A stylized illustration of a bright yellow sun rising over a green hill. The sun is partially obscured by the horizon line of the hill. The background is a gradient of yellow and orange, suggesting a clear sky.

Sunshine and Common Good: The Ralph M. Brown Act & County of Alameda Code of Ethics

Presentation by
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COUNTY OF ALAMEDA
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The Brown Act

The Brown Act was enacted in 1953 in part due to a 10-part exposé in the *San Francisco Chronicle* on the lack of transparency in local government, entitled “Your Secret Government.”

San Francisco Chronicle
NORTHERN CALIFORNIA'S LARGEST NEWSPAPER

The Guiding Principle

The Public's business must be conducted in *public*, with ample opportunity for public participation.





Recent Amendments

- Major changes to the Brown Act this year
- Purpose:
 - To increase public participation and access
 - To modernize the Act to reflect technological changes
 - To ensure minimum standards for public participation and notice



Recent Amendments

A local agency shall provide a copy of the Brown Act to any person elected or appointed to serve as a member of a legislative body of the local agency.

Gov. Code sec. 54952.7

Who is Subject to the Brown Act?

- Any board, commission, committee or other body created by a charter, ordinance, resolution or other formal action of the Board of Supervisors; and standing committees
- The Advisory Commission on IHSS was created by Ordinance 93-81 and is codified in the Admin Code, Ch. 2.106.020
- Exception: ad hoc committees made up of less than a quorum of the body

Ad Hoc Committees:

- Purely advisory
- Comprised solely of members
- < quorum (of body or standing committee)
- Limited duration and purpose
- No meeting schedule fixed by formal action
- Charged with accomplishing a specific task
 - *No continuing subject matter jurisdiction*
- In a short period of time
 - *Dissolved when the specific task is completed*

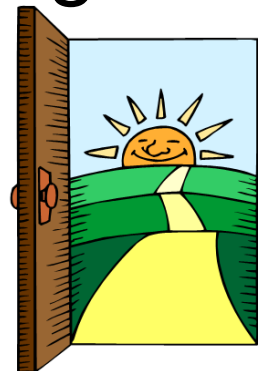
Ad Hoc Examples

- Meetings by 2/5 city council members to review Coastal Commission's new draft land use plan regarding city
- Ad hoc advisory committee created to advise Board of Education regarding candidates' qualifications for vacant board position

The Open Meeting Rule

RULE: Meetings are OPEN to the public; exceptions to the rule are narrowly construed.

“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.”



What is a “Meeting?”

A meeting occurs whenever a majority of the members of the Board or of a committee come together at the same time and place (including teleconference locations), to discuss business.

Meetings May Be:

- Formal or informal
- Involve listening, discussion, or action, or all of the above
- In person, or through technology



Meetings Can Include:

- Retreats
- Site visits
- Social gatherings or “networking” before or after a noticed meeting



Traps for the Unwary

- “Pre-meetings” and “Post-meetings” held without notice to the public
- Serial meetings (communications, direct or indirect, that relate to business).

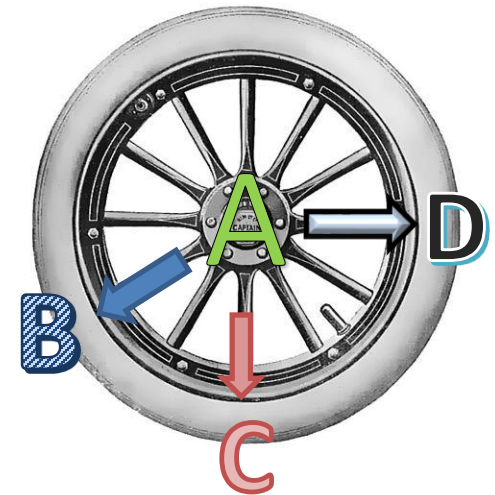


Types of Serial Meetings

- “Chain” meetings: Member A talks to member B, who talks to Member C...



- “Hub-and-Spoke” meetings: A talks to B, then C, then D...



How Serial Meetings Occur

- Through technology:
 - Text
 - Email
 - Phones, etc.



- Through staff or “intermediaries”



Discussions With Staff

Staff can ***answer questions*** or ***provide information*** to individual Board members ***so long as*** any views or positions expressed by the member are ***not communicated*** to other members of the Board



What ISN'T a Meeting?

- Attendance of majority at
 - regional/state/national conference
 - local meeting open to the public
 - social, recreational, ceremonial event not sponsored by or for the body
- Are OK *PROVIDED* no collective discussion of Commission business

What about Social Media?

- AB 992 applies to Social Media (e.g., Twitter, Facebook, Instagram, Reddit, etc.)
- *Meeting* does not include
 - Engaging in separate conversations or communications on the platform
 - To answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body
 - Government Code sec. 54952.2

...still...

- **No** “discuss[ion] among [members about] business of a specific nature that is within the subject matter jurisdiction of the legislative body”
- **No** “responding directly to any communication...regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body”
 - Government Code sec. 54952.2

Meetings: Locations and Time

- Meetings must be held within Alameda County
- Meetings must occur at a time and location set by ordinance, resolution, or bylaws
- Meetings include approved teleconference locations



“Teleconference” =

- A meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.
- Each teleconference location must be identified in the notice and agenda.
- Agenda must be posted at all teleconference locations.
- Each location **must have public access and opportunity for public to speak.**
- A quorum must be inside the County.
- All votes must be taken by roll call.

Teleconference cont.

- The body must “conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.”



Teleconference as Reasonable Accommodation

- Members can teleconference to accommodate a disability
 - Member must use audio and visual technology unless disability requires only telephone participation
 - Must disclose if someone 18+ is in the room with member, and relationship, before any action by ACA is taken
 - Remote participation for this reason counts toward quorum at physical location
 - » Gov Code sec. 54953 (as amended)

Teleconference as Reasonable Accommodation (cont.)

- Traditional teleconferencing rules do not apply in this situation
 - No need to post the location of the remote member

Alternative Teleconference Rules

Eligible Subsidiary Body

Local board/commission members may participate remotely without posting their physical location on the agenda if all of the following are met:

- 1) Authorization (every 6 months) by BOS through majority vote*
- 2) One physical meeting location (at least) where non-remote members participate and where public can attend, observe, hear & participate

*BOS has not authorized yet

Alternative Teleconference Rules (cont.)

3) One staff member (at least) of the commission or BOS shall be present at the physical meeting location

4) Public participation must be provided, allowing public to remotely hear and visually observe the meeting, and address the commission through:

a) Two-way audiovisual platform

b) Two-way telephonic service and live webcasting of the meeting

Alternative Teleconference Rules (cont.)

5) Remote members must disclose at the meeting, before any action taken, if someone 18+ is in the room with them, and relationship

6) Members must appear on camera unless a physical or mental condition creates a need to participate off camera

Alternative Teleconference Rules (cont.)

a) The camera appearance of a member can only stop if technologically infeasible, including a lack of reliable internet service.

b) If not appearing on camera, a member needs to state the reason they are not visible prior to turning off their camera.

Gov. Code sec. 54953.8.6 (until 1/1/30)

Remote Attendance

- A commission member may participate remotely without posting their physical location on the agenda but...

Only if:

- There is “just cause”
- At least a quorum of members are in-person at a singular physical location within the county (open to public)
- Member must notify the ACA at the earliest opportunity possible of the need to participate remotely, including a general description of the reason
- Member must attend using ***both*** video & audio
- Meeting minutes must include “just cause” reason
- Must disclose if someone 18+ is in room with member, and relationship

Gov. Code sec. 54953.2

Remote Attendance cont.

Just Cause

Sec. 54953.8.3(c) – Cannot Attend because:

- (1) Childcare or caregiving need
- (2) A contagious illness
- (3) A need related to a physical or mental condition (not covered under disability definition)
- (4) Travel while on official business of the ACA or another state or local agency

Remote Attendance cont.

Just Cause

(5) An immuno-compromised family member

(6) A physical or family medical emergency

(7) Military service obligations

- 50 miles outside boundary of ACA

Gov. Code sec. 54953.8, (In effect until 1/1/30)

Remote Attendance cont.

Process

- Remote participation is limited to:
 - Two meetings per year if the legislative body regularly meets once per month or less.
 - Five meetings per year if body regularly meets twice per month
 - Seven meetings per year if body regularly meets three or more times per month
- Submit request at earliest opportunity, including general description of the just cause or emergency circumstances.
- Minutes of the meeting must identify the specific provision in Gov. Code section 54953.8.3(c) relied on as “just cause” for remote appearance
 - Members do not need to disclose any medical diagnosis or disability

Notice & Agenda Requirements

- Regular meeting agendas must be posted 72 hours in advance of the meeting
- Special meeting agendas require only 24 hours advance notice
- Agendas must describe each item to be considered in enough detail that a person of ordinary intelligence could determine whether the item is of interest



Why Does It Matter?

A body subject to the Brown Act *may not discuss* and *may not act* on items not on the agenda or that are beyond the reasonable scope of the agenda description.



Very Limited Exceptions

- Public health/safety emergency
 - Immediate need to avoid serious injury to public interest



- An item continued from previous agenda *and* that last meeting was within the last 5 days

These Don't Need To Be on the Agenda

- Commendations
- Announcements
- Request to agendize future items
- Limited follow-up to general public comment, to provide information or direction to staff



Rights of the Public

ACCESS TO MEETINGS

- To have meetings open and public with limited exceptions
- To have access to all agendas of public meetings and documents distributed to the Legislative Body members
- To record the meetings as long as no reasonable finding that recording is persistently disruptive
- To inspect any recordings of the meetings made by the agency; inspections should be free of charge with agency equipment
- To attend without any condition precedent (e.g., cannot mandate that attendees register or say name)

Rights of the Public

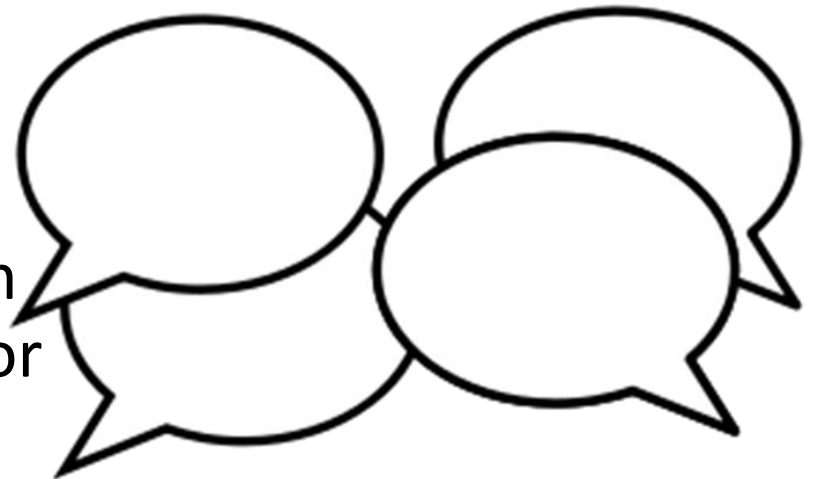
PARTICIPATION IN MEETINGS

The public has the right to address the Commission at any regular or special meeting on any item on the agenda, ***before conclusion of the discussion or action by the Commission***



Types of Public Comment

- Specific: Concerning an item on the agenda, at the time of consideration
- General: Any item within the Board or Commission's subject-matter jurisdiction



Specific Public Comment

- Any agenda item – discussion or action
- Must occur before
 - conclusion of consideration of item (discussion item); or
 - action taken (action item)

1. =

2. =



General Public Comment

- May occur at any time in the meeting, at the discretion of the Chair/Board majority
- Is limited to matters within scope of Commission's jurisdiction, even if not on the agenda
- Members may not discuss or respond substantively
- Not required at special meetings

Rights of the Speaker

- Right to equal time
- Right to criticize policy body, its members, and its staff



Limits on Public Comment

- “Up to” three minutes on an item
- Reasonable limit on total public comment time on an item
- No right to a response from policy body or its members



Additional Limits on Public Comment

A board/commission can skip public comment for certain items **if already considered by a prior committee** comprised exclusively of legislative body members, ***IF***:

- No substantial change to the item since committee consideration
- The prior committee had a physical, in-person quorum
- The committee did not have primary jurisdiction over certain sensitive, high interest areas (e.g., budget, taxes, police oversight, privacy, library material access)

Controlling Unruly Speakers

- Board Chair can impose reasonable time, place, and manner restrictions on public participation
- Unruly speakers may be excluded from the forum if necessary to allow business to continue
 - This applies to on-line participants too



Closed Session

Meetings must be open to the public *unless* the Brown Act specifically authorizes the Board to meet in “closed session.”

It is unlikely that the Commission will have any closed session matters; any plans to hold a closed session can be discussed with County Counsel prior to being placed on an agenda.

Example Topics:

- Personnel
- Litigation
- Labor Negotiations
- Real Estate Negotiations



Criminal Penalties

- Willful violation of Brown Act
 - Action taken in violation of Brown Act
 - Member intends to deprive the public of information to which the public is entitled
- Misdemeanor
 - punishable by imprisonment in the county jail not exceeding six months, or
 - by fine not exceeding one thousand dollars (\$1,000), or
 - by both



Other Potential Penalties

- Invalidation of action taken in violation of Brown Act
- Injunction or declaratory relief to stop or prevent violations
- Disciplinary action
- Prevailing plaintiff may get attorneys' fees and/or costs
- Referral to grand jury for disclosing closed session discussion





County Code of Ethics

- In 2024, County of Alameda adopted a code of ethics for all boards and Commissions.
- Goal is to ensure that promoting the common good is the hallmark of the decision-making process for all.
- Establishes 16 maxims for achieving the goal, including:

Code of Ethics Cont.

- Actively promote public confidence in county government through your actions.
- Recognize and support the public's right to know the public's business.
- Involve residents in the decision-making process and welcome divergent points of view.
- Void outside interests that will interfere or conflict with maintaining an objective and impartial perspective.
- Carefully guard against conflict of interest or its appearance in your actions or decisions.
- Full list codified at Admin Code 2.02.200. - Code of ethics—Board and commission members.

QUESTIONS?

