

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 303 (Meetings and Locations) or add new section to address open meetings.

Statement of Issue: Improve transparency by extending the reach of the Ralph M. Brown Act and the Public Records Act to additional city bodies.

Recommended Action: Motion to:

Amend Huntington Beach charter section 303 (Meetings and Locations) or add new section as follows:

City agencies, boards, commissions, committees, officials, staff and officers, including the Mayor and members of the City Council, exist to conduct the people's business. It is fundamental that the people have full access to information, not to just what decisions have been made in their name but how those decisions were reached and how they were deliberated. The people insist on remaining informed so that they may retain control over the instruments they have created. The people do not give their agencies or public servants the right to decide what is good for the people to know and what is not good for them to know.

Our values lie in a government that helps its citizens in a timely way to obtain information. Our values lie in a broadening base of public participation, involvement and interest, providing new ideas and energy.

Our values lie not in hiding embarrassment and unpleasant occurrences. Our values lie not in preventing dissent.

To carry out the purposes set forth in this section, the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.) and the Public Records Act (California Government Code Section 6250 et seq.) shall apply to the City Council, and any commission, committee, board or other body *(including ad-hoc advisory committees, composed solely of the members of the legislative body*

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

that are less than a quorum of the legislative body) created by Charter, ordinance, resolution or formal action of the City Council, or the Mayor, ***or any other legislative body of the city.***

Special circumstances dictate that there must be exceptions to access. But those exceptions should be narrowly drawn and narrowly exercised. Public employees must be protected from unwarranted invasions of privacy while the public's right to fundamental information must be protected. Citizen right to privacy must be protected with the knowledge that involvement in government matters necessarily reduces an expectation of privacy.

In general, the value of access should be given a strong presumption of public benefit.

Alternative Action(s):

Amend as above in the recommended action, but omit the first three paragraphs.

Analysis:

This amendment as originally stated by Riverside charter section 201 largely restates the scope of the Brown Act and the Public Records Act as a reminder of their importance to city officials and residents. While the first three paragraphs are beautifully written as to how government should aspire to interact with those governed, they are not legally enforceable and could be omitted from the amendment (though I hope they will be included because they set an excellent tone for the city to aspire to). The core of this amendment lies in the last three paragraphs stating the scope of the Brown Act and the Public Records Act, the narrow presumption for exceptions, and the broad presumption for public benefit.

I have added two custom clauses as indicated by bold italics in the recommended action above:

1. The first custom clause extends the reach of the Brown Act to sub-quorum ad-hoc advisory committees, bodies which are normally exempt from the Brown Act.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

2. The second custom clause fixes a loophole in the original Riverside language that seemed to exempt bodies created by bodies other than the city council or mayor. My custom clause makes clear that this shall apply to any subcommittees created by any of the any various assorted boards and commissions.

For the civic issues that I have personally been involved in to-date, my experience has been that city compliance with the Brown Act and Public Records Act is fairly good. However, two Brown Act problem areas do come to mind – the Environmental Assessment Committee and the Subdivision Committee. Both of these committees were created by ordinance (HBZSO) and as such should be subject to the provisions of the Act. However, members of the public who have attended these meetings report that the level of public participation provided for by the Act is not allowed to occur by staff. It is the intent of this charter amendment to apply to both of these committees.

Note that this amendment extends the reach of the Brown Act to ad-hoc advisory committees consisting of less than a quorum of members of a legislative body – normally such advisory committees are exempt from the Act. I feel it is important for these committees to be subject to the Act because it is in these types of meetings that policy gets created, and that there is a strong public benefit for public involvement in the earliest stages of policy creation. Otherwise when public participation is restricted to the latter stages of policy formation, oftentimes such a strong “policy momentum” has developed that public input is easier for the decision makers to ignore.

Making ad-hoc advisory committees subject to the Brown Act should not pose an undue burden upon such committees. It should already be good meeting practice to have agendas, and so the main significant change is to make the agendas available to the public. The other significant change is that the public must be allowed to attend the meetings and to comment upon them (i.e. public comments). Better policy always results when diverse points of view are considered.

References:

- Riverside charter - <http://www.riversideca.gov/municode/city-charter.asp>