

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: October 31, 2012
TO: Honorable Mayor and City Council
FROM: City Attorney
SUBJECT: Private Video Recordings of a Public Meeting

INTRODUCTION

This Memorandum is provided in response to an inquiry by a member of a community advisory group to the City of San Diego pertaining to his personal, unofficial video recording of the meetings of the group. The community advisory group is recognized by the San Diego City Council as an advisory body, and the advisory group's meetings¹ are subject to the Ralph M. Brown Act (Brown Act), which is California's open meeting law. *See* Cal. Gov't Code §§ 54950-54963.

QUESTIONS PRESENTED

1. Does a member of the Board of a community advisory group have a right to video record a public meeting of that Board, which is subject to the Brown Act?
2. If yes, is that video recording a public record subject to disclosure under the Brown Act?

SHORT ANSWERS

1. Yes. A member of the Board of a community advisory group has a right to video record a public meeting of that advisory group that is subject to the Brown Act, with limited exception.
2. No. Under the facts as presented, the video recording is not a public record under the Brown Act.

¹ Application of the Brown Act to the community advisory group is mandated by Council Policy 600-24.

ANALYSIS

I. THE BROWN ACT ALLOWS VIDEO RECORDINGS OF PUBLIC MEETINGS

A. The Right to Record a Public Meeting is Provided for in the Brown Act

California Government Code section 54953.5(a) provides that:

Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

Pursuant to the provisions of 54953.5(a), any person in attendance at a meeting of the community advisory group can record its public meeting. This all encompassing application to any person necessarily includes persons who are also members of the group's Board.

The only exception to the right to record a public meeting of the advisory group is where a reasonable finding is made by the Board that such recording would cause undue disruption of its public meeting. To our knowledge no such finding has been made, nor have any facts been presented indicating that an undue disruption would result from a video recording. Consequently, the member of the Board may video record a public meeting of the community advisory group.

II. VIDEO RECORDINGS ARE SUBJECT TO INSPECTION UNDER THE BROWN ACT WHEN MADE AT THE DIRECTION OF THE LOCAL AGENCY

California Government Code section 54953.5(b) provides that:

Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

This section makes clear that only those recordings of public meetings made by or at the direction of the body subject to the Brown Act are subject to inspection pursuant to the California Public Records Act. The facts as presented to us do not indicate that the video recording itself was prepared for, owned, used or even retained by the community advisory

group. Rather, the recording was taken by a member of its Board on his own volition, with his own equipment, and for his own personal use. The recording is not used in the course of business of the group. The recording is not mandated by the group's rules or bylaws. The recording is not possessed or maintained by the group. It is not submitted to the City, nor is it required to be, by the City policy that governs the group. Therefore, section 54953.5(b) is not applicable to these facts.

CONCLUSION

A member of a community advisory group subject to the Brown Act may personally video record a public meeting of the Community Planning Group with his own video equipment, unless there is a reasonable finding by the Board that such a recording would unduly disrupt the public meeting.

Any such video recording of a public meeting of a community advisory group is not subject to retention and inspection unless it was taken at the direction of and for the community advisory group

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By /s/ William Gersten
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