



City of San Diego

Overview of The Ralph M. Brown Act California's Open Meeting Law

**Presented by the Office of the City Attorney
May 17, 2018**



Purpose and Intent

- To ensure the actions of public bodies are taken openly and deliberations are conducted openly
- To facilitate public participation in all phases of local government decision-making and provide “meaningful public access”
- To curb secret meetings of public bodies



Basic Rules of the Brown Act

- **Meetings must be open and public**
- **Public right to attend, observe and participate in meetings**
- **Agendas must be available to the public before the meeting**
- **Only items noticed on the agenda can be discussed**
- **Meeting materials must be available to the public**
- **No secret ballots allowed**

Rules are interpreted liberally in favor of public access



What Boards And Committees are Subject to the Act?

The Brown Act applies to legislative bodies.

Includes:

- Elected or appointed bodies**
- Decision-making or advisory**
- Temporary or permanent**
- Standing committees and most sub-committees**



Boards & Committees Subject to the Act

- **Park and Recreation Board**
- **Mission Bay Park Committee**
- **Regional Park Improvement Fund Oversight Committee**
- **Mission Bay Park Improvement Fund Oversight Committee**
- **Municipal Golf Committee**
- **Balboa Park Committee**
- **Community Parks I and II Area Committees**
- **Recreation Councils**
- **Open Space Advisory Committees**



What is a “Meeting”?

... “meeting” means any congregation of a majority of the members of the legislative body at the same time and location, . . . , to hear, discuss, deliberate or take action on any item that is within its subject matter jurisdiction. Cal. Gov. Code § 54952.2



Meetings

A majority of the members of a Board or Recreation Council shall not, outside a meeting authorized by the Brown Act:

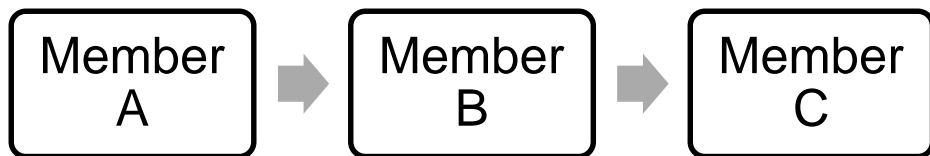
- use a series of communications of any kind, directly or through intermediaries,
- to discuss, deliberate, or take action on any item of business that is within their subject matter jurisdiction.
- **No substantive discussions which “advance or clarify a member’s understanding of an issue, or facilitate an agreement or compromise . . . or advance the ultimate resolution” of an issue.**
- **Broadly construed, captures activity in email and on social media.**



Examples of Serial Meetings

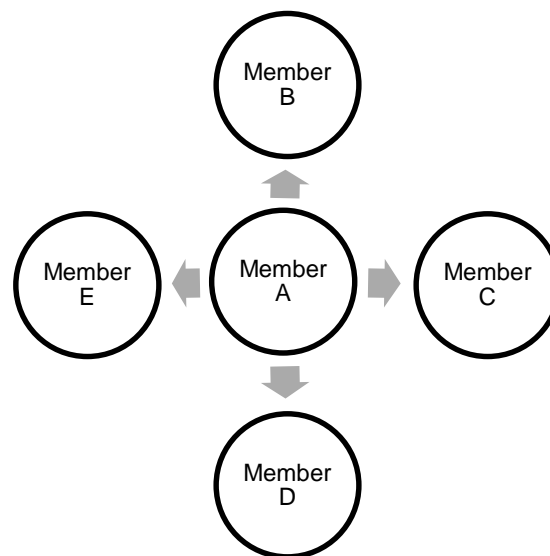
Daisy Chains

A talks to B, B talks to C,
until majority of
Recreation Council
members have been
consulted.



Hub and Spoke

A (the hub) talks to B, C,
D, and so on until a
majority of the Board has
been consulted.





What is *not* a “Meeting”?

A majority of members may attend:

- Conferences open to the public
- Community meetings
- Open meetings of another legislative body or agency
- Social or ceremonial events

NOTE: A majority of the members may not discuss Board matters among themselves at these events



Practice Points

- Don't encourage discussion of matters within the Board's subject matter jurisdiction on e-mail or social media.
- Discourage use of "Reply to All" with emails, use "Blind Copy" instead.
- Social media posts are ok, the issue is discussion of matters that will be heard by the Recreation Council or Board.
- When communicating with individual Board members, be careful not to disclose other members' views. A staff member could become the "hub" in a serial meeting.
- Email communications between majority of Recreation Council members to call a special meeting is expressly allowed by the Act.



PUBLIC ATTENDANCE AT MEETINGS

- Cannot require names or other information as a condition of attending meeting
- Voluntary sign-in is allowed
- Action by secret ballot prohibited
- All actions taken by the Board and the vote (yeas, nays, abstentions) must be disclosed at the time the action is taken



PUBLIC PARTICIPATION AT MEETINGS

- **Agenda must allow time for public comment on ALL items (not just discussion items)**
- **No discussion of non-agenda items raised during public comment**
- **Board or Recreation Council members may:**
 - provide a brief response
 - ask questions for clarification
 - refer the matter to staff for follow-up or to report back
 - direct that the matter be placed on a future agenda



PUBLIC ACCESS TO DOCUMENTS

- **The Public has a right to review agendas and other writings distributed to a majority of members**
- **Board records and communications are available for public inspection and copies provided for a reasonable fee**
- **Public has a right to record the meeting with an audio or video tape recorder, or take photographs**



AGENDAS

“At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.” Cal. Gov. C. § 54954.2(a).



What to put in an Agenda

- **Date, time and location of the meeting**
- **Brief general description of each item**
- **The description must inform the public of the scope of the intended**

Post in a place “freely accessible to the public.”

Post at least 72 hours before a regular meeting



Common Issues with Agendas

The Brown Act calls for substantial compliance with agenda posting requirements.

- What if the agenda indicates the wrong date?
- What if the agenda indicates the correct date, but the wrong day of the week?
- What if the website crashes during the 72 hour notice period?
- What if the agenda is removed during the 72 hour notice period?

Fact specific analysis: Will the public be able to determine when the meeting will occur? Did the City make reasonably effective efforts to notify the interested people of the meeting?



Contacts with the Public

- **No violation of Brown Act**
 - By communicating with a member of the public
 - Receiving background materials from an individual and reviewing it before the public meeting
- **If an individual contacts a majority of the Board members, members should not respond outside the public meeting**



Violations of Brown Act

- **Civil Actions**

- Any interested person may file a civil action
- Board or Recreation Council has an opportunity to “cure or correct” any actions allegedly taken in violation of the Act
- With judgment, action is void, with certain exceptions
- Costs and attorneys fees may be awarded

- **Criminal penalties**

- Attend a meeting in violation of the Act with intent to deprive public of information to which the public is entitled
- Punishable as a misdemeanor



Practice Points

- **Keep purpose of Brown Act in mind when working with Boards and Recreation Councils: OPEN AND PUBLIC**
- **Putting together an agenda requires careful thought. Double check dates, times and locations.**
- **Redirect meetings if topic is not noticed. For example: “It sounds like the Board is interested in discussing _____. Since this is not on your agenda, would you like to include it for discussion next month?”**
- **Allow public comment on any item on the agenda: informational items and workshops, included.**
- **Closed session exceptions are specific and limited. Consult the City Attorney’s Office before including closed session items on an agenda.**
- **Board must have quorum to conduct business and cannot hear any item, including informational items, without a quorum.**



Summary

- **All meetings must be open and public**
- **Discussions, actions, deliberations must take place in open meetings**
- **All persons must be permitted to attend and participate in the meetings**
- **Judicial interpretation favors open and public meetings and exceptions are narrowly construed.**



Helpful Resources

- ***Open & Public V: A Guide to the Ralph M. Brown Act, (April 2016) League of California Cities***
<http://www.cacities.org/opengovernment>
- ***The Brown Act, Open Meetings for Local Legislative Bodies, (2003) California Attorney General's Office***
<http://oag.ca.gov/open-meetings>