A SHORT PRIMER: COUNCIL/COUNSEL RELATIONSHIP, THE BROWN ACT, AND CONFLICTS OF INTEREST,

City of St. Helena City Council Candidate Orientation
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PRESENTED BY

Ethan Walsh
Best Best & Krieger, LLP

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City Attorney’s Role

• To represent the City, not any individual City Council member, City staff, or the public
  ▪ City Attorney cannot have attorney-client communications with just one Council member
• To provide advice and counsel to the City
• To litigate cases on behalf of the City
• To serve as the legal advisor during City Council and other meetings
Hiring of City Attorney

• The City Council hires and evaluates the City Attorney
• In the Council-Manager form of government, the Council hires only the City Manager and the City Attorney
• But the City Attorney works closely with the City Manager and staff to implement the City Council’s priorities
The Brown Act

• Intent: conduct the people’s business in an open and public manner

• Applies to both elected and appointed public agency legislative bodies, such as the city council
  ▪ Including, importantly, to newly elected city council members
The Brown Act Regulates Meetings

• Any gathering of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any matter under the agency’s jurisdiction.
  ▪ No action needs to be taken for a Brown Act “meeting” to occur; conversations amongst a quorum of agency’s governing board about issues confronting the agency is sufficient.
What Meetings are ok?

Meetings where the City posts an agenda in advance, the public is permitted to attend, and public comment is taken (e.g. City Council and Planning Commission meetings)
Other meetings that may be ok

• Conferences

• Community Meetings

• Social or Ceremonial Occasions

• Individual Contacts

• One way communications (no response)
What Meetings are not ok?

Meetings where a quorum or more of the City Council (or other body) meet to discuss matters of City business, for example at a private home or restaurant
Meetings Via Technology

• “Meeting” includes use of technological devices

• Meetings can occur via call, text, and/or e-mail when used to communicate the comments or positions of any member of the legislative body to a majority of the other members of the legislative body.
Serial Meetings

Daisy Chain

A

B

C

Hub & Spoke

HUB

SPOKE(S)
Best Practices

• Do not hit “reply all,” especially to messages sent to the entire Council

• Do not send messages to the entire Council (get a “Brown Act buddy”)

• Do not comment on online posts, especially if another member has already commented

• Do not text or email during a meeting
Other Technical Requirements

• Agenda Posting Requirements
  - Rules for both content and timing

• Allowance for public comment

• Teleconferencing is permitted (new rules during COVID-19 pandemic)
A Short Note on the California Public Records Act

- Upon becoming a City Council member, your records (including emails and texts) will be subject to public disclosure (upon request) if they concern the public’s business and there isn’t an exemption

- Doesn’t apply to campaign records
Conflicts of Interest: Political Reform Act

**Basic Rule:** Public officials have a disqualifying conflict of interest under the Political Reform Act of 1974 when the decision would have:

- Reasonably foreseeable
- Material financial effect
- On an economic interest
- Different from the public generally
Conflicts of Interest:
Political Reform Act Four-Step Test

❖ Step 1: Is the financial effect “reasonably foreseeable?”
❖ Step 2: Is it “material?”
❖ Step 3: Is the effect on the official the same as on the “public generally?”
❖ Step 4: If no, then absent an exception, official may not make or participate in the decision
Conflicts of Interest:
Economic Interests Under the PRA

- Business investments: ≥$2,000
- Business management position - director, official, partner, trustee, management
- Donor of Gift(s) over $500

- Real property: ≥$2,000
- Sources of income: ≥$500 w/in 12 mo
- Personal finances: increase or decrease w/in 12 months
Conflict of Interest: Political Reform Act’s Recusal Steps

What if a Conflict Exists?

- **Do Not** discuss, give opinions, or influence
- **Publicly identify interest** on the record
- **Recuse** self from discussions or action on the matter
- **Leave the room** until the item has concluded
  - **Exception:** consent item
  - **Exception:** if item involves one’s own personal interest
Conflict of Interest in Contracts: Government Code Section 1090

If:
• A Public Official
• Who Has a Financial Interest
• Makes A Contract

Then:
• Contract is VOID
• Penalties Apply
Conflicts of Interest in Contracts

• Applies broadly to renewals, extensions, oral contracts & grants of funds

• Financial interests are broadly construed
What is “Making” of a Contract?

Making includes:

- Negotiations,
- Discussions,
- Reasoning,
- Planning, and
- The “give and take which goes beforehand in the making of the decision to commit oneself ....”
Conflicts of Interest: PRA and Government Code section 1090

• Both laws are very complicated

• Both laws have a number of exceptions

• The earlier you can identify a conflict of interest and flag it for staff and the city attorney, the more time will be provided to thoroughly analyze the issue
Conflicts of Interest in Contracts: Council Members

- Council member may not alleviate a conflict problem under Section 1090 by recusal from the discussion and vote.

- The contract is considered void if it’s “made.”
Thank you!

Ethan Walsh
Partner
Best Best & Krieger LLP
Office: Sacramento
Phone: (916) 551-2825
Email: ethan.walsh@bbklaw.com
www.bbklaw.com