



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

Meeting Agenda

Citizens Advisory Charter Review Committee

Tuesday, June 18, 2019

6:00 PM

Council Chamber, 2nd Floor, Merced Civic
Center, 678 W. 18th Street, Merced, CA 95340

NOTICE TO PUBLIC

WELCOME

At least 72 hours prior to each regular Board/Commission meeting, a complete agenda packet is available for review on the City's website at www.cityofmerced.org or at the City Clerk's Office, 678 W. 18th Street, Merced, CA 95340. All public records relation to an open session item that are distributed to a majority of the Commission will be available for public inspection at the City Clerk's Office during regular business hours.

PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE BOARD/COMMISSION CLERK

Members of the audience who wish to address the Commission are requested to complete a speaker card available at the podium against the right-hand side of the Council Chamber. Please submit the completed card to the Board/Commission Clerk before the item is called, preferably before the meeting begins.

INDIVIDUALS WITH DISABILITIES

Accommodation for individuals with disabilities may be arranged by contacting the City Clerk at (209) 388-8650. Assisted hearing devices are available for meetings held in the Council Chamber.

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

D. BUSINESS

[19-308](#)

SUBJECT: Selection of Committee Chair and Vice Chair

REPORT IN BRIEF

Considers selection of a Chair and Vice Chair to facilitate running committee meetings.

RECOMMENDATION

Nominate and appoint one Committee Member as Chair and one Committee Member as Vice Chair.

[19-336](#)

SUBJECT: Selection of Dates for Remaining Citizens Advisory Charter Review Committee Meetings

REPORT IN BRIEF

Considers dates for the remaining meetings to allow members to plan accordingly.

RECOMMENDATION

Citizens Advisory Charter Review Committee - adopt a motion selecting dates for the next 5 committee meetings.

E. PUBLIC COMMENT

Members of the public who wish to speak on any matter not listed on the agenda may speak during this portion of the meeting and will be allotted 3 minutes. State law prohibits the Board/Commission from acting at this meeting on any matter raised during the public comment period. Members of the public who wish to speak on a matter that is listed on the agenda will be called upon to speak during discussion of that item.

F. REPORTS

[19-332](#)

SUBJECT: Brown Act Training and Committee Meeting Guidelines

REPORT IN BRIEF

The City Attorney will provide Brown Act training and meeting guidelines to the committee.

RECOMMENDATION

For information only.

[19-335](#)

SUBJECT: Discussion on Council Priorities for Charter Review and Selection of Initial Sections for Committee Review

REPORT IN BRIEF

Mayor Murphy will provide insight into City Council's desire to have the City of Merced Charter reviewed for possible updates to various sections.

RECOMMENDATION

Charter Review Committee - Adopt a motion selecting Charter sections for initial review based on City Council priorities to return to the next

meeting with suggested changes for discussion.

G. ADJOURNMENT



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ADMINISTRATIVE REPORT

File #: 19-308

Meeting Date: 6/18/2019

SUBJECT: Selection of Committee Chair and Vice Chair

REPORT IN BRIEF

Considers selection of a Chair and Vice Chair to facilitate running committee meetings.

RECOMMENDATION

Nominate and appoint one Committee Member as Chair and one Committee Member as Vice Chair.

AUTHORITY

City of Merced Charter Section 704.

DISCUSSION

Committee Members will need to select a Chair and Vice Chair as required in Charter Section 704..



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ADMINISTRATIVE REPORT

File #: 19-336

Meeting Date: 6/18/2019

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Selection of Dates for Remaining Citizens Advisory Charter Review Committee Meetings

REPORT IN BRIEF

Considers dates for the remaining meetings to allow members to plan accordingly.

RECOMMENDATION

Citizens Advisory Charter Review Committee - adopt a motion selecting dates for the next 5 committee meetings.

DISCUSSION

To ensure a quorum at each meeting and allow for committee members to schedule accordingly, a list of eligible dates has been attached for your review.

ATTACHMENTS

1. List of eligible dates

June

2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27 Available	28	29
30						

July

2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2 Available	3	4	5	6
7	8	9 Available	10	11	12	13
14	15	16	17	18 Available	19	20
21	22	23	24	25 Available	26	27
28	29	30 Available	31			

August

2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Available	2	3
4	5	6	7	8	9	10
11	12	13	14 Available	15 Available	16	17
18	19	20	21	22 Available	23	24
25	26	27	28 Available	29 Available	30	31



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ADMINISTRATIVE REPORT

File #: 19-332

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SUBJECT: Brown Act Training and Committee Meeting Guidelines

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RECOMMENDATION

For information only.

ATTACHMENTS

1. Brown Act Presentation

THE BROWN ACT

California's Open Meeting Law

CITY OF MERCED
CITIZENS ADVISORY CHARTER REVIEW COMMITTEE

JUNE 18, 2019

The Brown Act



- ▶ The Brown Act was enacted in 1953.
- ▶ Is codified in the California Government Code, section 54950, et seq.
- ▶ The intent of the Act is that the deliberations and actions of California's public agency governing boards, commissions and councils be taken openly and their deliberations be done in public.

Key Points

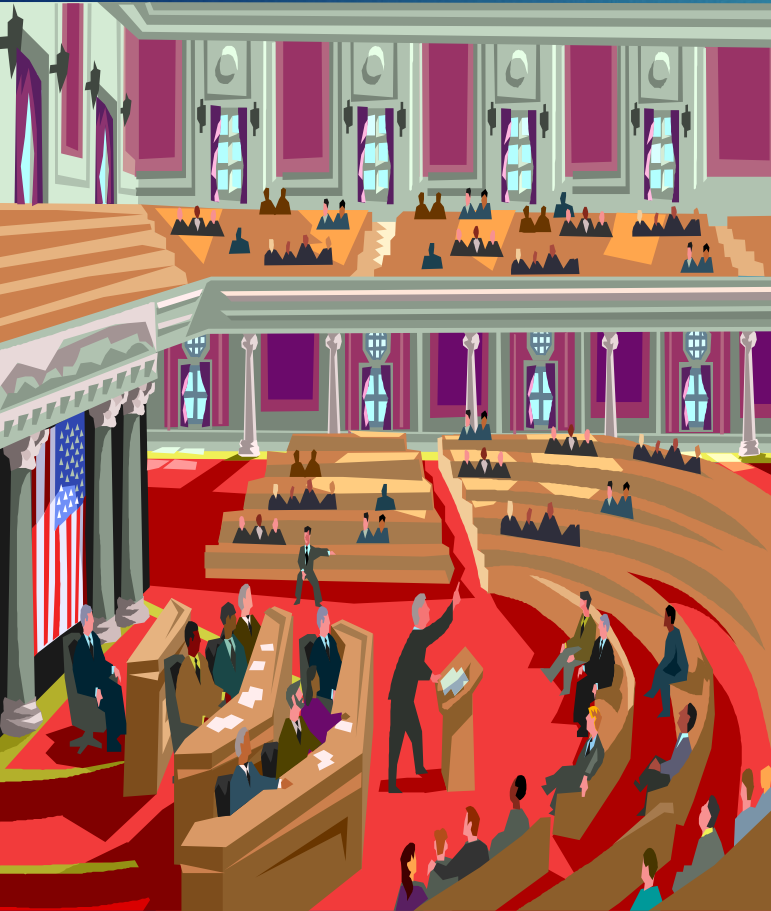


- ▶ All meetings shall be open and public except when the Brown Act authorizes otherwise.
- ▶ The public has a right to attend and participate in public meetings.
- ▶ A meaningful agenda must be posted in advance of meetings. Discussion and action is limited to the matters listed on the agenda.
- ▶ That discussions outside of noticed meetings by a majority of Committee Members about an item of business within the subject matter jurisdiction of the Committee are prohibited.

Common Questions and Issues

- ▶ Who is covered by the Brown Act?
- ▶ What constitutes a meeting?
- ▶ What are the notice and agenda requirements?
- ▶ What are the public's rights under the Brown Act?
- ▶ What are the consequences of violating the Brown Act?

WHO IS GOVERNED BY THE BROWN ACT?



- ▶ Any “legislative body”
- ▶ Governing body of any local agency, i.e., the city council
- ▶ Local agency commissions, appointed either permanently or temporary, who have decision making or advisory powers.
- ▶ Citizens Advisory Charter Review Committee is an advisory body.

(Government Code §54952)

WHAT IS A MEETING?

- ▶ The Act defines a meeting as:
 - ▶ Any congregation of a majority of the members of a legislative body at the same time and locations including teleconference locations . . . to hear, discuss, deliberate, or take action on any item that is within subject matter jurisdiction of the legislative body.
 - ▶ For the Citizens Advisory Charter Review Committee, Brown Act meetings are typically going to be regular meetings.

SERIAL MEETINGS

Are a chain or series of communications, each of which involves less than a quorum of a legislative body, but which together involve a majority of the body's members. It is also a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next and excluding the public. (Sutter Bay

Assoc. v. County of Sutter (1987) 58 Cal. App.4th 860)



WHAT CONSTITUTES A SERIES OF COMMUNICATIONS?

- A “series of communications” includes conference calls and emails shared among the majority of commission members, or conversations among members in which the position of other members are shared to the majority.
- Technological devices may create a “virtual serial meeting” so be careful when using social media, e-mails, “IM”, texts, chat rooms, blogs, etc.
- Case held letter circulated for signature among a legislative body was a violation of the Brown Act
[Common Cause v Stirling (1983) 147 Cal.App.3d 518]

E-MAIL

- ▶ Remember e-mails never go away.
- ▶ E-mail can create a “virtual serial meeting”
- ▶ Don't hit “reply all” in response to email from staff to all Members of the Committee.
- ▶ Refrain from emailing or forwarding an email to a majority of Committee Members.

Issue/Challenge

When can an issue or discussion become an issue for Brown Act purposes?

WHEN THE ISSUE IS:

- Within subject matter jurisdiction of the Committee; and,
 - A majority of Committee Members participate; and,
 - “Meeting is held”; and,
 - Brown Act is not followed.
-
- ▶ This deprives the public of an opportunity for meaningful observation of and participation in the decision-making.

Example: E-MAIL

What starts out as “legal” under the Brown Act:

- ▶ I think we should do “x” at our next meeting

Becomes “illegal” when it is replied to by a majority or by “Reply to All”:

- ▶ “I agree” [Reply to All]
- ▶ “Good idea!!!” [Reply to All]
- ▶ “Concur” [Reply to All]

EXCEPTIONS TO MEETING:

- ▶ Individual Contacts: Individual contacts or conversations between a member of a legislative body and any other person.
- ▶ Conferences: Public or educational conferences on matters of general interest.
- ▶ Community Meetings: Publicized and public meetings to discuss a topic of local community concern organized by someone other than the city.

Exceptions (cont'd):

- ▶ Other Legislative Bodies: Open and noticed meeting of another body of the public agency.
- ▶ Standing Committees: Open and noticed meeting of a standing committee within own agency, provided not a member of standing committee.
- ▶ Social or Ceremonial Events: Purely social or ceremonial events as long as no discussion of business w/in subject matter of jurisdiction of local agency.

Agendas and Notice

- ▶ Every meeting of the Citizens Advisory Charter Review Committee must be preceded by a posted agenda.
- ▶ The agenda must be posted at least 72 hours before the regular meeting.
- ▶ The agenda must advise the public of the meeting and the matters to be transacted or discussed.
- ▶ The agenda must state the meeting time and place.
- ▶ Each item of business to be transacted must be briefly described.

Action on Non-Agendized Items

- ▶ The Committee Members or staff may “briefly” respond to statements or questions posed by the public at a public meeting.
- ▶ A Committee Member may ask “a question for clarification, make a brief announcement, or make a brief report on his or her own activities.”
- ▶ Otherwise, no action can be taken on issues or items that were not agendized.

Public Participation

- ▶ The public has a right to attend, observe and participate in meetings.
- ▶ Members of the public cannot be required to register their names, provide information or involuntarily provide information in order to attend or participate in a meeting.
- ▶ Secret balloting is prohibited.
- ▶ All actions taken by the Committee in open session and the vote of each member must be disclosed to the public at the time the action is taken.

CRIMINAL ENFORCEMENT ACTIONS:

- Why do we take this so seriously?
- It is a misdemeanor for a member to attend a Committee meeting where action is taken that violates the Brown Act, and the member intended to deprive the public of information that the member knew or had reason to know the public was entitled.

CIVIL ENFORCEMENT ACTIONS:



- ▶ Enforcement actions can be brought by the district attorney or any interested person to get a court to order a stop to any violations of the Brown Act.
- ▶ A court action may also void actions in violation of the Brown Act.
- ▶ Before bringing suit, the plaintiff must demand the board cure or correct the offending action.



CONCLUSION

Discussion, Questions, &
Answers



ADMINISTRATIVE REPORT

File #: 19-335

Meeting Date: 6/18/2019

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Discussion on Council Priorities for Charter Review and Selection of Initial Sections for Committee Review

REPORT IN BRIEF

Mayor Murphy will provide insight into City Council's desire to have the City of Merced Charter reviewed for possible updates to various sections.

RECOMMENDATION

Charter Review Committee - Adopt a motion selecting Charter sections for initial review based on City Council priorities to return to the next meeting with suggested changes for discussion.

DISCUSSION

At the March 18, 2019 City Council Meeting, Mayor Murphy brought forward an item to discuss possible amendments to the City Charter. Council directed staff to return with a timeline and list of milestones in order to place possible amendments on the March 2020 Primary Election.

At the April 1, 2019 City Council meeting, staff reported on a timeline and set of milestones that would need to be met in order to place possible Charter Amendments on the March 2020 Primary Election. At the same meeting, Council directed staff to begin the process that would lead to that end.

At the May 20, 2019 City Council meeting, Council discussed priority items for the Citizens Advisory Charter to review in addition to an overall review of the Charter.

Items directed by City Council for review were as follows:

1. Charter Section 1112. - Cash Basis Fund (removal of section)
2. Charter Section 400. - Mayoral Term (review change from 2 to 4 year term)
3. Charter Section 402. - Compensation (review of Council monthly stipend)
4. Possible addition of a section regarding financial auditors directly reporting to the City Council.
5. Flexibility of Citizens Advisory Charter Review Committee to suggest changes to additional sections as time permits.

ATTACHMENTS

1. Charter Sections 1112, 400B, and 402

Sec. 1112. - Cash basis fund.

The City Council shall maintain a revolving fund to be known as the "Cash Basis Fund," for the purpose of placing the payment of running expenses of the City on a cash basis. An operating reserve shall be built up in this Fund from any available sources in an amount that the City Council deems sufficient with which to meet all lawful demands against the City for the first five months, or other necessary period, of the succeeding fiscal year prior to the receipt of ad valorem tax revenues. Transfers may be made by the City Council from such Fund to any other fund or funds of such sum or sums as may be required for the purpose of placing such funds, as nearly as possible, on a cash basis.

All moneys so transferred from the Cash Basis Fund shall be returned thereto before the end of the fiscal year.

Sec. 400. - Number and term.

B. The Mayor shall serve a term of two (2) years and until his/her successor is elected and qualified. The Mayor shall be limited to no more than two, two-year terms. For purposes of this subsection, a "term" shall be defined to include serving fifty percent plus one day of a term as Mayor, while service as Mayor for fifty percent or less of a term shall not constitute a term for purposes of term limits.

Sec. 402. - Compensation.

The members of the city council shall receive no compensation for their services as such, but shall receive reimbursement on order of the city council for council authorized traveling and other expenses when on official duty. In addition, each member shall receive the sum of twenty dollars per month, which amount shall be deemed to be reimbursement of other out-of-pocket expenditures and costs imposed upon him in serving as a city councilman. Absence of a councilman from all regular and special meetings of the council during any calendar month shall render such councilman ineligible to receive such sum for such calendar month.