



Town of Mammoth Lakes

Office of the Town Attorney

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MEMORANDUM

To: STR Advisory Committee

From: Andy Morris, Town Attorney

Date: November 9, 2023

Re: Basic rules for serving on the committee

BACKGROUND INFORMATION

The STR Advisory Committee and the committee members are subject to a number of laws that apply to local governments like the Town. This memo will address California's open meeting law, known as the Brown Act, and the California Public Records Act.

THE BROWN ACT

The basic purpose of the Brown Act is to ensure that government decisions are made publicly.¹ The law does this by requiring decisions to be made at public meetings, limiting discussions during meetings to topics that have been agendaized, and restricting discussions between members of a board or committee outside of public meetings.

Let's start with the restrictions on communications between Committee members outside of meetings. A majority of the Committee cannot discuss among themselves anything that is relevant to the Committee, except during a public Committee meeting. The prohibition covers conversations with a majority of the Committee present, but also covers any series of conversations that involves a majority of the Committee. The rule applies to any form of communication, including in-person conversations, phone calls, emails, texts, and even information relayed through a third party.

For example, Committee members A, B, C, D, and E cannot meet and discuss STR issues outside of a Committee meeting. But also, if members A, B, and C meet, they cannot then talk to members D and E about what they discussed. A "daisy chain" is also not allowed, in which A talks to B,

¹The Brown Act is sections 54950-54963 of the California Government Code. The full text is available at: https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=9.&article=

who talks to C, who talks to D, who talks to E. Nor is a “hub and spoke” series of conversations allowed, in which A talks to B, then A talks to C, then A talks to D, and then A talks to E. But since five members is a majority under the current makeup of the Committee, any discussion or series of discussions involving four or fewer Committee members would be OK.

This means that Committee members have to be careful not to talk to more than three other Committee members about any issue. You may also need to stop members of the public if they start trying to tell you what they have heard from four or more other members of the Committee. For example, if someone in the community tells you “I’ve met with four members of the STR Committee, and they are telling me...”, you will need to interrupt that person and tell them that you cannot have that discussion.

The Brown Act has rules about meetings as well. All meetings require a written agenda to be published and shared with the public prior to the meeting, either 24 hours in advance or 72 hours in advance. With rare exceptions, the Committee cannot discuss anything in a meeting that was not listed on the agenda for that meeting. This means that if a member of the public raises a topic during public comment that was not part of the meeting agenda, the Committee cannot discuss that topic during that meeting, but could ask staff to agendize the topic for discussion at a future Committee meeting.

All Committee meetings are required to be open to the public. Members of the public can record the meetings as long as they do not disrupt the meeting. The Committee will need to take public comment about each agenda item before deliberating on that item, and will also need to take public comment about matters not on the agenda but within the authority of the Committee. Public comment can be limited to three minutes or five minutes, but the rules need to be the same for all speakers, rather than giving some members of the public more time than others.

Committee members will generally need to participate in Committee meetings in person, rather than via Zoom. There are several sets of rules allowing remote participation, but each set of rules has significant restrictions, and remote participation may not be allowed in some cases. If you think you may need to participate remotely for a particular meeting, please let Town staff know as far in advance as possible.

The paragraphs above are just a summary of the Brown Act. The law is fairly complex and full of nuances, and any Committee member with questions about how the law works or what is and is not OK should feel free to ask Town staff. There is also a very good guide to the Brown Act available here, although it is a bit out of date:

https://www.calcities.org/docs/default-source/city-attorneys/open-public-v-revised-2016.pdf?sfvrsn=995414c9_3

THE PUBLIC RECORDS ACT

The other important law for Committee members to bear in mind is the California Public Records Act (also known as the “PRA”).² Like the Brown Act, the PRA requires transparency in government. The PRA does this by making most records that are relevant to Town business available to any member of the public upon request. This covers documents, but it also covers emails and attachments as well as text messages. The California Supreme Court has determined that records relevant to government business are public records regardless of whether they are sent, received, or held on a personal device or email account.

What this means for the Committee is that you will need to bear in mind that anything you put in writing about the Committee or STR regulation while you are serving on the Committee is very likely to be a public record, including texts or emails you send or receive on your personal phone or using your personal email account. If the Town receives a public records request for all emails sent or received by Committee members, the Town will be required to obtain those emails from you. The Town is also required to maintain public records, which means that Committee members also must maintain any Committee-related records and cannot delete them.

Due to the high degree of community interest in the Committee’s and the Town’s discussions of STR regulation, there is a very good chance that members of the public will want to see Committee members’ communications regarding STR regulation. Please be mindful of this as you send or receive emails and texts.

² The Public Records Act comprises sections 7920.000-7931.000 of the California Government Code. The full text is available at:
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=10.&title=1.&part=&chapter=&article=