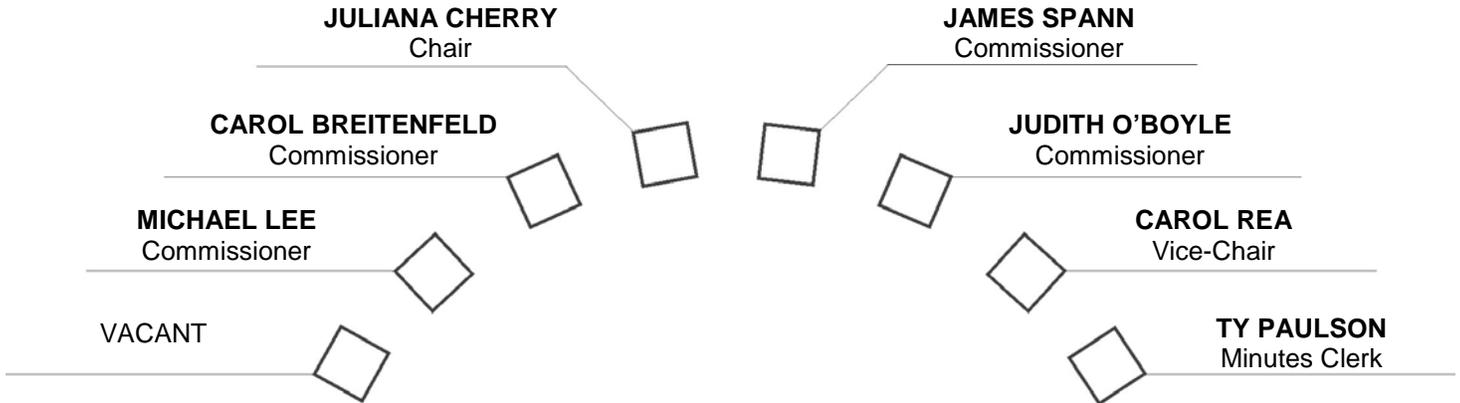


CITY OF ESCONDIDO

Historic Preservation Commission and Staff Seating



HISTORIC PRESERVATION COMMISSION
201 N. Broadway
City Hall Council Chambers

**3:30 P.M.
AGENDA**

June 3, 2014

A. Call to Order.

B. Flag Salute.

C. Roll Call.

D. Review and Approval of Commission Minutes of April 1, 2014.

E. Written Communication:

"Under State law, all items under Written Communications can have no action and will be referred to the staff for administrative action or scheduled on a subsequent agenda."

The Brown Act provides an opportunity for members of the public to directly address the Commission on any item of interest to the public, before or during the Commission's consideration of the item. If you wish to speak regarding an agenda item, please fill out a speaker's slip and give it to the minutes clerk who will forward it to the Chairman. If you wish to speak concerning an item not on the agenda, you may do so under "Oral Communications." All persons addressing the Historic Preservation Commission are asked to state their name for the public record. The Planning Division is the coordinating division for the Historic Preservation Commission. For information call (760) 839-4671.

Electronic Media: Electronic media which members of the public wish to be used during any public comment period should be submitted to the Planning Division at least 24 hours prior to the meeting at which it is to be shown.

The electronic media will be subject to a virus scan and must be compatible with the City's existing system. The media must be labeled with the name of the speaker, the comment period during which the media is to be played and contact information for the person presenting the media.

The time necessary to present any electronic media is considered part of the maximum time limit provided to speakers. City staff will queue the electronic information when the public member is called upon to speak. Materials shown to the Commission during the meeting are part of the public record and may be retained by the City.

The City of Escondido is not responsible for the content of any material presented, and the presentation and content of electronic media shall be subject to the same responsibilities regarding decorum and presentation as are applicable to live presentations.

If you wish to speak concerning an item not on the agenda, you may do so under "Oral Communications" which is listed at the beginning and end of the agenda. All persons addressing the Planning Commission are asked to state their names for the public record.

Availability of supplemental materials after agenda posting: Any supplemental writings or documents provided to the Historic Preservation Commission regarding any item on this agenda will be made available for public inspection in the Planning Division located at 201 N. Broadway during normal business hours, or in the Council Chambers while the meeting is in session.

The City of Escondido recognizes its obligation to provide equal access to public services to individuals with disabilities. Please contact the A.D.A. Coordinator, (760) 839-4671, with any requests for reasonable accommodation, at least 24 hours prior to the meeting.

F. Oral Communication.

"Under State law, all items under Oral Communications can have no action and will be referred to the staff for administrative action or scheduled on a subsequent agenda." This is the opportunity for members of the public to address the Commission on any item of business within the jurisdiction of the Commission.

G. Public Hearings: None

H. Current Business:

1. Review staff referral for exterior painting of a Local Register commercial building in the Historic Downtown District of the Downtown Specific Plan at 155 S. Juniper St.
Applicant: Tracy Foote Staff presenting: Rozanne Cherry
2. Review proposed façade remodel to replace historic glass tile with dyed aluminum squares in the Historic Downtown at 317 E. Grand Ave.
Owner: Mellissa Walker Staff presenting: Darren Parker
3. Review proposed remodel and addition to 1915 OEN residence at 519 E. 9th Ave.
Owner: Derek Berg Staff Presenting: Paul Bingham
4. Review proposed additions to single-family OEN residence at 549 E. 8th Ave.
Owner: Ryan Nestman Staff presenting: Paul Bingham
5. Discuss Historic Month Proclamation and awards presented May 21, 2014 by Mayor Sam Abed
6. Discuss and Prioritize HPC Goals & Objectives – Chair Juliana Cherry
7. [Discuss and Determine HPC Subcommittees – Chair Juliana Cherry](#)
8. Discuss Mills Act Application Process and Clarifications – Commissioner James Spann
9. Discuss HPC vacancy created by Commissioner James' departure.
10. [Recent Change to the Municipal Code regarding Window Replacements](#)

Note: Current Business items are those that under state law and local ordinances do not require either public notice or public hearings. However, public testimony, if requested, shall be taken by the Historic Preservation Commission and is limited to a maximum time of three minutes per person.

I. Updates:

Historic District – Breitenfeld, Rea
History Center – Lee
Commercial Historical– Spann, Cherry
Register/Survey/CLG Grants – Breitenfeld, Christensen, Cherry (McQuead –alternate)
Daley Ranch – Lee, McQuead
Mills Act Monitoring – Breitenfeld, Rea, Spann
Historic Public Relations – Christensen, Rea
Endangered Structures/Vintage Signs –Rea, Cherry

J. Nominations for Historic Awards Program:

Potential Categories - Adaptive Reuse, Best Appearance, Historic Research, Historic Rehabilitation, Historic Preservation, Historic Restoration, Historic Reconstruction, Landscaping, Historic Sign Preservation, Special Merit, Commercial, Vintage Signs.

K. Oral Communication:

"Under State law, all items under Oral Communication can have no action, and will be referred to the staff for administrative action or scheduled on a subsequent agenda." This is the opportunity for members of the public to address the commission on any item of business within the jurisdiction of the Commission.

L. Commissioner Comments:

"Under State law, all items under Commissioner Comments can have no action, and will be referred to the staff for administrative action or scheduled on a subsequent agenda."

M. Adjourn to Regular Historic Preservation Commission meeting of August 5, 2014.

CITY OF ESCONDIDO

**MINUTES OF THE REGULAR MEETING OF THE
ESCONDIDO HISTORIC PRESERVATION COMMISSION**

April 1, 2014

The meeting of the Historic Preservation Commission was called to order at 3:00 p.m. by Vice-chairman Rea, in the City Council Chambers, 201 North Broadway, Escondido, California.

Commissioners present: Commissioner Lee, Commissioner Rea, Commissioner Cherry, Commissioner Breitenfeld, Commissioner O'Boyle, and Commissioner Spann,

Commissioners absent: Commissioner James.

Staff present: Rozanne Cherry, Principal Planner; Paul Bingham, Assistant Planner; and Ty Paulson, Minutes Clerk.

Commissioner O'Boyle introduced herself to the Commission.

Taken out of order.

MINUTES:

Moved by Commissioner Spann, seconded by Commissioner Lee, to approve the minutes of the February 4, 2014 meeting. Motion carried unanimously.

Selection of Chair and Vice-chair and determination of seating

CHAIR NOMINATION:

Commissioner Brietenfeld nominated Commissioner Cherry for Chair. Commissioner Lee seconded the nomination. Motion carried unanimously.

VICE-CHAIR NOMINATION:

Commissioner Spann nominated Commissioner Rea for Vice-chair. Chairman Lee seconded the nomination.

Commissioner Rea nominated Commissioner O'Boyle for Vice-chair. Commissioner Brietenfeld seconded the motion.

ACTION ON COMMISSIONER REA NOMINATION:

Ayes: Lee, Spann, Cherry, and O'Boyle. Noes: Rea, and Brietenfeld. Motion carried. (4-2)

ACTION ON COMMISSIONER O'BOYLE NOMINATION:

Ayes: Rea, and Brietenfeld. Noes: Lee, Spann, Cherry, and O'Boyle. Motion did not carry. (2-4)

Vice-chairman Rea requested to be seated closest to the Minutes Clerk. Chairman Cherry was to move to the center chair position.

ORAL COMMUNICATIONS: None.

PUBLIC HEARINGS: None.

CURRENT BUSINESS:

- 1. Review proposed facade changes in Historic Downtown at 212 E. Grand Avenue.**

Mr. Bingham provided the background history for the property located at 212 East Grand Avenue as well as the current status of the property. He noted that the applicant's request was to establish a restaurant, recess the front windows and door to create an area for outdoor dining with beer and wine, and to add some design elements on the rear of the building. Staff recommended approval.

Commissioner O'Boyle requested clarification regarding what type of floor material would be used for the entrance. Mr. Hedyati indicated that they planned on removing the existing tile and polishing the floor concrete.

Vice-chairman Rea suggested that if brick was discovered during the renovation that it be incorporated into the project. Mr. Hedyati concurred, noting he was not aware of the material that was underneath the stucco.

Discussion ensued regarding a clarification of the plane for the doors and windows and as well as what type of railings would be used.

ACTION:

Moved by Commissioner Spann, seconded by Commissioner Breitenfeld, to approve staff's recommendation. Motion carried unanimously.

2. Review proposed room addition behind existing single-family OEN residence at 755 Chestnut.

Mr. Bingham provided the background history for the property and noted the property was not on the Local Register or survey. He then provided a description of the one-story family room expansion and noted that it would not be visible from Chestnut Street. Staff recommended approval.

Chairman Cherry and staff discussed the proposed path of travel to the garage.

ACTION:

Moved by Commissioner Rea, seconded by Commissioner Spann, to approve staff's recommendation. Motion carried unanimously.

3. **Review proposed additions to single-family OEN residence at 332 E. 10th Avenue.**

Mr. Bingham provided the background history for the property located at 332 E. 10th Avenue and noted that the house was not on the survey or Local Register. He indicated that the present owner wanted to renovate the residence as well as convert the single-bay garage into a master bedroom, construct two additional bedrooms in the current porch location at the back and add a double carport off the alley. He indicated that owner had expressed an interest in selling the property. Staff recommended approval of the most recent revised plans and color and material exhibits as presented, with the condition that the garage door and driveway be removed to meet current Code regulations regarding legally converted garages.

Discussion ensued regarding a clarification of the proposed colors and roofing material.

Mr. Bingham noted that the replacement windows would be wooden.

Commissioner Spann suggested that the landscaping proposed for the driveway area be consistent with the other landscape. Mr. Hawes replied in the affirmative.

Chairman Cherry asked if removal of the driveway apron would require removal of the curb. Mr. Bingham replied in the negative, noting it did not have one currently.

Chairman Cherry requested clarification regarding what type of material would be used for the carport as well as what type of pitch it would have. Mr. Hawes and Mr. Marquez noted that the materials would be the same as the house along with having a gable pitch.

Chairman Cherry asked whether they felt the proposed carport's posts would provide adequate alley access. Mr. Hawes replied in the affirmative.

ACTION:

Moved by Commissioner Spann, seconded by Commissioner Rea, to approve staff's recommendation with the removal of the existing garage door and driveway. Motion carried. Ayes: Spann, Rea, O'Boyle, Lee, and Brietenfeld. Noes: Cherry. (5-1)

4. Review Code Enforcement case for vinyl window installation in OEN at 610 S. Hickory.

Mr. Bingham provided the background history for the property located at 610 South Hickory and noted that this was a Code Enforcement case due to the property owner not obtaining a Certificate of Appropriateness for replacing the aluminum windows with vinyl windows. He also stated that the property was not on the Local Register or survey and was built in 1967.

Chairman Cherry asked if a building permit was needed for vinyl windows. Mr. Bingham replied in the negative. He also stated that the only reason for the code enforcement issue was due to the property being in the Historic District.

Commissioner Brietenfeld noted that the adjacent property had vinyl windows.

David Ogden, Clear Energy, noted that he replaced the windows and was not aware of the conditions for this Historic District.

Commissioner Rea stated that she was very disappointed with the look of the vinyl windows, noting they did not resemble what originally existed.

Commissioner Brietenfeld did not feel the look of the windows was detrimental to the look of the residence.

Mr. Ogden stated that the replacement windows were used more for function than form, noting they helped insulate the house. He also indicated that the vinyl could be painted.

Commissioner O'Boyle noted that she was opposed to vinyl windows, noting her preference would have been to use a wooden trim. Mr. Ogden noted that wooden trim could be used.

Commissioner Spann felt the vinyl windows were appropriate in this location since the house was not a significant historic home. He expressed his concern with the Certificate of Appropriateness not being obtained and felt that the cost for the certificate should be received. Mr. Bingham noted that the applicant was paying for this hearing and the Certificate of Appropriateness if approved.

Discussion ensued regarding painting the window trim or part of the vinyl window frame the same color as the existing house panels.

Commissioner O'Boyle motioned to add wood trim for all windows and that it be painted the color of the house trim. The motion included painting the vinyl window frames bronze. Motion did not carry.

Commissioner Lee noted that the Secretary of Interior Standards needed to be considered, noting the property was neither on the Local Register nor Survey as well as being under 50 years old. He also noted that the subject windows were energy efficient.

ACTION:

Moved by Commissioner Spann, seconded by Commissioner Brietenfeld, to approve as submitted. Motion did not carry. Ayes: Spann, Brietenfeld, and Lee. Noes: Cherry, Rea, and O'Boyle. (3-3)

Commissioner Lee noted that the level of significance needed to be taken into consideration according the Secretary of Interior Standards.

ACTION:

Moved by Commissioner Rea, seconded by Commissioner O'Boyle, to add one-by-four molding to match the existing shape of the original trim and to place over the vinyl edge flange which was to be painted the color of the siding or dark green trim color. Motion carried. Ayes: Rea, O'Boyle, Brietenfeld, and Cherry. Noes: Lee and Spann. (4-2)

5. Review proposed additions to single-family OEN residence at 137 E. 11th Avenue.

Mr. Bingham provided the background history for the property located at 137 East 11th Avenue and noted it was neither on the Local Register nor Survey. He indicated that the property was challenging due to the topography having varying elevations. The request included retaining the 520 SF residence, expanding behind the existing residence, and constructing a garage with a double gable roof at the corner of the residence. He stated that wood framed double-hung windows would be used for the addition. Staff felt the proposed plan was the best option, given the property's elevations, and outcroppings of boulders. Staff recommended approval.

Commissioner O'Boyle asked if the garage doors would be wooden or metal.

Abrhil Arvizu, applicant, stated that she was not sure what material the garage doors would be. She stated that she wanted to keep the original design in a craftsman style.

Commissioner Rea felt the addition of the garage and doors should be simplified down to resemble the simplicity of the original cottage (a California bungalow). She suggested using single hung windows. She felt the design of the garage was out of character with house. She also suggested flipping the gables on the garage and adding a front door with a single pane window.

Ms. Arvizu noted no problem with making the garage doors and front door more simple.

Commissioner Brietenfeld reference Item 4 on the south elevation design, feeling it would be appropriate for the design of the garage. Ms. Arvizu noted no issue with a simplifying the garage door and front door.

Chairman Cherry was in favor of the proposed color pallet as well as the suggestion to simplify the front door and garage door.

Commissioner Rea suggested a single gable for the garage.

Commissioner Brietenfeld felt a single gable would create the appearance of a larger garage. Commissioner Spann concurred.

ACTION:

Moved by Commissioner Rea, seconded by Commissioner O'Boyle, to approve staff's recommendation. The motion included simplifying the front door by using a single window and single wood panel and simplifying the garage door by reducing the amount of panels. Motion carried unanimously.

6. Review proposed shed behind existing single-family OEN residence at 1165 Chestnut.

Mr. Bingham provided the background history, which included additions and revisions for the property located 1165 Chestnut. He noted that the property was on the Survey. The request was to construct a shed with a gable roof and demolish the carport and construct a new double garage with a bedroom and bath above the garage. Staff recommended approval with a condition to deed restrict the bedroom above the garage so it could not be used as a second dwelling unit.

Samuel Mireles, applicant, noted that that the garage unit would not be used as a rental. He also stated that he planned on renovating the property in phases.

Commissioner O'Boyle asked if a kitchen would be allowed in the unit above the garage. Mr. Bingham replied in the negative.

Commissioner Spann noted that the additions would not be visible from the street. He felt the garage structure needed a little more architectural detail. Mr. Mireles noted that he could increase the size of the front facing window, which would help provide more design.

ACTION:

Moved by Commissioner Rea, seconded by Commissioner Spann, to approve staff's recommendation. Ayes: Spann, Rea, Lee, and O'Boyle. Noes: Brietenfeld and Cherry. Motion carried. (4-2)

7. Review proposal to demolish a single-family OEN residence and build a new house at 220 W. 10th Avenue.

Mr. Bingham provided the background history for the property located 220 West 10th Avenue. He noted that the property was not on the Local Register but was on the survey. He indicated that staff had researched whether there was any significance to the property and found none, noting that the historian indicated that there were many additions to the property. Mr. Bingham noted that the walls

of the house were built with a fired clay block with no reinforcement and little footing, so they were crumbling. Code Enforcement had posted the structure as uninhabitable. The first request was to demolish the residence, which staff supported. The second request was to build a new house, retaining the garage, and adding a single carport. Staff did not feel the proposed Spanish hacienda architecture was appropriate for the location and felt the treatments should be more in line with the simpler architecture of the Mediterranean Revival it was replacing.

ACTION:

Moved by Commissioner Lee, seconded by Commissioner Rea, to approve staff's recommendation that the structure located at 220 West 10th Avenue be allowed to be demolished. Motion carried unanimously.

Commissioner Rea felt the new structure should resemble the original structure, a simple Mediterranean style, to maintain the diverse fabric of the Old Escondido Neighborhood. She also felt the proposed design was too elaborate.

Mr. Yant noted that the owner would be totally fine with simplifying the architecture. He asked if he could submit another design before the next regularly scheduled Commission meeting, which could be acted upon.

Commissioner Lee felt the structure should be consistent with the other residences in the area.

Commissioner O'Boyle felt the new structure should resemble the previous structure.

Commissioner Spann felt the structure should represent a Mediterranean Revival style like the Ben Cueva units on West 7th Avenue.

ACTION:

Moved by Commissioner Rea, seconded by Commissioner Brietenfeld, to direct staff to work with the applicant to revise the house design to resemble a Mediterranean revival/Spanish style. This was to be submitted to the subcommittee comprised of Commissioners Rea, O'Boyle, and Brietenfeld for approval. Motion carried unanimously.

Updates:

Historic District - Breitenfeld, Rea
History Center – Lee
Commercial Historical – Spann, Cherry
Register/Survey/CLG Grants – Breitenfeld, Cherry (McQuead – alternate)
Mills Act Monitoring Committee – Breitenfeld, Rea, and Spann
Historic Public Relations – Rea, (vacancy)
Endangered Structures/Vintage Signs – Rea, Cherry
Daley Ranch – Staff

Chairman Cherry requested an agenda item to discuss reviewing subcommittees with regard to establishing goals and creating and replacing some subcommittees. The Commission tabled updates to the next meeting.

Nominations for Historic Awards Program: Confirmation of five (5) vintage signs nominated for awards to be presented May 21, 2014 and wording of award certificates.

Mrs. Cherry referenced the staff report and noted that staff requested language for each certificate. Commissioner Rea provided wording for staff, which was reviewed and edited.

ORAL COMMUNICATIONS – None.

COMMISSIONER COMMENTS:

Commissioner Rea asked for an update regarding the City Council status for preservation fees. Mrs. Cherry noted staff had not heard anything yet.

Chairman Cherry noted that she was looking forward to the dialog regarding the fees. Commissioner Rea suggested sending a new letter to City Council asking for an agenda item to discuss the fees. Chairman Cherry suggested looking at this at the next meeting when considering the subcommittees.

WRITTEN COMMUNICATIONS:

1. Memo regarding Item 1, Current Business
2. Memo regarding Vintage Signs nominated for awards, Item K

ADJOURNMENT:

The meeting was adjourned at 5:28 pm. The next regular meeting was scheduled for June 3, 2014, at 3:30 p.m.

Rozanne Cherry, Principal Planner

Ty Paulson, Minutes Clerk



HISTORIC PRESERVATION COMMISSION

Agenda Item No.: H.7
Date: June 3, 2014

TO: Historic Preservation Commissioners

FROM: Rozanne Cherry, Principal Planner

SUBJECT: HPC Subcommittees

The attached proposal is for your consideration and discussion at the meeting. The memorandum from the City Attorney, dated February 14, 2014, includes requirements for implementing standing subcommittees in conformance with State Law and the Brown Act. Subcommittees that are authorized by the full commission to take actions will require public meetings, posted agendas, and the taking of minutes. However, staff has requested clarification of whether a work group or study team would also be subject to the Brown Act from the City Attorney.

Proposed 2014 Historic Preservation Commission Subcommittees

prepared by Juliana Cherry

With the advent of new HPC commissioners, now might be an opportune time to revisit HPC goals and volunteer for subcommittee assignments. It would be terrific if each commissioner volunteered to participate in two subcommittees. Note, subcommittee participation is limited to three commissioners. Subcommittees meet separately from regularly scheduled HPC meetings.

Current Subcommittees are listed in the Update section of the HPC Agenda.

Possible subcommittees could be:

1 Mills Act inspection. This subcommittee meets with property owners to conduct Mills Act Inspections. In addition, its purpose could be to evaluate current methods of contacting property owners and develop recommendations for inspections to be timely, welcomed, and informative. The goal could be to contact all Mills Act property owners within a recurring 24-month cycle. Up to 3 commissioners volunteering.

2 Grant applications. Its purpose could be to find resources to write grants and advocate for CLG and CDBG funding of HPC goals (like funding the writing of a Commercial District context statement and surveying Escondido's historic downtown). 2 or 3 commissioners volunteering.

3 Ad hoc design review. Formed solely to review and comment on simple design issues between scheduled HPC meetings. Meeting dates determined at the discretion of staff. Up to 3 commissioners volunteering.

4 Promote Escondido's cultural assets. Its purpose could be to identify a theme for next May's historic preservation awards; identify candidates for nomination; and advocate that local papers showcase the theme of the Mayor's historic preservation awards every May. [Jun identify theme. Oct recommend candidates. Dec HPC considers candidates. Jan collaborate on publication.] 2 or 3 commissioners volunteering.

5 HPC Guidance. Its purpose could be to inform HPC members about local architectural or cultural assets; for example, summarizing design guidelines for local historic structures. This training could aid HPC members when evaluating proposals. 2 or 3 commissioners volunteering.

Another Update topic to schedule for any HPC Meeting could be General Updates about:

- Escondido History Center
- Old Escondido Neighborhood
- endangered buildings and signs
- Historic Downtown
- Daley Ranch

In the past, commissioners participated in subcommittees on these topics. These subcommittees could be disbanded and the responsibility shared by all HPC membership.

Please take note that if you have an item to discuss and take action on, then you would want to notify staff one-to-two weeks prior to a scheduled HPC meeting. This will allow time for staff to schedule the discussion in a publicly noticed HPC Agenda.

February 14, 2014

TO: BOARD AND COMMISSION MEMBERS
FROM: JEFFREY R. EPP, City Attorney 
SUBJECT: Ralph M. Brown Act, California Government Code
Section 54950 et seq.

The Ralph M. Brown Act ("Brown Act") requires all action and deliberation of legislative bodies of local agencies to be taken and conducted openly. It is important for you to be aware of the provisions of the Brown Act, so that your job is carried out within the requirements of the law. This memorandum will give you an overview of the requirements of the Brown Act. In addition, the City Attorney's Office is always available and encourages any specific questions you may have regarding the Brown Act. You may call either myself or Assistant City Attorney Jennifer McCain at 839-4608.

INTENT:

The intent of the California Legislature in passing the open meeting law is strongly stated by Government Code Section 54950 which states:

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

BASIC REQUIREMENT:

The basic requirement of the Brown Act is stated in Government Code Section 54953(a):

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency. . . .

WHO IS COVERED:

Government Code Section 54952 defines the term "legislative body" to specifically include not only the city council, but all boards and commissions of the city council, including advisory commissions.

The Brown Act also applies to committees which are composed of less than a quorum of the legislative body, if they are "standing committees" which either have continuing subject matter jurisdiction or a meeting schedule established by formal action of the legislative body. See Gov't Code §54952(b). Temporary, ad hoc advisory committees continue to be exempt from the Brown Act, provided they consist of less than a quorum of the legislative body. While the Brown Act exempts certain subcommittees, Escondido's City Council has designated all City Council subcommittees to be considered "standing subcommittees." The City Council also voted unanimously to allow members of the public to attend all subcommittee meetings. In light of this Council action, all subcommittee meetings constitute "meetings of the legislative body" subject to the legal requirements set forth in the Brown Act.

The Act applies to members of a legislative body from the time they are elected to office, even if they have not yet assumed the duties of the office.

MEETINGS:

The term "meeting" includes much more than simply a formal and official gathering. A meeting is a gathering of a quorum, no matter how informal, where business of the board or commission is discussed, deliberated or transacted. Therefore, any time a quorum of your group is gathered, and the business of that group is discussed, the Brown Act will apply.

The Brown Act also provides that "use of a series of communications of any kind", including direct communication, personal intermediaries or technological devices, that is employed by a majority of the members of the legislative body to discuss, deliberate or take action on any item of business . . ." is a meeting. This means that a meeting can occur via email or on the phone if a majority is involved.

Meetings can also include situations where a series of smaller meetings ultimately involve a majority of the legislative body and a decision-making process. Although staff or members of the public will meet with individual councilmembers from time to time to answer questions or provide information regarding a matter within the local agency's jurisdiction, care must be taken to assure that comments or positions of any member of the legislative body are not relayed from meeting to meeting. The same can hold true for email communications which are forwarded or exchanged among members of the legislative body.

The Brown Act includes six important exceptions to the definition of a "meeting". These are:

1. Individual contacts or conversations between a member of a legislative body and any other person -- provided a series of individual communications are not used to take actions on any item of business that is within the subject matter jurisdiction of the legislative body.

2. The attendance of a majority of members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public -- provided that a majority of the members do not discuss among themselves business of a specific nature that is within their subject matter jurisdiction.
3. The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern -- provided the members do not discuss among themselves business of a specific nature within their subject matter jurisdiction.
4. The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency -- provided that a majority of the members do not discuss among themselves business of a specific nature that is within their subject matter jurisdiction.
5. The attendance of a majority of the members at a purely social or ceremonial occasion -- provided that a majority of the members do not discuss among themselves business of a specific nature within their subject matter jurisdiction.
6. The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee -- provided that the members who are not members of the standing committee attend only as observers.

Gov't Code §54952.2.

Other than the six specific exceptions noted above, other gatherings are defined as "meetings" and a majority of the legislative body cannot gather and discuss City business except at an open and properly noticed meeting.

In 1997, the Legislature adopted Government Code Section 54952.2(c)(6) to allow meetings involving the attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers. Attendance as an observer means that the member may not ask questions, make statements or sit in a special chair.

AGENDA:

Each legislative body must have an agenda for their meetings. The agenda must be posted in a public place at least 72 hours before each regular meeting. The agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting, and must also specify the time and location of the regular meeting. Agendas must be posted in a location that is freely accessible to members

of the public and must be posted on the local agency's internet website. The law also requires that if non-confidential writings related to an agenda item are distributed less than 72 hours prior to the meeting at which it is to be discussed, the writing must be made available for inspection without delay, and no later than when the material is distributed to the Councilmembers – at a public office or location the agency designates. The City may also post last minute materials to its website.

The general rule is ***that no action or discussion can occur on any item that does not appear on the posted agenda.*** The following exceptions to this rule exist:

1. If a majority of the legislative body determines that an emergency situation exists, an item may be considered even though it does not appear on the agenda.
2. If two-thirds of the legislative body (or a unanimous vote of those present if two-thirds are not present) determines that the need to take action arose subsequent to the agenda being posted, the item may be considered even though it does not appear on the agenda.
3. Discussion can also occur on an off-agenda item if the item was properly posted for a prior meeting of the legislative body, the prior meeting took place not more than five calendar days before the date action is usually taken on the item, and the item is continued from the prior meeting to the current meeting. In this case, the item may be considered even though it does not appear on the agenda.

Generally speaking, Boards and Commissions are rarely in a position to take advantage of one of the above exceptions. All business should consist of items which were placed on the agenda in advance.

Because the Brown Act has been specifically worded to indicate that no action or discussion shall be taken on any item which does not appear on the posted agenda, responding to members of the public raising off agenda issues can pose potential issues under the Brown Act. In these circumstances, the Act provides that a member of the legislative body may:

1. "Briefly respond" to the statement.
2. Ask for clarification.
3. Provide the necessary reference to staff or other resources for factual information.
4. Request staff to report back to the legislative body at a later meeting.
5. Direct staff to place a matter of business on the future agenda.

RECORDING OF MEETINGS:

The Brown Act provides that any person attending a meeting has a right to record the proceedings with audio or video tape recorders, and may also broadcast the meeting. There is a limited exception that the recording or broadcasting cannot continue if it would constitute a disruption of the proceedings.

PLACE OF REGULAR MEETINGS:

All meetings normally take place within the City. There are certain specific exceptions when the legislative body may meet outside the City limits. These include situations to:

1. Comply with a State or Federal law or court order.
2. Inspect real or personal property.
3. Participate in meetings or discussions of multi-agency significance.
4. Meet with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency.
5. Visit the agency's legal counsel for a closed session on pending litigation.

SECRET BALLOTS:

The Brown Act prohibits legislative bodies from taking any action whatsoever by secret ballot, whether preliminary or final. Any ballots taken are open to public inspection. Indeed, recently enacted legislation requires all votes and decisions of any sort to be publicly reported.

ORAL COMMUNICATIONS:

Each agenda for the City Council and a Board or Commission should have a place on it entitled "oral communications." The Government Code requires all agendas for regular meetings of legislative bodies to provide an opportunity for members of the public to directly address legislative bodies. The members of the public may address the legislative body on items of interest to the public that are within the jurisdiction of the legislative body. However, unless the basis for a specific exception to the Brown Act exists, the legislative body cannot take action on items raised during oral communications.

SPECIAL MEETINGS:

Special meetings may be called at any time by the presiding officer of the legislative body, or by a majority of the members of the legislative body. This is accomplished by personally delivering or mailing notice to each member of the body. Notice must also be delivered to each local newspaper of general circulation and radio or television station that has requested such notice in writing. Additionally, notice must be posted on the local agency's internet website. All notices must be received at least 24 hours before the time of the meeting. The notice must also specify the time and place of the special meeting and the business to be transacted. No other business can be considered at these meetings. A legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive.

Certain exceptions to all of the above rules are still available in emergency situations. An emergency situation is defined as a work stoppage or other activity which severely impairs public health and safety, or a crippling disaster which severely impairs the public health and safety, as determined by a majority of the members of the legislative body.

CLOSED SESSIONS:

Closed or "executive" sessions can only be held if they are for one of the purposes specified in the law. Generally, closed sessions can only be held to discuss specific litigation items, personnel matters, labor relations, and purchases of real property. Although the City Council regularly has a need to meet in closed session, it is difficult to envision a circumstance where an advisory board or commission would meet in closed session. The sole exception is perhaps the Personnel Review Board, which occasionally considers confidential personnel matters.

Because of the strict confidentiality that is associated with closed sessions of the legislative body, the Government Code has specific rules regarding the manner in which closed sessions appear on the agenda, and governing the manner in which specific matters might be disclosed following a closed session. While some disclosures are legally required, there are important exceptions which are essential to preserve confidentiality. The City Attorney and City Clerk will prepare all closed session agendas, and handle any required disclosures. Elected officials should always avoid discussing closed session matters without consulting the City Attorney.

PUBLIC CRITICISM:

The Brown Act provides that "the legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body." However, local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.

PENALTIES:

A violation of the Brown Act which occurs with wrongful intent to deprive the public of information can be punished as a misdemeanor, which is punishable by a fine up to \$1,000 or up to six months in jail or both. Further, any action taken which is found to be in violation of the Brown Act can be nullified.

REMEDIES FOR VIOLATION:

Any interested person may commence a court action to obtain a judicial determination that action taken by the legislative body in violation of the above sections is null and void. However, before any action can be commenced, the interested person must make a demand of the legislative body that they correct the alleged error. The demand must be in writing and must clearly describe the challenged action and the nature of the alleged violation. The enforcement provisions of the Brown Act also specifically include the District Attorney as an interested person that may commence an action to enforce the Act, or prevent threatened violations of the Act. Additionally, the law has a mechanism to require the closed sessions of a legislative body to be tape recorded if there is a determination by a court that the Brown Act has been violated.

No person can challenge an action of the legislative body as being in violation of the Brown Act if the action was taken in substantial compliance with the relevant sections of the Brown Act. Court costs and reasonable attorney's fees can be awarded to the person bringing an action challenging violation of the Brown Act. If the court finds that the action was clearly frivolous or totally lacking in merit, court costs can also be awarded against the person bringing the action.

CONCLUSION:

It is important that your business be conducted in compliance with the law. This memorandum gives you the basics of the Brown Act. If you want further information or have specific questions, you are encouraged to call the City Attorney's office at 839-4608.



HISTORIC PRESERVATION COMMISSION

Agenda Item No.: H.10
Date: June 3, 2014

TO: Historic Preservation Commissioners
FROM: Rozanne Cherry, Principal Planner
SUBJECT: Window Replacement

As you know, there is a problem with inappropriate window replacements on historic resources and structures in the Old Escondido Neighborhood. Since a building permit was not required for replacing windows within the original openings, many contractors were not aware of the special circumstances in dealing with historic resources and structure within the OEN. One step in addressing this concern was accomplished last fall when the Escondido Municipal Code was revised to now require a building permit for replacing windows in buildings on the historic register or in the OEN, even when there is no modification to the existing rough opening or to the exterior weather proofing. This code update is in effect.

See Sec. 6-13.1, 6-13.3 and 6-13.3.12 in the attached Municipal Code excerpt.

Sec. 6-13. Permits.

Sec. 6-13.1. Permits Required. Except as specified in Section 6-13.2, no building, structure or building service equipment regulated by this code and the technical codes shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate, appropriate permit for each building, structure or building service equipment has first been obtained from the building official.

Sec. 6-13.2. Work Exempt from Permit. A permit shall not be required for the types of work in each of the separate classes of permit as listed below. Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in violation of the provisions of the technical codes or any other laws or ordinances of this jurisdiction.

Sec. 6-13.3. Building Permits. A building permit shall not be required for the following:

Sec. 6-13.3.1. One-story detached accessory buildings, associated with a Group R-3 Occupancy, used as tool and storage sheds, playhouses, gazebos and similar uses, provided the floor area does not exceed one hundred twenty (120) square feet (11.15 m²).

Sec. 6-13.3.2. Fences not over six (6) feet (1,829 mm) high.

Sec. 6-13.3.3. Oil derricks.

Sec. 6-13.3.4. Nonfixed and movable, fixtures, cases, racks, counters and partitions not over five (5) feet nine (9) inches (1,753 mm) in height.

Sec. 6-13.3.5. Retaining walls which are not over four (4) feet (1,219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding flammable liquids.

Sec. 6-13.3.6. Water tanks supported directly upon grade if the capacity does not exceed five thousand (5,000) gallons (18,925 L) and the ratio of height to diameter or width does not exceed 2:1.

Sec. 6-13.3.7. Decks, porches, sidewalks and driveways not more than thirty (30) inches (762 mm) above adjacent grade, measured vertically to the floor or grade below at any point within thirty-six (36) inches (914 mm) horizontally to the edge of the open side, and not over any basement or story below and are not part of an accessible route.

Sec. 6-13.3.8. Painting, papering, tiling, carpeting, cabinets, countertops and similar finish work.

Sec. 6-13.3.9. Temporary motion picture, television and theater stage sets and scenery.

Sec. 6-13.3.10. Window awnings supported by an exterior wall that do not project more than fifty-four (54) inches (1,372 mm) from the exterior wall and do not require additional support of Group R - 3, and Group U Occupancies.

Sec. 6-13.3.11. Prefabricated swimming pools accessory to a Group R-3 Occupancy that are less than twenty-four (24) inches (610 mm) deep, do not exceed five thousand (5,000) gallons (18,925 L) and are installed entirely above ground.

Sec. 6-13.3.12. Except for buildings on the historic register or in the Old Escondido Neighborhood, the installation of replacement windows in existing window openings associated with a residential dwelling unit with no modifications to the existing rough opening or to the exterior weather proofing. This does not exempt the installation from retaining code compliance for bedroom egress.

Sec. 6-13.3.13. Ground supported, non-internally illuminated signs, not over six (6) feet in height. This does not exempt these signs from planning division permits or from compliance with the Zoning Code.

Sec. 6-93.3.14. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.

Sec. 6-13.3.15. Swings and other playground equipment accessory to detached one- and two-family dwellings.

Unless otherwise exempted by this code, separate plumbing, electrical and mechanical permits will be required for the above exempted items.