



Fagen Friedman & Fulfrost LLP

# 7-11 Committee Governance Issues



**Twin Rivers Unified School District  
7-11 Committee Meeting  
October 14, 2020  
Cynthia Smith**

# Overview

- 7-11 Committee Process and Duties
  - Ralph M. Brown Act Review
  - Review of Prohibited Conflicts of Interest
  - Introduction to the Properties
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- Please note, references to EC = Education Code.



# The Process

## The 7-11 Committee



- The District's governing board "shall" appoint a "district ***advisory***" committee prior to sale or lease of surplus real property. (EC 17388)
- At least 7, but no more than 11 members. (EC 17389)



# The Process

## The 7-11 Committee



- The composition includes individuals *"representative"* of the following:
  - The ethnic, age group, and socioeconomic composition of the district
  - The business community, such as store owners, managers, or supervisors
  - Landowners or renters
  - Teachers
  - Administrators
  - Parents of students
  - Persons with expertise in environmental impact, legal contracts, building codes, and land use planning

(EC 17389)



# The Process

## Duties



- The 7-11 committee must:
  - Determine the amount of surplus space and real property;
  - Establish and circulate a priority list of use through the community;
  - Make a “final determination” of the limits of tolerance of use of the space and real property; and
  - Forward a report to the District’s Board **recommending** uses of surplus space and real property.

(EC 17390)



# 7-11 Committees

- Committee Purpose:
  - Act in an advisory role
  - Gather community input and perspective
  - Aid the District in using property responsibly



# The Brown Act



- Open and public deliberations
- Meaningful public access



# The Brown Act

- The Brown Act imposes requirements on the “legislative bodies” of local agencies.
- School districts, county offices of education, community college districts, regional occupational programs, charter schools and joint power authorities are all local agencies and are considered “legislative bodies” under the Brown Act.





# Brown Act for 7-11 Committees

- All committees created by formal action of the Board, whether temporary, decision making, or advisory, are legislative bodies subject to the Brown Act.



# Brown Act for 7-11 Committees

- The meetings of the 7-11 Committee are subject to Ralph M. Brown Act open meeting laws.



# What is a Meeting?

- The Brown Act applies to “meetings” of a legislative body.
- All meetings of a legislative body are public and official business must be transacted at a public meeting.
  - Exception: Closed Session
- Majority of members gather at the same time and place to hear, discuss or deliberate upon any item within the subject matter jurisdiction of the legislative body.



# Closed Session Topics – Likely Not Applicable

1. Personnel Matters
2. Negotiations/Collective Bargaining
3. Pending Litigation
4. Student Matters
5. And others... (e.g. security matters, real property negotiations)



# Serial Meetings Prohibited!

- Serial Meetings: Communications outside formal meetings, each of which involve less than a quorum, but collectively encompass a majority.
- Communications of any kind ***cannot*** be used by a majority of members to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the Committee.  
(Gov. Code, § 54952.2.)



# The Meeting Agenda

- Goal: Facilitate public awareness and access to the Committee's business
- Requirements for Regular Meeting:
  - Must be posted 72 hours in advance
  - Must include time and place of meeting
  - Must identify the business being discussed or transacted
  - Must be posted in location accessible to public and on District



# Public Participation and Comment

## ■ Regular Meetings:

- Subject to reasonable regulations, the public must be allowed to speak on any subject on the agenda (open or closed session) or within the subject matter jurisdiction of the legislative body.



# Public Records

- Documents distributed to the Committee less than 72 hours prior to an open public meeting shall be made available for public inspection when distributed to the Committee.
- Must list on the agenda the location of where item can be viewed or can post on website.





# Public Records

- All agendas and other documents distributed to a majority of the Committee members at a meeting of the legislative body in connection with an agenda item are public records.
- Any document a Committee member brings to a meeting and shares with a majority of the members will become a public record.



# Robert's Rules of Order

- Designed to provide structure and order to legislative bodies' public meetings.
- Addresses, among other topics:
  - Quorum
  - Voting
  - Rights of committee members to make motions



# Conflicts of Interest

## A. Government Code section 1090

- Contractual Conflicts

## B. Common Law Conflicts of Interest

- Disqualifications Because of Bias

## C. Economic Conflicts of Interest – Political Reform Act

- Financial Interest in Committee Decision



# Section 1090 – Contractual Conflicts

## The Basic Prohibition

- A public official may not have a financial interest in any contract made in his or her official capacity or by the committee of which he or she is a member.
- Section 1090 generally does not address property ownership.



# Common Law Conflicts Free from Personal Bias

- A public official is required to exercise his or her powers free from personal bias.
  - Includes biases that have nothing to do with financial gain or loss
- Public officials must not place themselves in a position where their private, personal interests may conflict with their official duties.
  - Avoid the appearance of impropriety



# Political Reform Act – Economic Conflicts of Interest

- The Political Reform Act applies to public officials.
- Public officials can include members of advisory bodies such as a 7-11 Committee.



# Political Reform Act – Economic Conflicts of Interest

- Underlying Principle: Public officials should not benefit financially from their position.
  - Public officials may not participate in or attempt to influence a decision if their economic interests could be affected by the decision.
  - Applies whether the impact is positive or negative.



# Political Reform Act

- Influencing a Government Decision includes:
  - Making a decision by directing any action, voting, obligating or committing the agency to any course of action, or entering into any contractual agreement on behalf of the agency.
  - Participating in a decision by providing information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- 7-11 Committee members are participating in decisions with regard to how the District may utilize or dispose of real property.





# Political Reform Act

- Conflict of Interest under the Political Reform Act, in summary:
  - If a member of the 7-11 Committee owns a piece of property that may be financially effected in a material way by an act of the Committee, then the member must take steps to ensure the Committee's decisions are not influenced by the member with the conflict of interest.



# Political Reform Act

- A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any real property in which the public official has a direct or indirect interest worth \$2,000 or more.



# Political Reform Act

- The effect on the property must be material. Material effects include:
  - The involvement of property located 1,000 feet or less from the property line of the parcel
  - The adoption of or amendment to a development plan or criteria applying to the parcel
  - The determination of the parcel's zoning or rezoning
  - The imposition, repeal, or modification of any taxes, fees, or assessments that apply to the parcel



# Political Reform Act

- The effect on the property must be material. Material effects include:
  - The authorization of the sale, purchase, or lease of the parcel
  - Changes to the termination date of a lease
  - Increases or decreases the potential rental value of the property
  - Changes the official's actual or legally allowable use of leased property
  - Impacts the official's use and enjoyment of leased property



# Political Reform Act

- If the involved property is over 1,000 feet from the official's property, then the financial effect of a governmental decision on the official's property is presumed **not** to be material.
- This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.



# Political Reform Act

- If it is determined a public official has a conflict of interest, they must:
  - Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public.
  - The disclosure of the exact street address of a residence is not required.



# Political Reform Act

- If it is determined a public official has a conflict of interest, they must:
  - Recuse themselves from discussing and voting on the matter.
  - Leave the room during the discussion and vote.
  - The member may speak about the matter during the time the general public is allowed to speak on the matter.



# Questions?

