

**BROWN ACT  
&  
PUBLIC RECORDS ACT**

**CHARTER REVIEW COMMITTEE**  
**November 17, 2021**

# BROWN ACT



# The Ralph M. Brown Act

- ❑ Enacted in 1953 after lengthy investigative reporting on secrecy in local government
- ❑ Principles incorporated into California Constitution in 2004
- ❑ It is the people's business: "The people of this State do not yield their sovereignty to the agencies which serve them."

# Basic Rule

**“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, except as otherwise provided in this chapter.”**



# Charter Review Committee is a Legislative Body Subject to the Brown Act

- ❑ Brown Act encompasses any “commission, committee, board, or other body of a local agency . . . created by charter, ordinance, resolution or formal action of the legislative body.”
- ❑ Council expressly declared the Committee is subject to the Brown Act



# Exception for Ad Hoc Committees

- ❑ Exception for a temporary ad hoc advisory committee comprised solely of less than a quorum of the members of the legislative body which created it.
- ❑ Single subject, short duration.

# What is a Meeting?

- ❑ Any congregation of a majority of the members of a legislative body (meeting cannot be held without a quorum.)
- ❑ To hear, discuss, deliberate or take action
- ❑ On any item that is within the subject matter jurisdiction of the legislative body.

# What is a Meeting?

- ❑ Formal or informal
- ❑ Planned or unplanned
- ❑ In person or through technology or intermediaries
- ❑ At one time or in sequence
- ❑ Discussion or action





# Includes Informal Meetings

Commissioners A, B, C and D meet before a Board meeting to exchange research they did on an item within the Board's subject matter jurisdiction.



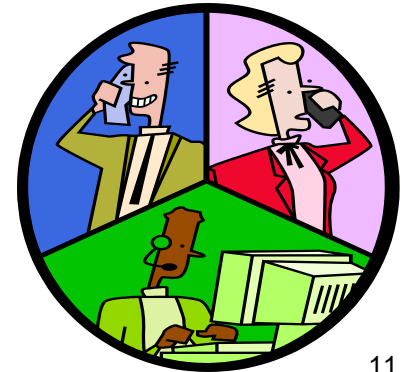
# Includes Hub Meetings

A calls B to discuss an issue within the Authority's jurisdiction. Next, A calls C to get her thoughts too. And then A calls D to get his thoughts as well.



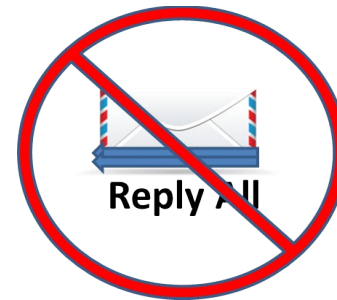
# Includes Serial Meetings

- ❑ Council member A texts Council member B to discuss an item within the Board's jurisdiction, who then emails Council member C about the same issue, who then calls Council member D about the same issue.
- ❑ A series of communications of any kind, conducted directly or through intermediaries or through technological devices, to discuss, deliberate, or take action on any item of business.
- ❑ Such serial meetings are expressly prohibited.



# Includes Electronic Communications

- ❑ Emails and text messages can easily (and inadvertently) become a channel for communication among a majority of the legislative body.
- ❑ Avoid sending emails or texts to the whole body
  - Best to communicate through staff on both substance and procedure.
  - Do not solicit response and do not “reply all”



# What is not a meeting?

- ❑ Individual contacts between Commissioners and staff, legal counsel, or others, provided that the individual meetings are not used as a conduit for developing concurrence or sharing of member opinions.
- ❑ Attendance at social or ceremonial events where no business of the body is discussed.



# What is not a meeting?

- ❑ Provided members do not discuss among themselves matters within the Council's subject matter jurisdiction, the following are permissible:
  - Attendance at conferences and other gatherings which are open to the public.
  - Open community forums or meetings organized to address topics of local community concern.
  - Open and noticed meetings of other legislative bodies, including legislative bodies of other agencies and other bodies of the same agency.



# Social Media

Be aware of risks of Brown Act violations in the use of social media. Recently enacted AB 992 sets guidelines:

- ❑ Allowed: Use social media platforms to answer questions and provide the public with information, or to solicit information from the public on matters within the Council's jurisdiction
  
- ❑ Not Allowed: Do not respond to any communication made, posted or shared on social media by another Council member regarding any matter with the Council's jurisdiction. This includes any comment, "like," or digital icon expressing reaction

# Authorized Meetings

- ❑ **Open Session:**
  - Regular Meetings
  - Special Meetings
  - Emergency Meetings



- ❑ **Closed Session**
  - Limited by statute





# Regular Meetings

- ❑ A regular meeting is a meeting that occurs at the regularly scheduled date, time and location.
- ❑ Under Brown Act, agenda must be posted at least 72 hours prior to the meeting.
- ❑ Note: Extended notice required under City's Open Government Ordinance.

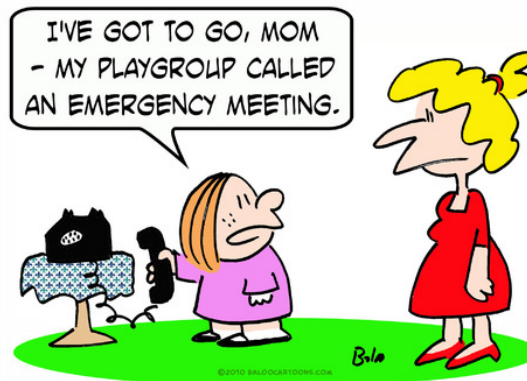
# Special Meetings

- ❑ A “special meeting” is a meeting called by the presiding officer or majority of the legislative body to discuss one or more identified discrete items.
- ❑ Agenda must be posted at least 24 hours prior to the meeting.



# Emergency Meetings

- ❑ “Emergency meetings” are a limited class of meetings held when prompt action is needed due to actual or threatened crippling disaster, work stoppage or other activity which severely impairs public health, safety or both.
- ❑ Notice must be provided 1 hour in advance, if possible.



# Notice and Agenda Requirements

- ❑ Agenda must contain brief description of each item to be discussed, including items in closed session.
- ❑ Must be posted hard copy and on-line, mailed to those who have filed a written request, and must be made available in appropriate alternative formats to persons with disabilities.
- ❑ The Brown Act generally prohibits any action or discussion of items not posted on the agenda.

# Distribution of Materials

- ❑ Materials distributed to legislative body must be made available to the public at time of noticing.
- ❑ Supplemental materials provided after the posting of the agenda must be made available to the public at the time they are provided to the legislative body.
- ❑ Materials presented at the meeting must be made available to the public.



# Actions Not on Agenda

At a regular meeting, the legislative body can act on an item not on the agenda:

- ❑ If a majority decides that an emergency exists;
- ❑ If 2/3 of the members determine there is a need for immediate action and the need for action came to the attention of the local agency subsequent to the agenda being posted; or
- ❑ When an item appeared on the agenda of, and was continued from, a meeting held not more than 5 days earlier.

# Public Comment

- ❑ At all meetings, the public must be allowed to speak on each agenda item of business, unless the item was previously considered at a public meeting.
- ❑ In addition, every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body.



# Permissible Responses to Off-Agenda Public Comments

- ❑ Members of a legislative body or its staff may briefly respond.
- ❑ Members of the legislative body may ask staff questions for clarification.
- ❑ Members of the legislative body may refer the speaker to staff or appropriate reference materials.
- ❑ The legislative body may ask staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.





# Right To Regulate Public Comment

- ❑ Legislative body may adopt reasonable regulations regarding public testimony.
- ❑ Mayor may stop a speaker who becomes overly repetitious or whose subject is irrelevant to the board's subject matter jurisdiction.
- ❑ Mayor may have a speaker removed from the room if they become overly disruptive.



# Brown Act Violations

- ❑ Civil Remedies:
  - Void action taken in violation of Brown Act
  - Injunction to stop or prevent violations
  - Attorneys' fees and costs to prevailing plaintiffs.
  
- ❑ Criminal Penalties
  - Intentional violation is a misdemeanor

❑ Government Code §§ 54959, 54960 and 54960.2.

# PUBLIC RECORDS ACT



# Transparency in Government

- “[A]ccess to information concerning the people’s business is a fundamental and necessary right of every person in this state.”
  
- “Public records are open to inspection at all times . . . And every person has a right to inspect any public record . . .”

(Government Code §§ 6250 and 6253)

# What is a Public Record?

“**any writing** containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency, **regardless** of physical form or characteristics.”

- Government Code §6252 -



# What is a “Writing”?

“Any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, **including, letters, words, pictures, sounds, or symbols, or combinations thereof**, and any record thereby created, regardless of the manner in which the record has been stored.

# “Information relating to the conduct of the public’s business”

- Any document/record containing information relating to City’s business.
- Prepared, owned, used or retained by the City
- Possession or constructive possession
- Possession, however, not determinative, information that is primarily personal is not a public record

# Exempt Information



- ❑ Social Security Numbers/Driver's License Numbers/Credit Card Information/Taxpayer information/Date of Birth
- ❑ Attorney-Client communications
- ❑ Personnel Records
- ❑ Pending Litigation, including settlement discussions
- ❑ Medical Records
- ❑ Real estate negotiations
- ❑ Trade secrets or proprietary information
- ❑ Deliberative Process
- ❑ Drafts not kept in the ordinary course of business
- ❑ Public Interest Balancing Test



# Electronic Communications

- ❑ Emails (including personal accounts; i.e. Gmail/Yahoo/etc.)
- ❑ Social media (including personal accounts; i.e. Facebook, Twitter, blogs)
- ❑ Text messages (including personal devices)



# Public Records / Private Devices

“[W]e hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act....”

City of San Jose v.  
Superior Court (2017)



# Public Records / Private Devices

- No particular search method required
- Search must be “calculated to locate responsive records”
- Local agency may reasonably rely on employees to search their own devices



# Request May Be in Any Form

- Verbal requests permitted
  - In person
  - By phone
- Requestor need not identify themselves
  - Request may be anonymous
  - Need not provide contact information
- Requestor need not identify reason for request

# Questions?