



# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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**TO:** All Town Commissions and Committees

**CC:** Jeremy Dennis, Town Manager

**FROM:** Cara Silver, Town Attorney

**DATE:** August 3, 2022

**RE:** New Policy Regarding Texting and Emailing During Public Meetings

On August 1, 2022, the Town Council adopted the attached policy prohibiting private email or text communications among commission and committee members during public meetings. (See the [August 1 Staff Report](#) for further background on this policy.) This policy also prevents commission and committee members from privately communicating with a third-party consultant employed by the Town during a public meeting. This policy does not prevent commission and committee members from communicating with Town staff or the Town Attorney during public meetings. This policy is directed at communications relating to the business of the legislative body. Thus, this policy is not intended to prevent commission and committee members from texting one another to report an internet connection problem during a remote meeting or to request a restroom break.

Below are some common examples of both prohibited and permitted communications.

**Prohibited Communications (during public meetings):**

- Text asking fellow committee member a clarifying question about an agenda item
- Text to a fellow committee member providing additional information on a pending agenda item
- Text to a fellow committee member forwarding a historic document relative to an item contained on the agenda, but not included in the agenda packet
- Text from a committee member to the chair asking if a member of the public could be recognized even though public comment time has ended

- Text from a committee chair asking an evacuation consultant who has made a presentation to the committee whether they can respond to a question raised by a member of the public
- Text from a committee chair to an evacuation consultant scheduled to make a presentation to the committee whether their schedule would be impacted if the committee re-arranged the agenda
- Email from chair to entire committee forwarding a power point slide deck for an agenda item

### **Permitted Communications (during public meeting)**

- Text from a committee member asking the Town Manager to respond to a question from a member of the public
- Text from a committee member asking the Town Manager a clarifying or technical question regarding a matter on the agenda
- Text from a committee member to the Town Attorney asking whether a public member's summary of a new State law is accurate
- Text from a committee member to the chair informing them that their internet connection is unstable and they plan to exit and rejoin the meeting
- Text from a member of the public to the chair complaining about the disrespectful tone of one of the committee members (and responding text from chair)
- Text from a member of the public to a committee member stating that Town staff's summary of the resident comments received at a community meeting is inaccurate
- Text from a committee member to chair that the member must leave the remote meeting due to a family emergency
- Text from a committee member to chair requesting a restroom break

This new policy does not apply to communications outside a public meeting. The Brown Act prohibits direct or serial communications outside a meeting amongst a quorum of commission and committee members. To avoid an inadvertent serial Brown Act violation, a practical tip is to select a single "Brown Act buddy" and only communicate with that person. Commission and committee member may have different Brown Act buddies for different topics.

For more information on the Brown Act, see [Open & Public V: A Guide to the Ralph M. Brown Act](#). The Town Attorney and Town Clerk are available to provide additional Brown Act training to your commission and committee.

For more background on this new policy, see [August 1 Town Council Staff Report](#).

Attachment: Unconditional Commitment Letter



# TOWN of PORTOLA VALLEY

Town Hall: 765 Portola Road, Portola Valley, CA 94028 - Tel: (650) 851-1700 Fax: (650) 851-4677

August 1, 2022

Lawrence A. Jacobson  
Cohen and Jacobson LLP  
Attorneys at Law  
60 Bovet Road, Suite 285  
San Mateo, CA 94402

Dear Mr. Jacobson:

The Town of Portola Valley, and its legislative body Wildfire Preparedness Committee (WPC), have received your "Cease and Desist" letter dated March 30, 2022, alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

The WPC held a publicly noticed, video-recorded meeting on March 1, 2022, starting at approximately 4:30 pm and concluding at approximately 7:20 pm. A portion of the video time-stamped 2:26:00 through 2:26:50 of the March 1, 2022, meeting shows Town Council Liaison and Vice Mayor Sarah Wernikoff communicating via text message with Committee Member Jennifer Youstra, Committee Chairman Michael Tomars, and Town Manager Jeremy Dennis. The text communications, which were disclosed to the public during the meeting through a screenshare, include:

1. A message exchanged with Committee Member Youstra at 6:01 pm relating to Committee business;
2. A message exchanged with Committee Chairman Tomars at 6:14 pm allegedly relating to Committee business; and
3. A message exchanged with Town Manager Dennis at 6:25 pm relating to Committee business.

Representatives or agents of the Town Council alleged to be attending the meeting included (a) the Vice Mayor attending and participating in this meeting as a member of the Town Council and as the Liaison of and for the Town Council, (b) Jeremy Dennis attending and participating as Town Manager, and (c) Cara Silver attending as Town Attorney.

The Cease and Desist letter further asserts that based upon the conduct described above further alleged violations may similarly have been committed by the other legislative bodies of the Town. The Cease and Desist Letter also contains a Public Records Act request for records reflecting such other communications.

Larry Jacobson  
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In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the Town of Portola Valley (the "Town"), for itself and all legislative bodies thereof (the "Legislative Bodies" or, individually, a "Legislative Body"), hereby unconditionally commits that members of all Legislative Bodies will cease and desist from the following:

1. Non-public texting or emailing, or engaging in any other non-public communications, between or among members and/or third-party consultants (not including legal counsel), during any meeting that is subject to the Brown Act relating to business of the Legislative Body.
2. For the purposes of this letter, the prohibited texting, emailing and other forms of non-public communication shall mean and include all such communication between or among members participating in a meeting collectively or by serial communications constituting a meeting within the scope of the Brown Act which are not open and shared with the public.

The Town, for itself and all Legislative Bodies, may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to [subdivision \(a\) of Section 54960 of the Government Code](#). That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

  
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Craig Hughes  
Mayor