



---

# **THE BROWN ACT:**

## California's Open Meetings Law

October 2020



# Legislative Intent

---

- “public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”
- “The people insist on remaining informed so that they may retain control over the instruments they have created.”



# BROWN ACT: BASIC RULE

---

- All meetings of a legislative body of a local agency shall be open and public
- Exceptions are few & narrowly construed

# “LEGISLATIVE BODY”

---

- 1) The governing body of the local agency
- 2) Any commission, committee, or board, permanent *or* temporary, decision-making *or* advisory, created by a formal act of the local agency
- 3) Governing body of private organization if:
  - a) Created by legislative body; or
  - b) Receives funds from the agency and legislative body has appointed a full voting board member

# NOT “LEGISLATIVE BODY”

---

- A temporary advisory committee composed solely of less than a quorum of the legislative body that serves a limited or single purpose
  - Sometimes referred to as “ad hoc committees”
  
- Contrast with “standing committees,” which are Brown Act bodies:
  - Continuing subject-matter jurisdiction; or
  - Meeting schedule fixed by formal action of body



# “MEETING”

---

- 1) When a majority of the members;
- 2) Are present at the same time and place;
- 3) To “hear, discuss, deliberate, *or* take action”;
- 4) On any item within the subject-matter jurisdiction of the legislative body

# SERIAL “MEETINGS”

---

Individual communications can become invalid serial “meetings” in two ways:

1) CHAIN: Member A contacts Member B, and Member B contacts Member C, etc.

2) INTERMEDIARY: An intermediary contacts a majority of members sharing information between members

Note: Measure G states that at each public meeting of the commission, each commission member shall clearly disclose the sources and summaries of any ex parte communications they have had concerning the redistricting process.

**\*\*EMAIL exchanges may constitute serial meetings.\*\***

# COUNTY STAFF COMMUNICATIONS

---

- County staff may communicate with members of a legislative body:
  - in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of that body,
  - if that person does not communicate to members of the legislative body the comments or position of any other member of the legislative body



# “MEETING” EXCEPTIONS

---

- Attendance by a majority of members at:
  - 1) An open and publicized conference
  - 2) An open and publicized community forum
  - 3) An open and publicized meeting of another legislative body
  - 4) A purely social or ceremonial occasion

***IF . . .***



# NOT A “MEETING”

---

. . . The members DO NOT discuss among themselves business that is within the subject-matter jurisdiction of their legislative body

# TELECONFERENCING

---

- Body may meet by teleconference, through audio or video or both, for all purposes, IF:
  - 1) All votes taken by roll call
  - 2) Each location identified in agenda, and agenda posted at each location
  - 3) Public access and comment rights protected at each location
  - 4) At least a quorum of members participate from within County

# BROWN ACT AND COVID

---

- EO N-29-20 allows public meetings to be held by video, teleconference or other electronic means and suspends certain teleconferencing requirements:
  - Identifying physical locations of each teleconferencing location in agenda
  - Posting agendas at each teleconferencing location
  - Public access at each teleconferencing location
  - Quorum within the County



# BROWN ACT AND COVID

---

- Under EO N-29-20, Brown Act bodies are still required to:
  - Notice public meetings and post agendas in accordance with Brown Act time-frames
  - Provide information by which members of the public may observe and offer public comment



# REGULAR MEETINGS

---

- ❑ Must be held at the time and place set by ordinance, resolution, bylaws or whatever other rule is required for the conduct of business by that body
- ❑ Agenda posted at least 72 hours in advance
- ❑ Each agenda item must be briefly described



# SPECIAL MEETINGS

---

- May be called by presiding officer of legislative body (Chairperson) or a majority of the members
- Written notice to each member of body, local newspaper requesting notice, and posted on agency website 24 hours before meeting



# ALLOWED NON-AGENDA ITEMS

---

Generally, no action or discussion shall be undertaken on any item not appearing on posted agenda. Exceptions include:

- ❑ “Briefly respond” to public comment
- ❑ Ask a question for clarification
- ❑ Make a brief report on own activities
- ❑ Provide reference for factual information
- ❑ Request that staff report back or that an item be placed on future agenda





# CLOSED SESSION

---

- 1) Personnel Matters - performance evaluation, discipline, complaints against
- 2) Real Estate Negotiations – price and terms
- 3) Litigation – existing, pending, threatened
- 4) Labor Negotiations
- 5) Security of Public Buildings

# BROWN ACT AND ACCESSIBILITY

---

- ❑ Basic rule: Meetings must be accessible per ADA - “reasonable accommodations”
- ❑ Agendas must be made available in appropriate alternative formats upon request
- ❑ No meetings at location that is “inaccessible to disabled persons”



# RIGHTS OF THE PUBLIC

---

- Right to attend meetings without registering name or providing other information
- Right to record proceedings with camera, audio or visual recorder, unless persistently disruptive
- Right to address the body on each item of business on the agenda and any other matter of public interest



# RIGHTS OF THE PUBLIC

---

- Right to criticize the County's policies, procedures, programs, or services, as well as employees and officers acting within the scope of their official capacity
- Right to inspect/obtain agendas and any other non-exempt writings made available to a majority of members at the meeting



# REMEDIES

---

- Civil Action
  - Opportunity to cure
  - Stop future violation or invalidate past violation
  - Attorneys' fees and costs recoverable
  
- Criminal Charges
  - Misdemeanor
  - Requires intent to deprive public of information

# Other Resources

---

□ Political Reform Act

<http://www.fppc.ca.gov/learn/conflicts-of-interest-rules.html>

□ Gov. Code 1090

<http://www.fppc.ca.gov/learn/section-1090.html>

□ Brown Act <https://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>



---

QUESTIONS?