

# BROWN ACT



# MEETINGS

- Meetings of the Board and any standing committees that the Board establishes are subject to the Brown Act.
- A "meeting" is "any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location...to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body."

# MEETINGS

**A meeting is:**

- **Where a majority gets together in the field to discuss Board business.**
- **Where a majority gets on a conference call to discuss Board business.**
- **Where a majority exchanges emails on a matter of Board business.**

# AD HOC COMMITTEES

- Ad hoc committees are not subject to the Brown Act.
- Ad hoc committee:
  - Advisory committees, composed solely of the members of the board, that are less than a quorum of the board without continuing subject matter jurisdiction or a meeting schedule fixed by ordinance, resolution or formal action of the body.
- Beware of the ad hoc committee that never ends.

# BRIEFINGS

- **Collective briefings are not permitted. Any briefings involving the majority of the directors must be open to the public and satisfy the notice and agenda requirements specified in the Act.**
- **A unilateral written communication to a legislative body such as an informational or advisory memorandum does not violate the Act. The memo may, however, be public record.**

# BRIEFINGS

Does not prevent:

An employee or official of a local agency from engaging in separate conversations outside of a meeting with members of a legislative body to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

# WHAT IF I LOSE A QUORUM, OR SIMPLY DON'T HAVE A QUORUM SHOW UP?

## If you lose a quorum:

- The meeting is effectively adjourned. Usually, the remaining members will announce the adjournment and conclude the meeting.
- But, while the “legal” meeting is over, there is no bar to continuing to receive public comments and any presentations by staff or third parties. The remaining legislative body members simply can't take any action in response.
- The best approach requires case-by-case consideration, balancing inconvenience to staff and the public against the value of having a quorum present to hear all comments and presentations

# WHAT IF I LOSE A QUORUM, OR SIMPLY DON'T HAVE A QUORUM SHOW UP?

If you simply don't have a quorum appear:

- No “meeting” occurs under the Brown Act.
- No action can be taken by those present other than receiving public comments and presentations by staff or third parties, as discussed above.



# PROHIBITION AGAINST SERIAL MEETINGS

- Serial meetings are a common Brown Act violation.
- Examples:
  - Member A calls Member B at night about issue X on the agenda of a forthcoming meeting; the next day Member B emails Member C about the same issue. (Daisy Chain)
  - Member A calls staff about issue X on the agenda; staff emails Member B about issue X; Member B calls Member C about the same issue. (Hub and Spoke)
- The public has a right to view the deliberative process.

# OPEN MEETING REQUIREMENTS

- The Board can only discuss items on the agenda at the meeting.
- Must post notice of meetings:
  - Regular meetings: 72 hour notice.
  - Special meetings: 24 hour notice.
- Any person may request a copy of the meeting agenda, or a copy of all documents in the agenda packet.

# PUBLIC PARTICIPATION

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the Board on any item of interest to the public:

- Before or during the Board's consideration of the item; or
- Within the Board's subject matter jurisdiction.

Shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the Board.

# NON-AGENDA ITEMS

Board members may:

- Briefly respond to statements made or questions posed by persons making public comment
  
- On their own initiative or in response to questions posed by the public:
  - Ask a question for clarification
  - Make a brief announcement
  - Make a brief report on his or her own activities
  - Provide a reference to staff or other resources for factual information
  - Request staff to report back to the body at a subsequent meeting
  - Take action to direct staff to place a matter of business on a future agenda

# OPEN MEETING REQUIREMENTS

- Meetings must generally be held within jurisdiction of the agency.
  - Exception: issues of multi-agency concern
- Teleconferencing is permitted under limited circumstances:
  - Quorum must be in jurisdiction (even if not at meeting location)
  - Meeting notice must give address of teleconference location
  - Agenda must be posted at teleconference locations
  - Public must be able to participate from teleconference locations
  - Votes must be by roll call

# ADDITION TO AGENDA

- Action can be taken on an item that is not on the agenda if the board determines by a 2/3rds vote that there is a need for immediate action that can't reasonably wait until the next meeting.
- Requirements to use this exception:
  - The issue must have come to the attention of the agency after the agenda had been posted.
  - The board must openly discuss the issue during the meeting.

# CLOSED SESSION

## “Exceptions” to the Brown Act:

- Real property negotiations
- Labor negotiations
- Personnel
- Litigation; Pending and Potential



# CLOSED SESSION

- **Labor negotiations**

- Represented and unrepresented employees

- **Personnel**

- Charges and complaints require 24 hour notice to employee and right to hear in open session
- Performance evaluation
- Can't set compensation in closed session



# PARTICIPATION IN CLOSED SESSION

- Meeting are either open or closed; an agency cannot invite certain members of the public but exclude others
- Pending and potential litigation:
  - All expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.
- Evidence Code 952 (“Confidential communication”)
  - Third persons may be present to further the interest of the client in the consultation or if disclosure is reasonably necessary for the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of the attorney-client relationship.

# REPORTING AFTER CLOSED SESSION

- Decisions reached in closed session must be discussed in public immediately after the closed session
  - In its guide to the Brown Act, the Attorney General's office has stated, "it would be prudent for legislative bodies to afford the public an opportunity to comment on closed-session items prior to the body's adjournment into closed session."
- Brown Act specifically provides information that must be reported following a closed session where action is taken (and its timing)

# REPORTING AFTER CLOSED SESSION

Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, shall be reported:

- In open session at the public meeting during which the closed session is held.
- The report shall identify, if known, the adverse party or parties and the substance of the litigation.

# REPORTING AFTER CLOSED SESSION

In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that:

- The direction to initiate or intervene in an action has been given; and
- The action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry,

Unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

# REPORTING AFTER CLOSED SESSION

Approval given to its legal counsel of a settlement of pending litigation:

- If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.
- If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

# REPORTING AFTER CLOSED SESSION

Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee:

- Shall be reported at the public meeting during which the closed session is held.
- Any report shall identify the title of the position.

The report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

# OPPORTUNITY TO CURE AND PENALTIES

## ■ Opportunity to Cure:

- Challenger must demand corrective action within 90 days of action; or 30 days if agenda issue
- Agency has 30 days to correct action before lawsuit can be filed

## ■ Penalties

- Nullification of decision
- Criminal Misdemeanor for intentional violations (up to 6 months in jail/\$1000 fine)
- Injunction, Mandamus & Declaratory Relief

# OTHER RESOURCES

- Pamphlets
  - California Attorney General
  - League of CA Cities
- District Legal Counsel