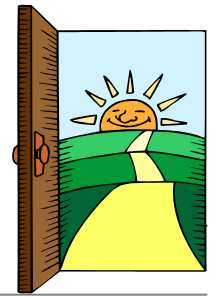


Overview of The Ralph M. Brown Act (California Govt. Code Section 54950 et seq.)



Office of the County Counsel
County of Santa Clara

February 22, 2023



Purposes of the Brown Act

- ❑ Decision-making process of legislative bodies of local agencies must be conducted in public and open to public scrutiny
- ❑ Balance two legitimate interests:
 - Government's interest in candor and confidentiality
 - Public's interest in free and open debate and in being informed of government's activity on the public's behalf
- ❑ Also County's Open Government Ordinance (Div. A17)

Brown Act

- “Majority of members of a legislative body shall not, outside [an authorized meeting], use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

The Brown Act Applies To:

- Local Agencies
- Legislative Bodies
- Meetings



- Persons Elected to Legislative Bodies – even before they assume office

What is a “Legislative Body” under the Act?

- ❑ Governing body of a local agency.
- ❑ Any other local body created by state or federal statute.
- ❑ Commission, committee, board, or other body of a local agency, permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.
- ❑ Standing committees of legislative bodies with continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- ❑ Temporary ad hoc committees of legislative bodies that include as a member someone who is not on the legislative body.

Ad Hoc Bodies

- Ad hoc body is only exempt from the Brown Act if:
 - 1) it is comprised exclusively of members from the parent legislative body;
 - 2) it is composed solely of less than a quorum of the members of the parent legislative body;
 - 3) it is created to address a limited or single purpose within a limited duration (i.e., temporary);
 - 4) it does not have continuing subject matter jurisdiction over a particular issue or area; and
 - 5) it does not have a meeting schedule fixed by formal action of a legislative body.

What is a “Meeting” That Triggers the Act?

- ❑ A “meeting” is any gathering of a majority of the members of a legislative body to hear, discuss, deliberate or take action on any item within the legislative body’s subject matter jurisdiction.
- ❑ No vote or action is required.
- ❑ Any gathering where a majority of the members merely receive information, hear a proposal, or discuss their views on an issue that is within their subject matter jurisdiction is a “meeting” subject to the notice and open meeting requirements of the Brown Act.

“Meeting” includes:

- ❑ Face-to-Face Meetings
- ❑ Video Teleconferencing
- ❑ “Serial Meetings” (chain and spoke-and-hub)
 - Using a series of communications, directly or through intermediaries, to discuss, deliberate, or take action on an issue within the group’s subject matter jurisdiction outside of a public meeting.
 - Email exchanges may be serial meetings in violation of the Brown Act.

Using Email or Texts as a Legislative Body Member

- ❑ March 2, 2017 California Supreme Court decision in *City of San Jose v. Superior Court*.
- ❑ Writings-including emails and text messages-that are sent or received on personal electronic devices or personal accounts but relate in some substantive way to the conduct of the public's business qualify as "public records" under the California Public Records Act ("CPRA").

AB 992 – Updating the Brown Act to Address Social Media

Effective January 1, 2021, AB 992 extends normal Brown Act restrictions explicitly to social media platforms.

- Members of a legislative body may use social media platforms that are accessible to the general public to “answer questions, provide information to the public, or to solicit information from the public.”
- Members are not permitted to use such social media platforms to communicate with other legislative body members constituting a majority of the legislative body about “business of a specific nature that is within the subject matter jurisdiction” of the legislative body.

AB 992 – Updating the Brown Act to Address Social Media

AB 992 imposes a new restriction on members responding to social media posts of other members.

- Members may not respond to or comment on any social media postings made by any other legislative body member that is accessible to the public on any topic within the subject matter jurisdiction of the legislative body, including “liking” such a posting, “retweeting” it, or responding to it with a digital image or icon (e.g., an emoji) expressing their reaction.

The Brown Act Does NOT Apply To:

- Conferences or similar events open to the public
- Attendance at meetings of other local agencies
- Purely social or ceremonial occasions
- . . . provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, specific business that is within the subject matter jurisdiction of the legislative body.

Location of Meeting

- ❑ A meeting may not be held in any facility that:
 - ❑ prohibits the admittance of any person based on protected characteristics (e.g., ancestry, race, religion, age, sex, sexual orientation, disability, etc.);
 - ❑ is inaccessible to disabled persons; or
 - ❑ requires a payment or purchase for admittance/attendance.

Public Participation

- ☐ Noticed Agenda
 - ☐ Posted in a location that is freely accessible to members of the public and on County's Internet website.

Public Participation

- ❑ Public Comment
 - ❑ Before or during consideration of any agendized item
 - ❑ Comment Period for Non-Agendized Items
 - ❑ Provide 2X allotted time to member of public who utilizes a translator
 - ❑ May not require members of public to identify themselves.
 - ❑ May not require members of public to sign-in, complete a questionnaire, or fulfill any other condition in order to attend a meeting.
 - ❑ May not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body

A legislative body may not take any action or discuss any item not appearing on the posted agenda – Limited Exceptions

- Briefly respond to statements made or questions posed by members of the public,
- Ask a question for clarification,
- Make a brief announcement,
- Make a brief report on their own activities,
- Make a referral for factual information,
- Request staff to report back to the body on a matter at a future meeting, and
- Request staff to agendize a particular matter of business at a future meeting.

Public Participation

- ❑ Every member of the public has the right to record and broadcast the proceedings of an open meeting with an audio or video recorder or a still or motion picture camera.
- ❑ Legislative body may only prohibit or limit the recording or broadcasting of a meeting if it finds that the recording/broadcasting cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings. Consult County Counsel regarding legal requirements of what constitutes a disruption.

Public's Access to Documents

- ❑ Agendas of public meetings and any other writings, when distributed to at least a majority of legislative body by any person in connection with a matter subject to discussion/consideration at an open meeting of the body, are public records under the CPRA.
- ❑ Writings distributed during a public meeting by the local agency (staff) or a member of its legislative body shall be made available for public inspection at the meeting
- ❑ If prepared by other person (member of the public), it shall be made available after the meeting.

Public's Ability to Monitor Votes of Individual Members

- ❑ Legislative body must publicly report (1) any action taken and (2) the vote or abstention on that action of each member present for the action.
- ❑ Not sufficient to state six in favor and two opposed without identifying who is in favor and who is opposed.

General, Longstanding Requirements for Teleconferencing by Legislative Body Members

1. Remote locations are connected to the main meeting location by telephone, video, or both;
2. Quorum of the members participate from locations within jurisdiction;
3. Full address of each teleconference location is identified in the notice and agenda of the meeting;
4. Agendas are posted at all teleconference locations within required timelines;
5. Each teleconference location is accessible to the public and has technology to enable the public to participate from that location; and
6. All votes are taken by roll call.

The Brown Act – Penalties & Remedies



- ❑ Challenges to Invalidate an Action
 - Cure or Correct Demand to Agency
 - Agency response through County Counsel needed
- ❑ Challenges to Find Past Action/Practice Violates Brown Act
 - Cease and Desist Letter to Agency
 - Agency response through County Counsel needed
- ❑ Other Issues
 - Intense adverse media attention
 - Referral to Grand Jury
- ❑ Misdemeanor for intentional violation (6 mo. jail; \$1,000 fine)

Additional Procedural Information

Quorum Required for Scheduled Meeting to Proceed

- When a quorum is not present for a scheduled meeting, the legislative body cannot hold the meeting.
- May orally announce Legislative Body will wait for a specified time (e.g., 15 minutes) to determine if quorum arrives.
 - No public comment or staff reports during the designated waiting time.
- If it is determined that a quorum is not present to proceed with the meeting, Chairperson or Deputy Clerk shall orally announce that the meeting is cancelled due to a lack of quorum.
- Once meeting is cancelled, it cannot be held if additional members that would comprise a quorum arrive after the cancellation announcement.

Overview of Commonly Used Procedures from Robert's Rules of Order

MOTIONS

- In general, a motion is a formal proposal by a member in a meeting that the legislative body take certain actions.
- A motion forms one of the fundamental principles of parliamentary law – only one question can be considered at a time; once a motion is before the legislative body, it must be adopted or rejected by a vote before any other business can be brought up.

Overview of Commonly Used Procedures from Robert's Rules of Order

SUMMARY OF BASIC PROCEDURE OF MOTIONS

- A member requests to speak.
- The Chair recognizes the member.
- The member makes a motion.
- Another member seconds the motion.
- The Chair states the motion that is before the legislative body.
- The Chair recognizes any members who wish to speak on the motion before the vote. Each member who wishes to speak may speak more than once to respond to another member's comment. The Chair is responsible for recognizing each member and indicating when it is their turn to speak, maintaining order during the discussion.
- The Chair puts the motion to a vote. The Chair shall make clear the names of the motioner and seconder.
- The Chair announces the result of the vote.