



*In accordance with City Council Resolution 1995-21, the minutes of meetings of the City Council and the Boards, Commissions, and Committees of the City shall be prepared as Action Minutes.*

MINUTES 03/09/2021  
CITY COUNCIL SPECIAL MEETING – WORKSHOP  
BANNING, CALIFORNIA

COUNCIL MEMBERS PRESENT:	Mayor Wallace Mayor Pro Tem Happe, via Zoom Councilmember Hamlin Councilmember Sanchez, via Zoom
COUNCIL MEMBERS ABSENT:	Councilmember Pingree
COMMISSIONERS PRESENT:	Commissioner Krick via Zoom Commissioner Lopez via Zoom Commissioner Santana via Zoom Commissioner Cabral via Zoom Commissioner Diaz via Zoom Commissioner Sellers via Zoom Commissioner Waldron via Zoom Chairman Miller via Zoom
COMMISSIONERS ABSENT:	Commissioner Brosious Chairman Shaw
OTHERS PRESENT:	Douglas Schulze, City Manager Kevin G. Ennis, City Attorney Marie Calderon, City Clerk Jennifer Christensen, Administrative Services Director Tom Miller, Electric Utility Director Ralph Wright, Parks & Recreation Director James Wurtz, Economic Development Manager Laurie Sampson, Acting Deputy City Clerk

**I. CALL TO ORDER**

A special meeting of the Banning City Council, Planning Commission and Parks and Recreation Commission was called to order by Mayor Wallace on February 23, 2021 at 4:03 P.M.

**II. WORKSHOP**

**A. Brown Act Training**

City Attorney Kevin G. Ennis provided a PowerPoint Presentation and training of the Brown Act rules.

**III. PUBLIC COMMENTS**

The Mayor opened the workshop item for public comment.

Commissioner Sellers asked if there are more rules than what is included in the PowerPoint. Mr. Ennis answered that in addition to the Brown Act the City has a Procedural Guidelines Manual.

Seeing no other comments or questions the Mayor closed Public Comments.

**II. ADJOURNMENT**

By consensus, the meeting adjourned at 4:56 p.m.

Minutes Prepared by:



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Laurie Sampson, Acting Deputy City Clerk

*The entire discussion of this meeting may be viewed here:*

<https://banninglive.viebit.com/player.php?hash=E2RqnJfXMqCs>

*Any related documents maybe viewed here:*

<http://www.ci.banning.ca.us/ArchiveCenter/ViewFile/Item/2434>

*or by purchasing a CD or DVD in the amount of \$7.00 at Banning City Hall located at 99 E. Ramsey Street.*

# **ATTACHMENT 1**

Brown Act  
PowerPoint Presentation  
Provided by  
Kevin G. Ennis,  
City Attorney



## City of Banning

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KEVIN G. ENNIS, CITY ATTORNEY'S OFFICE

Ralph M. Brown Act (California Open Meeting Law)  
Parliamentary Procedure  
Manual of Procedural Guidelines  
Meeting Management Techniques

3.9.21



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## OVERVIEW

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- Brown Act
  - Standing Committee Meetings, Serial Meetings, and Technology
  - Agenda, Information Requirements, Items not on the Agenda
  - Public Comments, Closed Sessions, and Other Considerations
- Parliamentary Procedure
  - Motions and Voting
  - Rules of Decorum
  - Meeting Management



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### 3 RALPH M. BROWN ACT

Government Code §54953

- “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.”



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### 4 BROWN ACT – STANDING COMMITTEES VS. AD HOC COMMITTEES

- A legislative body includes
  - Governing body of the agency
  - Subordinate boards and commissions created by formal action of the governing body such as the Planning Commission and Parks and Recreation Commission
  - Standing committees with regular meeting schedule and continuing subject matter jurisdiction
  - City Council standing committees including the Budget and Finance Committee
- Standing Committees are subject to the Brown Act
  - Require posted agendas – 72 hours in advance for regular meetings and 24 hours in advance for special meetings
  - No discussion of matters outside of a meeting by its Members



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## 5 BROWN ACT – STANDING COMMITTEES VS. AD HOC COMMITTEES

- Ad Hoc Committees are not Subject to the Brown Act
- Ad Hoc Committees do not need to have agendas or be open to the public
- Ad Hoc Committees are:
  - Committees composed solely of less than a quorum of the Members of the legislative body, that don't have a fixed or regular meeting schedule, and the subject that they are created to consider is a short-term or limited duration matter
  - If they have been around for more than a year or so, they can morph into being a standing committee



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## 6 BROWN ACT MEETINGS



- What is a "meeting"?

1. Congregation of a majority of Members of a legislative body
2. At the same time and place (including teleconference location)
3. To hear, discuss, deliberate or take action on
4. Any item within subject matter jurisdiction

- Gov't Code Section 54952.2



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## WHAT IS NOT A BROWN ACT MEETING

- What is NOT a “meeting” of the City Council?
  - Ad hoc committee meetings
  - Observation of standing committee meetings
  - Individual contacts – just between two Members
  - Conferences and seminars open to the public
  - Community meetings open to the public
  - Another body of the agency – Planning Commission, etc.
  - Social or ceremonial events – attendance at parades and community events



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## 8 SERIAL MEETINGS ARE ILLEGAL

### Serial Meetings Are Illegal

- What is an illegal serial meeting?
  - Series of communications
  - Direct or indirect (intermediaries/technology)
  - Employed by a majority
  - To discuss, deliberate, or take action on any item of business or potential business



- Gov't Code § 54952.2



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## TYPES OF SERIAL MEETINGS

### Serial Meetings – Types

- Hub and Spoke:
  - A to B, A to C, A to D,
  - Consensus via A
- Daisy Chain:
  - A to B to C
  - C → Consensus



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## 10 UNINTENTIONAL SERIAL MEETINGS

### Serial Meetings - Avoiding Unintentional Serial Meetings via Technology

- Technology is great...until it isn't
  - Don't hit "Reply All" to e-mails from the City Manager to All Councilmembers providing your view of the matter
  - Text Messaging to two others on the Council
  - Social Media
    - Twitter, Instagram, Facebook
    - Can result in inadvertent violations



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## UNINTENTIONAL SERIAL MEETINGS THROUGH SOCIAL MEDIA (NEW LAW – AB 992)

### Serial Meetings - Avoiding Unintentional Serial Meetings via Technology

- Examples
  - Controversial land use project ("Project") being considered by City Council. Councilmember tweets:

Abe McAbe @Councilmember/powerdude  
I hope everyone comes out and supports the project at the City Council meeting. #supportProject #YesIMBY



- Problem if other members of the Council receive and read that Tweet



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## 12 BRIEFINGS BY STAFF AND OTHERS – HOW TO AVOID A SERIAL MEETING VIOLATION

- Individual briefings by staff are permitted
  - "Unidirectional"
  - Don't describe views of any other Members
  - Don't ask Member's views
- Individual meetings with developers and community members
  - Ask them not to share other Member's views



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## **BROWN ACT MEETING INFORMATION**

### **Agendas, Agenda Packets, and Information**

- Agenda must also be posted on City's website



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## ONLINE AGENDA MATERIALS

- Online agendas – There needs to be a direct links to online agendas that appears in a prominent place on the City's homepage
- Additional qualifications for cities that use an integrated agenda management platform
  - Gov't Code Section 54954.2



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## AGENDAS – SPECIFICITY OF AGENDA ITEM TITLES

- Regular Meeting
  - Agenda must be posted 72 hours in advance
  - Brief description of each item of business in approximately 20 words
    - Include name of contracting party or other key information such as the type of land use project and the applicant
  - Posted agenda must be freely accessible to public
  - No discussion or action on items not appearing on the agenda



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## STRAYING OFF TOPIC OR DISCUSSION OF NON-AGENDA ITEMS

- What can you discuss at a meeting?
  - Only items listed on the posted agenda
  - We all need to watch out for how a discussion can start to stray into a topic or issue that is not on the agenda
  - Ask that the separate issue or item come back on a future agenda rather than continue to talk about a non-agenda issue or item
  - If you want to talk about an item that you know that staff is not otherwise going to list on the agenda, then bring that matter to the attention of the City Manager or mention it at the end of the Meeting and ask that it be listed on a future agenda



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## PERMITTED DISCUSSION OF NON-AGENDA ITEMS

- Exceptions – what can be said at a meeting that is not on the agenda?
- Members may make a brief response to public comments
- Members may ask questions for clarification
- Members may make a brief announcement or report of own activities
- Members may request staff to report back at a subsequent meeting
- The Council can agree to place an item on a future agenda
- If you bring up items not on the agenda to discuss putting it on a future agenda – 6 minute limit – Culver City court decision
  - Government Code Section 54954.2 (a)(3)



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## ADDING ITEMS TO THE AGENDA

- When may an item be added to the agenda?
- Item came to the agency's attention after the agenda was posted and
- Need to take immediate action before the next meeting and
- Two-thirds vote required

- Government Code Section 54954.2

**URGENT**



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## AGENDAS - SPECIAL MEETINGS – NO ABILITY TO ADD ITEMS TO AGENDA

### Special Meeting

- Notice and Agenda must be
  - posted 24 hours in advance
  - received by each Member of the Council, unless waived
  - sent to media and newspapers, if requested in writing
  - state time/place of meeting and all business to be transacted
  - Can't add items by 2/3<sup>rd</sup> vote

- **Government Code Section 54956**



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## DOCUMENTS AT MEETING



- Documents distributed at meeting by staff or Member of the Council must be made available to public at meeting
- If distributed by someone else, must be made available to the public at or after the meeting

- Gov't Code §54957.5(c)



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## PUBLIC PARTICIPATION



- Can require speaker cards
- Time limits okay
- Recording permitted
- Permitted to speak on any item within the subject matter jurisdiction of the Council
- Can be required to abide by rules of decorum



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## PUBLIC PARTICIPATION – BUSINESS MEETING VS. TOWN HALL STYLE



- Many cities require speaker cards for public comments
- This means that a speaker must fill out a card and turn them in before meeting
  - Helps Mayor prepare and possibly move up items with lots of speakers
  - Avoids having to call for public comment for each item



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## PUBLIC PARTICIPATION – BUSINESS MEETING VS. TOWN HALL STYLE



- Banning allows 3 minutes on non-agenda items and 5 minutes on agenda items – recent change
- Most cities have shorter time limits per speaker on any item (usually 3 minutes)
- City's choice as to how long public comments may be



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## PUBLIC CRITICISM OF CITY AND COUNCILMEMBERS AT MEETINGS

- Public agencies may not prohibit public criticism of the agency or the legislative body
- Civil Code Section 47 makes statements at a public meeting generally privileged
- But public agencies may adopt rules of decorum and other procedural rules to ensure that its meetings are focused on accomplishing the public agency's business
- Courts balance a speaker's First Amendment rights to address the Council with the need to ensure that he or she does not unduly disrupt the meeting



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## PUBLIC CRITICISM OF CITY AND COUNCILMEMBERS AT MEETINGS

- Mayor, Councilmembers and Staff may request speaker to abide by Rules of Decorum
- Can ask speaker to focus on issue and not violate the Rules by making “rude and derogatory remarks, reflections as to integrity, abusive comments and statements as to motives and personalities”
- However, Mayor cannot force the speaker to stop and may not remove the speaker from the room if they want to make those comments unless they exceed their time or otherwise cause an actual disruption of the meeting



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## PUBLIC COMMENTS – COUNCIL QUESTIONS

- Councilmembers may ask the speaker to clarify comments or answer questions and that can occur after the speaker's time has expired
- Councilmembers questions to speakers should not be for the purpose of debating an issue with the speaker
- Public comments are not required to be included in the minutes verbatim but rather in a summary form
- City uses a form of “action minutes” which try to summarize main issues rather than include every comment made by the Council and public
- Members of the public do not have the right to “pull” items from the Consent Calendar – that is a Councilmember prerogative.
- If a member of the public wants to speak on a consent calendar item, they may do so at the beginning of the consent calendar and before Council acts to approve the consent calendar.



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## CLOSED SESSIONS

- Personnel matters/labor negotiations
- Real property matters
- Pending/threatened/ contemplated litigation



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## CLOSED SESSIONS CONFIDENTIAL INFORMATION

- Members and staff may not disclose confidential information that has been acquired by being present at a closed session to a person not entitled to it unless authorized by legislative body.

- Gov. Code 54963 (a)



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## CLOSED SESSIONS CONFIDENTIAL INFORMATION - REMEDIES

- Remedies to disclosing confidential information from a closed session:
  - Disciplinary action against an employee to require additional training
  - Referral of a member of a legislative body to the grand jury

- Gov. Code 54963 (c)



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## PARLIAMENTARY PROCEDURE

- Rules of procedure at meetings to establish orderly conduct at meetings
- Manual of Procedural Guidelines for the Conduct of City Council and Commission Meetings
  - Adopted in 2012 and amended in 2013 and 2020
  - Replaced the 2004 Code of Conduct and Pledge of Civility



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## CLARITY OF MOTIONS

- **No. 1 Tip for Councilmembers: Be clear**
- **Examples of motions that are clear:**
  - “I make a motion that we adopt Resolution No. 1234 approving a Conditional Use Permit for a restaurant at 123 Main Street.”
  - “I make a motion that we recommend that the City Council consider revisions to the City’s PUD Ordinance.”
- **Examples of motions that are not clear:**
  - “Motion to approve.” (Approve what?)



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## WHEN IS A ROLL CALL VOTE REQUIRED?

- **When to do a roll call vote**
  - When some members are on Zoom and not at the meeting.
  - When you have a controversial item or you have an application before you that you are acting upon
  - When the City Council is adopting a Resolution, Ordinance or making a payment of money
- **When to simply ask for “all in favor, any objections?”**
  - Straightforward items such as approval of the minutes or directing staff to place a noncontroversial item on a future agenda
  - Only works if all members of the body are in the Chambers and some of them are not participating by phone or by Zoom



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## HOW MAY VOTES REQUIRED TO PASS A MOTION?

### • Votes Required

- On general matters (approval of minutes, direction to staff, etc) a majority of a quorum is sufficient to adopt a motion
  - Example: 2 in favor, 1 against, 1 absent and 1 abstain (2-1-1-1)
- Resolutions, Payments of Money and Ordinances adopted by the City Council require three affirmative votes
  - Example: 3 in favor, 2 against (3-2)
- Two-thirds vote (four out of five) is required for urgency ordinances, interim ordinances, eminent domain actions, levying taxes and assessments
  - Example: 4 in favor, 1 against (4-1)



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## PARLIAMENTARY PROCEDURES

### • Tie Votes – (2 – 2)

- Results in no action taken and a new motion may be made that results in a majority vote
- When all Members are present and one abstains, a tie vote on whether to grant an appeal from a lower body's action shall be considered a denial of the appeal
- If a tie vote results due to an absence of a Member (and not a conflict of interest), the matter is to be automatically continued to the next regular meeting of the body



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## PARLIAMENTARY PROCEDURES

- Votes of Members Previously Absent
  - A Member who was absent from a meeting should abstain from the vote to approve the minutes of that meeting
  - For public hearing items, where a Member was absent from a previous meeting and where the public hearing was continued to a later meeting, the Member may participate and vote on the matter as long as the Member has read the staff report, reviewed the materials submitted at the meeting, and listened to the audio or videotape of the prior meeting and makes that affirmation at the present meeting.



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## PARLIAMENTARY PROCEDURES

- Reconsideration
  - Any Member who voted with the majority may move to reconsider any action at the same meeting or, within 60 days, request in writing that the item be agendized for consideration at the next meeting
  - However, reconsideration is not permitted when a quasi-judicial decision has been made and the applicant will be substantially prejudiced by such reconsideration
  - If the motion to reconsider passes with a majority vote, then the original item may be reconsidered at that time or agendized for the next meeting to provide for time for noticing requirements



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## PARLIAMENTARY PROCEDURES

- **Decorum and Order**
  - A Member shall obtain the "floor" by first being recognized for that purpose by the Chair
  - Once recognized, the Member should not be interrupted unless called to order by the Chair for violating a rule or if a point of order is raised by another Member
  - If the Chair calls a Member to order, the Member shall immediately cease speaking until the point of order is determined
  - The Rules provide that Members should always be attentive and show respect to those addressing the body but may make a point of order to enforce the rules if the person speaking is out of order



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## PARLIAMENTARY PROCEDURES

- **Decorum and Order**
  - The Rules provide that Members shall accord the utmost courtesy to each other, to the City employees and to the public appearing before the body
  - Members shall refrain from making rude and derogatory remarks, reflections as to integrity, abusive comments and statements as to motives and personalities if any of these remarks disrupt, disturb, or otherwise impede the orderly conduct of the meeting
  - City employees and Members of the public shall observe the same rules of decorum and order as apply to Members of the legislative body
  - Members of the public should address their comments and questions to the Chair and not to individual Members or staff



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## PARLIAMENTARY PROCEDURES

- Examples of behavior that is deemed to cause an actual disruption include:
  - Catcalls and yelling from the audience
  - Interrupting speakers
  - Shouting into the microphone
  - Speaking too long or being unduly repetitious
  - Physical threats



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## PARLIAMENTARY PROCEDURES

- Examples of behavior that is not deemed to cause an actual disruption include
  - Silent gestures from Members of the audience
  - Catcalls and boeing during a time allowed for applause and that does not otherwise disrupt the meeting
  - Criticisms of public officials or staff during a time reserved for public comment that does not violate Council procedures and does not disrupt the meeting



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## PARLIAMENTARY PROCEDURES

### • Role of the Presiding Officer

- He or she is charged with applying the rules of conduct
- Should take a back seat during discussions
- Common courtesy for the Presiding Officer to speak last on an agenda item
- Presiding Officer can make or second a motion, but should do so only if no other Member does so



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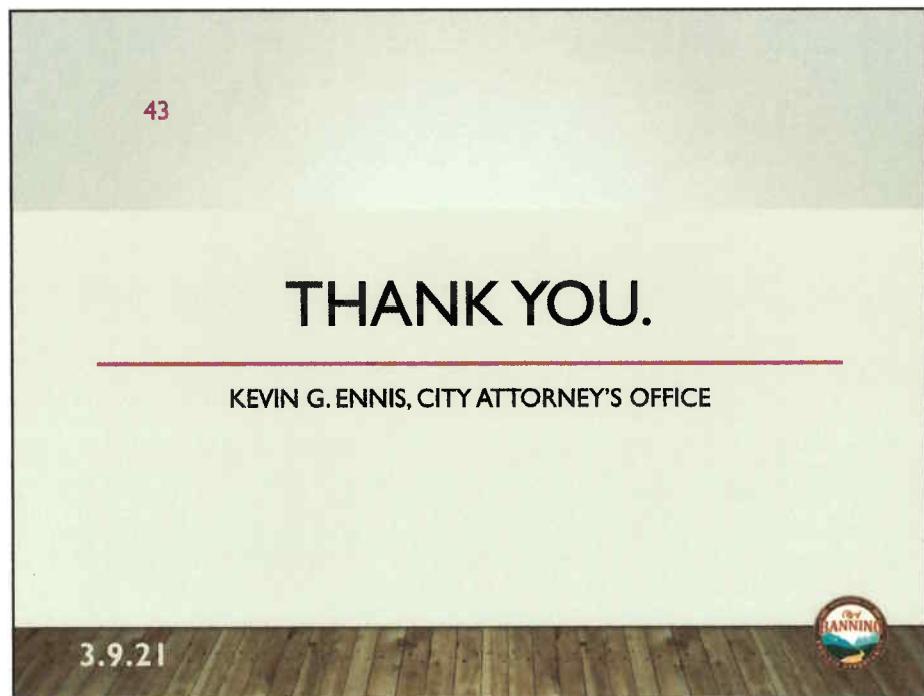
## MANAGING MEETINGS

### • Goals of Meeting Management

- Balance public participation with efficiency
- Make meetings run efficiently and fairly
- Relieve "meeting anxiety"
- Deal effectively with disruptive people
- Present competent, civil and efficient public face
- Comply with legal requirements (Brown Act, due process, privacy rights)



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