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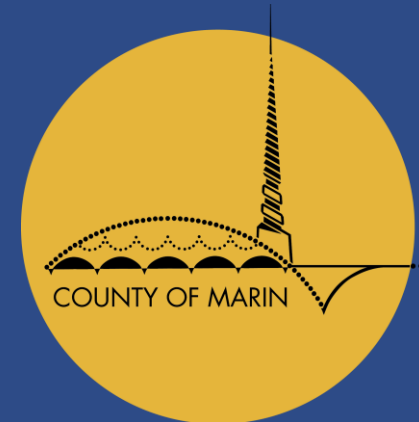
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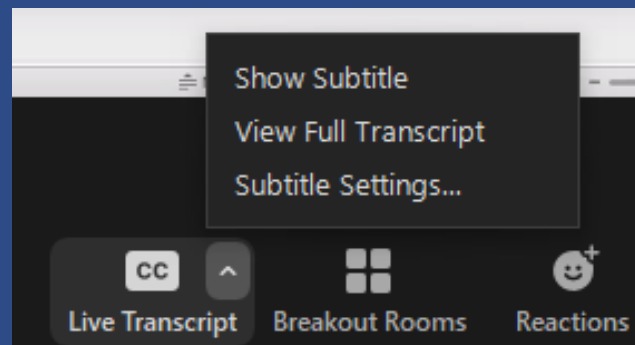
SEPTEMBER 25, 2024

HOLDING AND CONDUCTING MEETINGS UNDER THE BROWN ACT

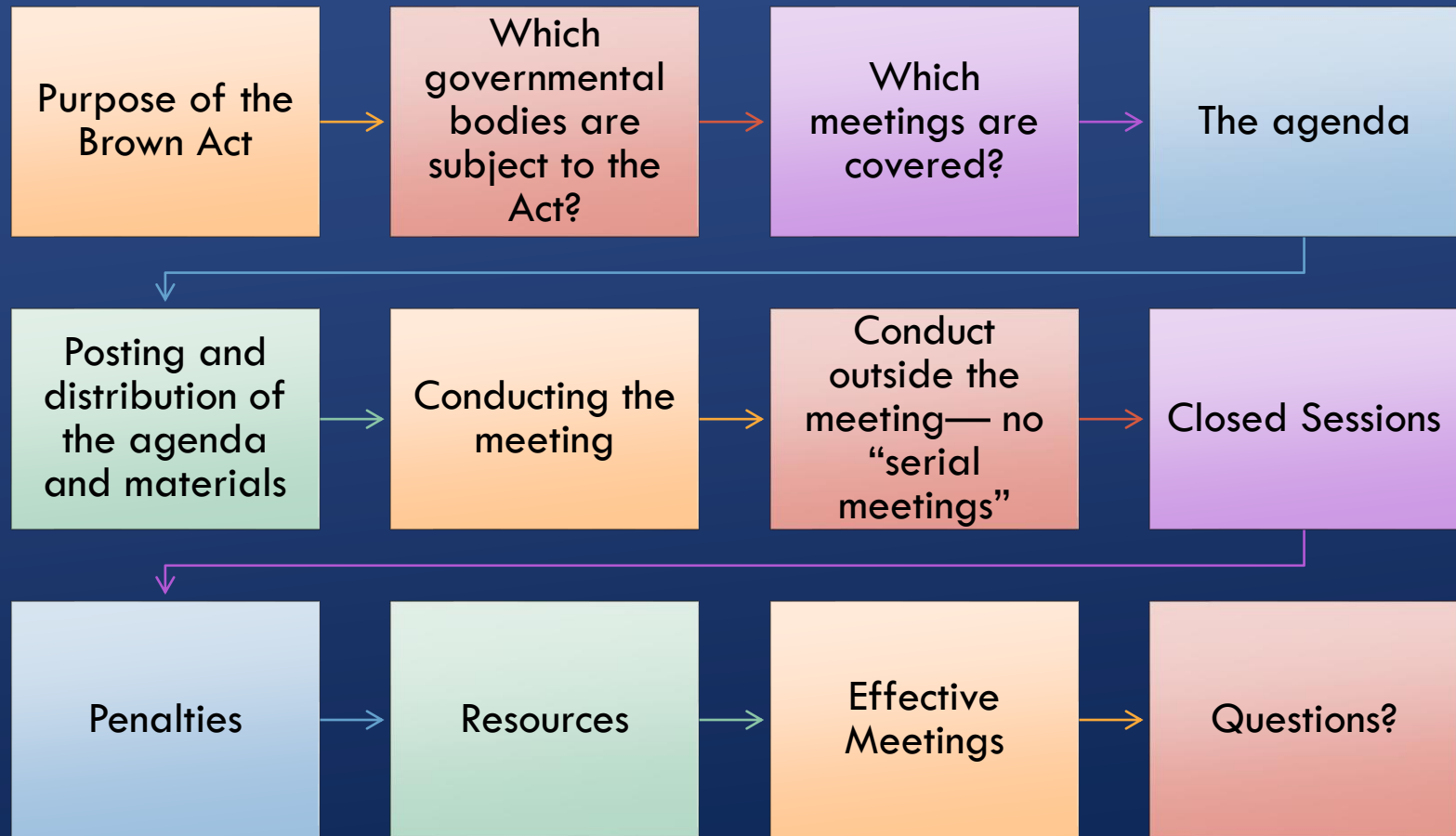


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PUTTING THE BROWN ACT INTO PRACTICE: TOPICS TO BE COVERED



PURPOSE

- Ralph M. Brown Act (Government Code §§54950-54963.)
- Legislative intent: “The public commissions, boards and councils and the 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.” (Gov’t Code §54950.)



WHICH GOVERNMENTAL BODIES ARE SUBJECT TO THE ACT?



LOCAL AGENCIES



- Brown Act applies to “local agencies”
- “Local agency” includes county, city, school district, municipal corporation, district, political subdivision, or “any board, commission, agency thereof” and “other local public agency.”

(Government Code § 54951.)

LEGISLATIVE BODIES

Brown Act applies to “legislative bodies” of local agencies.

“Legislative body” includes:

- “the governing body” of the local agency;
- “a commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body”;
- “standing committee” of a legislative body that has continuing jurisdiction over a subject matter or whose meeting schedule is fixed by formal action of the body.

(Gov’t Code §54952.)

EXAMPLES IN MARIN COUNTY

In the County, Brown Act applies to:

- the Board of Supervisors;
- Commissions created by ordinance, resolution, or other action of the Board, such as:
 - Decision-making Commissions (e.g. Planning Commission, Personnel Commission.)
 - Advisory Bodies (e.g. Behavioral Health Board, Design Review Boards.)



Boards, committees, and commissions of other local agencies (cities, school districts, etc.)

Boards, commissions, and committee whose enabling legislation requires compliance with the Brown Act.

NOT SUBJECT TO BROWN ACT

- “Ad hoc” committees: temporary, advisory committees composed solely of members of the body which are less than a quorum of the members of the body.
- Example: one-time nominating committee for Chair

WHAT MEETINGS ARE SUBJECT TO THE ACT?



MEETINGS DEFINED

- Meeting = “any congregation of a majority of the members of a legislative body at the same time and location . . . to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” (Gov’t Code §54952.2(a).)
- Meetings with only deliberation – even if no action will occur – are subject to the Brown Act.
- Includes “workshops,” “study sessions,” and retreats.

MEETINGS DEFINED (CONTINUED)



- Exceptions (Section 54952.2(c):
 - Individual conversations (but see “serial” discussion below)
 - Certain public conferences
 - Community meetings open to the public
 - Attendance at other entities’ public meetings
 - Certain social events

REGULAR MEETINGS



- Each legislative body except for advisory and standing committees must – by ordinance, resolution, by-laws, or other rule-- provide for the time and place of holding regular meetings. (Gov't Code § 54954(a).)

Practice tip:

- Set the time and place of regular meetings in the organizational rules (such as by-laws) or by resolution

SPECIAL MEETINGS

- Meetings held at a time or location different than regular meetings. Examples:
 - Planning Commission's regular meeting time is 9:00 a.m. The commission calls a meeting for 8:00 a.m. Different start time makes it a "special meeting."
 - Site visit/"field trip" attended by a majority of the members of a committee

SPECIAL MEETING LIMITATIONS

- The notice must specify the time and place of the special meeting and the business to be transacted.
- Agendas for special meetings must be posted at least 24 hours in advance.
- No other business may be conducted at the special meeting.

(Gov't Code §54956(a).)

TELECONFERENCING – “TRADITIONAL” BROWN ACT RULES (GOV’T CODE § 54953(B))

Teleconferencing allowed only if specific, challenging criteria are met, including:



- Must post agenda at the teleconference location;
- Agenda must identify the teleconference location;
- Location must be publicly accessible, and public must be able to comment at the teleconference locale;
- Generally, at least a quorum must participate from locations within the boundaries of the agency; and
- Votes must be by roll call.

NEW TELECONFERENCING RULES FOR THE POST-COVID TRANSITION

- The Brown Act presently allows for easier-to-manage teleconferencing for meetings held during a state of emergency where officials have recommended or mandated social distancing and/or when meeting in person would pose a risk to health and safety. (Gov't Code §54953 (e)(1).)
 - In these circumstances, the “traditional” teleconference rules do not apply.
- A body can continue using these modified teleconference rules if, no later than every 45 days, it:
 - Reconsiders the circumstances of the state of emergency; and
 - Makes a new finding that meeting in person poses a public health and safety risk. (Gov't Code §54953(e)(3))

NEW TELECONFERENCING RULES FOR THE POST-COVID TRANSITION (CONTINUED)

- When operating under the emergency circumstances/new regulations, the legislative body must do the following:
 - Allow the public audio-visual or telephonic access to the meeting, and the agenda must provide the opportunity for the public to address the body;
 - Protect statutory and constitutional rights of all parties;
 - Take no action on agenda items if a technical issue prevents the public from participating or observing;
 - May not require public comments to be submitted in advance, and must provide an opportunity for the public to address the body and offer comments in real time.

Currently set to sunset on December 31, 2026

NEW TELECONFERENCING RULES FOR THE POST-COVID TRANSITION (CONTINUED)

New options for remote appearance are available ONLY if the following threshold conditions are met (Gov't Code §54953(e)(2)):

1) A majority of the legislative body is meeting on site at a single physical location within the body's jurisdiction identified on the agenda and open to the public;

2) The meeting provides a means by which the public may remotely hear and visually observe the meeting and remotely address the legislative body with opportunity to comment in real time; and

3) The agenda for the meeting identifies the audio/visual call-in option for the public by which the public may access the meeting and provide comment.

NEW TELECONFERENCING RULES FOR THE POST-COVID TRANSITION (CONTINUED)

If threshold conditions are met, members may participate remotely (with video and audio) if there is “just cause” or “emergency circumstances” (Gov’t Code §54953(f)(2), (j))

- “Just Cause” = (1) childcare or caregiving need for an immediate family member; (2) contagious disease; (3) need related to a physical or mental disability; or (4) travel while on official business for state or local government
- “Emergency Circumstances” = a physical or family medical emergency that prevents a member from attending in person

Should be requested at earliest opportunity; administrative requirements, including adding item to agenda; legislative body must take action (vote) to allow remote participation.

NEW TELECONFERENCING RULES FOR THE POST-COVID TRANSITION (CONTINUED)

Limitations (Gov't Code §54953(f)(2)):

- Member may only appear remotely based on “just cause” twice per year.
- No member can appear remotely for more than three consecutive months or for more than 20 percent of regularly meetings.
- Meeting must halt if disruption to teleconferencing technology
- Members appearing remotely must disclose any individuals over the age of 18 who are present in the room in which they are appearing remotely

Set to sunset December 31, 2025



THE AGENDA

ROLE OF THE AGENDA

- In general, the body is limited to considering the items listed on the posted agenda.
- “No action or discussion shall be undertaken on any item not appearing on the posted agenda” (Gov’t Code §54954.2(a)(2).)
- Agenda provides notice to the public of the items under consideration and actions that may be taken.

AGENDA PREPARATION

- Agenda must provide “a brief general description of each item of business to be transacted or discussed at the meeting.” (Gov’t Code §54954.2(a)(1).)
- The description must provide enough information to inform the public, but the description need not exceed 20 words.
- Practice tip: Pay attention to the wording of the agenda because it defines what can be discussed and what actions can be taken.
 - Examples: “Discussion Only” limits the board/commission from taking action.

OTHER AGENDA REQUIREMENTS



- Agenda must specify time and location of the meeting.
- Agenda must list the location (with address) where the public is able to inspect public documents related to an agenda item when such documents were distributed to the public less than 72 hours prior to the meeting. (Gov't Code §54957.5)

EXCEPTIONS TO AGENDA RULE

Board Members may speak to items **not** on the agenda to:

- Make a brief response to public testimony;
- Ask a question for clarification;
- Make brief announcement or report on his/her activities;
- Make a referral to staff to report back at a subsequent meeting; or
- Direct staff to place a matter on a future agenda.
(Gov't Code §54954.2(a)(3).)

AGENDA ADDITIONS AFTER POSTING

The body may take action on an item not appearing on the posted agenda if it is added as “urgency” item. (Gov’t Code §54954.2(b).)

Urgency add-on requires separate determination by 2/3 vote of the body that:

- There is a need to take immediate action; and
- The need to take action came to the attention of the local agency subsequent to the posting of the agenda.

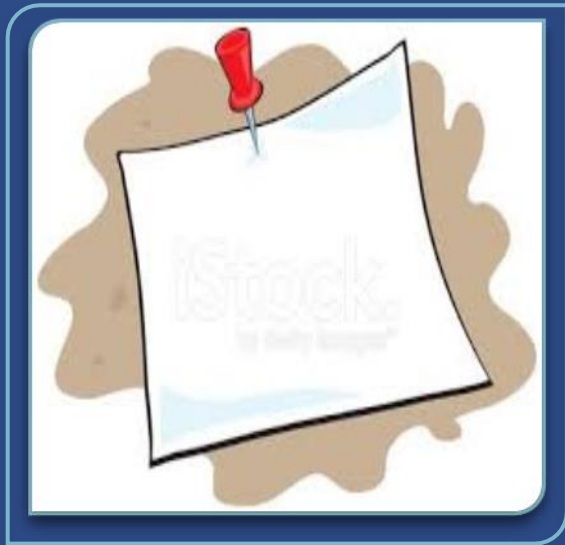
Emergencies – items may be added to the agenda in emergency situations (rare)



THE AGENDA AND PUBLIC PARTICIPATION



- The public has a right to comment on every item on the agenda before action is taken. (Gov't Code §54954.3(a).)
- Every agenda for regular and special meetings must provide an opportunity for the public to comment on agenda items before or during consideration of the item.
- Regular meeting agenda must allow time for public testimony on matters not on the agenda that are under the body's jurisdiction.



POSTING AND DISTRIBUTION OF AGENDA AND MATERIALS

POSTING THE AGENDA

- The agenda must be posted “in a location that is freely accessible to the public.” (Gov’t Code §§ 54954.2(a)(1), 54956)
 - Example: post hard copy in protected bulletin board outside meeting location
- Regular meetings: post at least 72 hours ahead.
- Special meetings: post at least 24 hours ahead.
- If the agenda is posted in a building that is locked to the public over the weekend, that time does not count toward the required 72 or 24 hours.

POSTING THE AGENDA ON THE WEB

- A regular or special meeting agenda must be posted on the local agency's web site, if it has one, if either (Gov't Code §54954.1):
 - The agenda is for the agency's governing body; or
 - The agenda is for a committee, commission or board of the local agency, the members are compensated for their appearance, and one or more of the members are also members of the governing body.
- Practice tip: post agendas on the agency website if feasible, even if not required.
- Note: web posting is not a substitute for posting the hard copy.

AVAILABILITY OF AGENDA AND AGENDA PACKETS

- Basic rule: Agenda and documents distributed to the members of a body are public records and must be available upon request without delay. (Gov't Code §54957.5(b).)
- If a writing that is a public record is distributed less than 72 hours before the meeting, it must be made available for public inspection at the time the writing is distributed to a majority of the members of the body.
- Practice tip: If staff writes and distributes a memo at the meeting itself, make extra copies for the public or at least have a copy available for public inspection.

CONDUCTING THE MEETING



PUBLIC PARTICIPATION

- Must allow the public to comment on matters on the agenda before or during consideration of the item.
- Agency may adopt “reasonable regulations” on time allotted for public testimony, such as limiting the time per speaker or limiting the total time allotted to public testimony. (Gov’t Code §54954.3(b)(1).)
- Reasonable time regulation must, however, ensure intent of allowing public testimony on matters on agenda is carried out.

PUBLIC PARTICIPATION (CONTINUED)

- May not require any member of the public to register his/her name or complete a questionnaire as a condition of attendance. (Gov't Code §54953.3.)
- If an attendance list is posted at or near the entrance or circulated at the meeting, it must state that completion of the document is voluntary.
- Legislative body may remove an individual from a public meeting for disruptive behavior
 - Must provide a warning prior to removal
 - Disruptive = failure to comply with reasonable and lawful regulations of the legislative body OR engaging in behavior that constitutes use of force or a true threat of force (Gov't Code § 54957.95)



LOSS OF QUORUM

- When there is no quorum, there is no meeting. No action can be taken.
- Do not prepare minutes if the meeting did not have a quorum.
- Practice tip: can we still have a discussion if less than a quorum show up? If less than a body elects to continue to have a discussion, they are doing so outside of a meeting of the board/commission.

VOTING



- Secret ballots prohibited.
- The body must publicly report any vote taken and the vote or abstention of each member present for that action. (Gov't Code §54953(c)(1).)

AGENCY RECORDING OF THE MEETING

- The Brown Act does not require recording a meeting.
- HOWEVER, any recording that is made for whatever purpose “by or at the direction of the local agency” must be made available to members of the public in response to a request under the Public Records Act.
- The recording may be erased or deleted 30 days after the recording is made. (Gov’t Code §54953.5(b).)

PUBLIC RECORDING OF THE MEETING



- Any person attending the meeting has the right to record or broadcast the proceedings unless the body makes a “reasonable finding” that the recording or broadcast constitutes a “persistent disruption” of the meeting. (Gov’t Code §54953.5(a).)



CONDUCT
OUTSIDE THE
MEETING

PROHIBITION ON SERIAL MEETINGS



- Basic principle: Deliberations of public bodies should be conducted openly and their actions should be taken openly
- “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, 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.**” (Gov’t Code §54952.2 (b)(1), emphasis added.)

EXAMPLES OF SERIAL MEETING

- “Daisy chain” (A to B, B to C, C to D)
- “Hub and spoke” (e.g. use of staff to communicate with members one by one for deliberation or a decision.)
- Avoid converting permitted communications into serial meeting.
 - Example: A member of the public meets individually with each Board member about an issue. The member should avoid making inquiries about what the other members thought or said.

BEWARE OF E-MAIL



- Prohibited: use of e-mail among a majority of the members of a body to reach a shared view.
- E-mail may not be used among a majority of the members to discuss, deliberate, or take action.
- Practice tips:
 - “reply all” + substantive discussion = Brown Act violation Beware of potential for serial meetings via “reply all” or email chains.
 - Use of email for scheduling is ok

E-MAIL EXAMPLE

Case study: e-mail among a majority of the members and sent to the chairperson and secretary of the agency. The emails were also posted on the agency website and a printed version reported at the next open meeting. Permissible?

- No. Per an Attorney General opinion, the emailing violates the Brown Act because the deliberations among a majority of the body are conducted outside the public view, and debate could be over before the public had the opportunity to participate. Safeguards insufficient.
(84 Ops. Cal. Atty. Gen. 30 (2001).)

ROLE OF STAFF



- Staff of the agency may have separate communications with members in order to answer questions or provide information, if staff does not communicate to members of the body the comments or position of any other member of the body.

CLOSED SESSION



- Limited exception for closed session for matters requiring confidentiality:
 - Exception must be expressly authorized by statute;
 - Exceptions are narrowly construed;
 - Examples: pending litigation, employee discipline, real estate negotiations.
- Focus of today's training is open session

PENALTIES

- Invalidation of the action: any person, including the District Attorney, may sue to invalidate an action of the legislative body based on violation of Brown Act
 - Person must first send a written demand to cure the violation, and the agency has a limited time to cure and correct its action.
- Any person, including District Attorney, may file a civil action to stop or prevent violations of the Brown Act. Attorneys' fees may be awarded to a prevailing plaintiff.

POTENTIAL FOR CRIMINAL PENALTY



An intentional violation of the Brown Act by a member is punishable as a misdemeanor. Involves two components: participation in a meeting that violated the Brown Act and intent of the member to deprive the public of information.

RESOURCES

- County Counsel (for County boards, committees, and commissions)
- For other agencies, consult your agency counsel
- *The Brown Act: Open Meetings for Local Legislative Bodies* (California Attorney General's Office, 2003) [does not include recent amendments to Brown Act]
- *Open & Public V: A Guide to the Ralph M. Brown Act* (2d ed. 2016) published by the League of California Cities
- *Understanding the Basics of Local Agency Decision-making* (2009) published by the Institute for Local Government (www.ca-ilg.org)

BONUS!! EFFECTIVE MEETINGS

Basic principle: When a public meeting is well-conducted, it instills public confidence and encourages public engagement. A bit of formality and decorum can set the tone for an orderly and effective meeting.



TIPS FOR EFFECTIVE MEETINGS (CONTINUED)

- For the chair:
 - Be clear about who is running the meeting and explain the role of the presiding officer / chair of the meeting
 - Summarize the meeting process and outline local rules and procedures at the beginning of the meeting, including any limitations on public participation (e.g., time limits)
 - Assure people they will be allowed to share their views
- For other members:
 - Address remarks and debate to the chair or presiding officer
 - Wait for recognition by the chair before speaking / avoid cross-talk

TIPS FOR EFFECTIVE MEETINGS (CONTINUED)

- Follow common structures:
 - Receive Staff Report
 - Questions from the Board/Commission
 - Receive Public Comment
 - Discuss/deliberate
 - Motions/action (if necessary)



TIPS FOR EFFECTIVE MEETINGS (CONTINUED)

Encourage civility:

- Remind all participants to be respectful of public speakers—do not allow heckling and hold applause.
- Keep the discourse civil and impersonal, even when there are negative comments toward the body from the public.
- Consider using titles and/or last names as a sign of respect.
- Keep remarks brief; avoid repetition of other people's comments.



QUESTIONS?



ZOOM RAISE / LOWER HAND

Keyboard:

- Windows: Alt + Y or Mac: Option + Y

Mouse:

- Select “Raise Hand” in toolbar at the bottom of the screen.

