

The Brown Act & Rosenberg Rules of Order

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July 17, 2019, Regular Meeting of the
Richmond Rent Board

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Government Transparency: Brown Act

Brown Act: All meetings of a legislative body of a local agency shall be open and public, unless an exception applies

- Purpose – Conduct the people’s business in the open and give the public access to decision making
- “Public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business...”

What is a Meeting?

- ▶ A meeting occurs whenever a majority of the members of a **legislative body** come together at the same time or place to hear, discuss or deliberate on an item within its jurisdiction.
- ▶ **Legislative body** includes any body created by formal action of the City Council or other legislative body.
 - Includes standing committees, appointed bodies, advisory committee/ task force. Does not include temporary advisory committee composed solely of less than a quorum.

Government Transparency: Brown Act

▶ Meetings:

- *Includes:* direct communication, use of technology, and serial meetings
- *Excludes, for example:* individual contacts, conferences that are open to the public, community meetings, or social or ceremonial occasions. However, majority of members cannot discuss among themselves business within their local agency's subject matter jurisdiction.

Unlawful Meetings

- Pre-meetings
- Post-meetings
- Seriatim or serial meetings



• “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.”

Types of Serial Meetings

Sequential: A talks to B, B talks to C, C talks to D

Hub-and-spoke: A or staff talks to B, A or staff talks to C, A or staff talks to D

Note: Beware of email (no reply all) and social media

Posting the Agenda

- Post at least 72 hours before meeting (for regular meetings – set by resolution or other formal action by body)
- Post at least 24 hours before meeting (for special meetings – called by presiding officer or majority of body to discuss discrete items)
- Post where “freely accessible to members of the public”

Describing an Agenda Item

- Meaningful description:
 - “ [S]ufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item ”
- Identify as action or discussion item
- Members of the public allowed to speak on all items – time limits OK

The Public's Place on the Agenda

- ▶ Every agenda for a regular meeting must allow members of the public to speak on any item of interest that is within the subject matter jurisdiction of the legislative body
 - Open forum
 - Can limit time, but not content and cannot prohibit criticism

Why does it matter what is listed on the agenda?

**A LEGISLATIVE BODY
CANNOT DISCUSS OR ACT
ON ITEMS NOT ON AN AGENDA.**

Very Limited Exceptions

1. Public health/safety emergency
2. Need to take immediate action before next regular meeting and comes to the attention of the agency after the agenda is posted (2/3 vote)
3. Item on previous agenda, and continued to next meeting no more than 5 days later

Brown Act: Closed Session

Limit Closed Sessions:

- ▶ Allowable only for specific matters
 - Your attorney will determine, but could include, e.g., hiring Executive Director and existing/anticipated litigation
- ▶ Do not disclose closed session info unless authorized
- ▶ Public Comment before going into closed session

Brown Act: Penalties and Remedies

- **Criminal Penalties** – misdemeanor if undertaken intentionally to deprive public of information to which the public is entitled
- **Civil Remedies** – invalidation of actions and attorneys' fees

Public Records Act

- ▶ **Reminder:** Emails, documents, voicemails, text messages, etc. about Commission work are public records and are subject to disclosure to the public under the Public Records Act
- ▶ Supreme Court Case *San Jose v. Superior Court*. Personal email accounts used for conduct of public business=public records.

Public Records Act

- ▶ Public record = any writing containing information relating to conduct of people's business prepared, owned, used or retained by any local agency regardless of physical form or characteristic
- ▶ Disclosable to public unless specific exemption applies
 - Example: Attorney–client privileged, personnel files

Conflicts of Interest

- ▶ Training in September
- ▶ Prohibition on having a financial interest in a contract made by them or board
- ▶ Prohibition on participating in decision or influencing a decision when you have a disqualifying financial interest (Political Reform Act)
 - 1-866-ASK-FPPC
- ▶ Form 700 from Clerk's office within 30 days of assuming office and April 1 annually
 - Gift restrictions (\$500 in calendar year)

Rosenberg's Rules of Order

- ▶ No longer feel overwhelmed by the complexities of parliamentary procedure
- ▶ Able to use the rules freely to navigate the meeting
- ▶ Feel comfortable presiding over meetings

Purpose of the Rules

- ▶ Establish Order
- ▶ Promote clarity
- ▶ Easily understood by the public
- ▶ Enforce the will of the majority while protecting the rights of the minority

The Role of the Chair

- ▶ Must understand the rules
- ▶ Moves the meeting and agenda
- ▶ Takes the lead role on process
- ▶ Takes less active role in debate

Basic Format for Agenda Item

- ▶ Announce the agenda item
- ▶ Report on the item
- ▶ Technical questions for clarification
- ▶ Public comments
- ▶ Discussion and debate
- ▶ Invite a motion
- ▶ Second for the motion
- ▶ Understand the motion and vote

Voting

- ▶ Richmond Municipal Code Section 11.100.060(j)
 - The affirmative vote of three (3) Members of the Board is required for a decision including all motions, regulations, and orders of the Board

Counting ‘Abstain’ Votes

- ▶ The general (and default rule) is that you count all votes that are “present and voting”. Abstain votes are NOT counted. Members who abstain are counted for purposes of determining quorum, but it is as if the abstain votes on the motion don’t exist.

Motions

- ▶ Basic motions
- ▶ Motions to amend
- ▶ Substitute motion

To Debate or Not to Debate

- ▶ The basic rule: All motions are subject to debate or discussion
- ▶ The exceptions:
 - Motion to adjourn
 - Motion to recess
 - Motion to fix the time to adjourn
 - Motion to table
 - Motion to limit debate

Super-Majority Votes

- ▶ The basic rule: All motions require a simple majority vote to pass.
- ▶ Exceptions:
 - Motion to limit debate
 - Motion to close nominations
 - Motion to object to consideration of a question
 - Motion to suspend rules (Debatable)
 - *Richmond Municipal Code 11.100.060(j)

The Motion to Reconsider

- ▶ Special motion and special rule
- ▶ Simple majority vote need to pass But
- ▶ Must be made at a certain time
- ▶ Can only be made by certain members

Courtesy and Decorum

- ▶ Create the right atmosphere
- ▶ One person at a time
- ▶ Point of privilege
- ▶ Point of order
- ▶ Withdrawing a motion

Item J-1: Proposed Amendments to Regulation 842 Concerning Request for Reconsideration

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Item J-1: Statement of the Issue

Currently, where staff members have identified a problem with the Record in a matter on appeal, staff members cannot remedy the error, but rather must send the matter to the Rent Board for an Order of Remand to address the issue of the Record. The result is that the parties may end up waiting several months before the issue can be resolved by the Rent Board, whereas staff members could have administratively remedied the issue within thirty days.

Item J-1: Cont'd: Statement of the Issue

To address this issue, on June 19, 2019, staff members brought the matter before the Board and recommended the Board amend Regulation 842 to allow the Executive Director or assigned Designee to send a matter back to the Hearing Examiner without the requirement of a Rent Board Order, where the issue involves a clear misapplication of the law, a problem with the Record, or a change in the law or any other matter appropriate for reconsideration. The proposed amendments also added a requirement that when the Executive Director or their Designee treats and/or grants a request for reconsideration, it must be followed by a written Order of Reconsideration.

Item J-1: Board Direction

The Board agreed with the amendments but decided to postpone the adoption of said amendments and directed staff members to include language that required any determination of reconsideration be made within 15 days after the time to appeal has expired, and a new hearing be scheduled within 60 days.

Item J-1: Overview of the Process

- Pursuant to the Board's adopted regulations, any party to a petition may file an appeal with the Rent Board within thirty days (thirty-five days if mailed) of the issuance of the Hearing Examiner's decision. Appeals are both filed with and processed by the Board Clerk.
- After the 35th day has elapsed, the Board Clerk provides the appeal to the Staff Attorney.
- Staff Attorney must review the entire Record
- During the review process, the Staff Attorney may find issues warranting reconsideration by the Hearing Examiner. For instance, the Record may be incomplete due to an error in the audio recording of the hearing, or there may exist a clear misapplication of the law.

Item J-1: Timing of Reconsideration

At the June 19, 2019, meeting Board members directed staff to include language that required any determination of reconsideration be made within 15 days after the time to appeal has expired, and a new hearing be scheduled no later than 60 days from the order of reconsideration.

Item J-1: Recommended Action

- AMEND Regulation 842 to do either of the following:
- Option A:

Within 15 business days after the date to file an appeal has expired, allow the Executive Director or assigned Designee to treat appeals as requests for reconsideration, where there is a clear misapplication of the law, the law has changed, there is a problem with the Record, or any other matter where reconsideration would be appropriate considering administrative efficacy. This amendment would also clarify that the Executive Director or assigned Designee is the individual who grants a request for reconsideration and not the Hearing Examiner.

Item J-1: Cont'd Recommended Action

- Option B:

Amend Regulation 842 to allow the Executive Director or assigned Designee to send a matter back to the Hearing Examiner within a reasonable period of time without the requirement of a Rent Board Order, where the issue involves a clear misapplication of the law, a problem with the Record, or a change in the law or any other matter appropriate for reconsideration. In such an event, the Executive Director or assigned Designee must submit a written Order of Reconsideration with specific instructions identifying the good cause underlying the granting of reconsideration and the parameters of the hearing on reconsideration— Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

Rent Board Governance Regulations

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Item J-2**

Statement of the Issue

- Section 11.100.060 of the Rent Ordinance establishes basic provisions for Rent Board composition, conduct, powers, duties, and qualifications.
- Additional regulations could provide greater clarity as to these provisions to further the intent of the Rent Ordinance.

Background

- **The Rent Ordinance establishes basic provisions governing the Rent Board, such as:**
 - **Composition**
 - **Eligibility**
 - **Full Disclosure of Hearings**
 - **Term of Office**
 - **Powers and Duties**
 - **Rules and Regulations**
 - **Community Education**
 - **Meetings**



Background (continued)

- The Rent Ordinance establishes basic provisions governing the Rent Board, such as:
 - Quorum
 - Voting
 - Dockets
 - Financing
 - Integrity and Autonomy of Board
 - Budget
 - Personnel
 - Board Legal Work

Background (continued)

- The Rent Ordinance establishes basic provisions governing the Rent Board, such as:
 - Contracts and Purchases
 - Conforming Regulations
 - Reporting and Fee Payment Requirements

Possible Rent Board Governance Policies

- Regulations could address policy questions such as:
 - If a Boardmember does not own or manage rental property themselves, but an immediate family member has interest or manages real property or is a realtor, does the Boardmember “count” as one of two members who may own or manage rental property or act as realtors under the Ordinance?
 - What constitutes a conflict of interest for a Boardmember?

Possible Rent Board Governance Policies (continued)

- Regulations could address policy questions such as:
 - Can Boardmembers file Rent Adjustment Petitions? How should this process work as to avoid bias or perception of bias?
 - How should vacancies be handled?
 - Should rules and regulations issued by the Board continue to become effective immediately upon adoption, or should such policies become effective 30 days after adoption and/or a “second reading?”

Possible Rent Board Governance Policies (continued)

- Regulations could address policy questions such as:
 - What are the grounds for Boardmember suspension? On a related note, what is the process if a Boardmember's eligibility is questioned? For example, what if a Boardmember violates a local, state, or federal housing law, or is themselves not in compliance with the Rent Ordinance?

Possible Rent Board Governance Policies (continued)

- **Regulations could address policy questions such as:**
 - What policies should govern Boardmember decorum and procedure during public meetings? For example, when is the agenda packet published? Where are meetings to be held, and when? What types of items may be heard in closed session?
 - How would the Board like correspondence addressed to the Board be handled? If correspondence is profane or potentially slanderous or libelous, should such correspondence be included in Rent Board agenda packets?

Established Regulations in Peer Jurisdictions



Berkeley



San
Francisco



Santa
Monica



Berkeley Rent Board Regulation 602

- Requires a first and second reading of all proposed regulations and orders of repeal
- Does not apply to the adoption of any Annual General Adjustment



Berkeley Rent Board Regulation 690

- Provides, in part, that any commissioner of the Berkeley Rent Board who is a plaintiff or petitioner in any court action challenging the validity of seeking to enjoin the enforcement of any part of the Ordinance shall be deemed to have breached their public trust of office.
- If the Board finds that a commissioner is a plaintiff or petitioner in any such court action, the Board is required to immediately suspend the commissioner, subject to review and rescission by the City Council.
- Suspended commissioners have the right to request a hearing before the Board within 15 days of the written request.

San Francisco Rent Board Regulation

Section 2.13

- Establishes the frequency, time, and location of regularly scheduled Board meetings.

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Section 2.13 Board Meetings

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(Amended June 17, 1986; June 18, 1991; January 18, 1994;
new section (e) added; amended March 23, 2004)

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- (a) The Board shall meet on the first Tuesday of each month at 6:00 p.m. at Room

San Francisco Rent Board Regulation

Section 2.17

- Provides that no member of the Rent Board or member of the staff of the Board may participate in the consideration or decision of any case in which such person has any personal interest, including an equity interest, an interest as a landlord, tenant, or management position, or is related by blood or marriage or adoption to a landlord or tenant involved.

Santa Monica Rent Board Regulation 1009

- Establishes the powers and duties of the presiding officer
 - The Chair or Vice Chair may move, second, and debate from the Chair.
 - The Presiding Officer shall preserve order at all regular and special meetings.
 - The Presiding Officer shall sign all Resolutions and other documents necessitating their signature which were adopted in their presence, unless they are unavailable, in which case the signature of an alternate Presiding Officer may be used.

Direction Requested from the Board

- Does the Board wish to enact regulations governing its activities and/or decorum?
- Which, if any, areas of regulation would the Board like to explore?
- How, if at all, would the Board prefer staff members bring forth proposed policy options for the Board's consideration (e.g. piecemeal or comprehensive)?

Recommended Action

RECEIVE a presentation on possible Rent Board governance regulations and **PROVIDE** direction to staff – Rent Program (Nicolas Traylor/Paige Roosa 620-6564).

