups who may be affected by the subject of the hearing should be given sufficient notice specified by law of the time and place of the hearing and a reasonable opportunity to be heard. They may be represented by counsel and be permitted to present oral and documentary evidence, and should be permitted to rebut any statements made by others.

At the scheduled time, the chair should open the hearing and explain to the audience the hearing procedures:

- Members of the public may speak on any item on the agenda, when it is heard, or on any matter NOT on the agenda, under Verbal Communications. The Chair may restrict each speaker to a limited time (generally three minutes) so all may be heard.
- The usual procedure after the hearing has been opened is for staff to present the staff report, followed by Commissioners' questions relating to the report.
- Proponents should be given the opportunity to present their case first. This is followed by an opportunity for opponents to present their case.
- After all interested persons have had an opportunity to speak the hearing is closed, ending audience participation.
- Board, Commission, or Committee members may discuss the proposal and take an action on the proposal.

A summary of the decisions made is prepared by staff and forwarded to Town Council for their information and an item is prepared for the Council Agenda by the secretary. In certain instances, recommendations should be in the form of a resolution (i.e., Planning Commission recommendations for zone changes).

There are 2 different types of hearings and decisions:

1. Administrative or quasi-judicial. In an administrative hearing, the hearing body must avoid being swayed by the numbers of proponents or opponents present, but must instead rely on the evidence and facts presented; in many such instances, detailed findings are required.
2. Legislative or policy-making. In a legislative hearing, the hearing body can use much more discretion in determining what is best for the entire community. Members of the Planning Commission should be aware of special rules concerning their contact with applicants or other interested parties.

Unlawful Action

State Code authorizes any interested person to seek a judicial determination that an action taken by the legislative body in violation of the public meeting or agenda posting requirements of the Brown Act is null and void. Prior to filing a lawsuit and within thirty (30) days of the action, the interested person must make a demand of the legislative body that it cure the challenged action.

If there is a demand for curative action for an alleged Brown Act violation, the Town Attorney's office should be consulted to ascertain whether curative action is recommended and, if so, what that action will be.

n:\clk\public education\tab 2\operating procedures and the brown act.docx