



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

Sustainable Energy Advisory Board

Presented by the Office of the City Attorney

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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 for Public Access

- Meetings must be open to the public
- Meeting agendas must be available to the public in advance; only noticed items can be discussed
- Meeting materials must be available to the public
- Closed sessions are limited to specific purposes authorized by the Act
- No secret ballots allowed
- Rules are interpreted liberally in favor of public access

How the Board is Subject to the Act

- “Legislative bodies” includes a commission, committee, board, or other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body
- Sustainable Energy Advisory Board – created by an ordinance of the City Council (Ordinance O-15631)
- San Diego Municipal Code Section § 26.04
- If the Board creates any standing subcommittees with continuing subject matter jurisdiction, it also would be subject to the Act
- Temporary subcommittees of less than a quorum are not subject to the Brown Act

Definition of “Meeting”

- The Brown Act applies to all “meetings” of the Board
- “Meeting” = Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, deliberate or take action on any item within its subject matter jurisdiction
- A majority of the Board is six members

Serial Meetings not Allowed

- A majority of the members 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 the subject matter jurisdiction of the Board
 - example of “serial” communications
 - “A talks to B” and “B talks to C”
(no “daisy chains” or “telephone trees”)

Serial Meetings not Allowed

- “Deliberation” – broadly construed; includes “not only collective discussion, but collective acquisition and exchange of facts preliminary to the ultimate decision”
- 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
- Be careful with social media and blogs (*Practice tip: avoid discussing Board issues on social media*)



Use Caution with Email Communications

- Email communications:
 - a majority of the members of the Board cannot email each other to discuss topics that are within the subject matter of the Board.
 - *Practice tip: Do not “reply to all” to emails that include other Board members*

- *But note:* Staff may communicate with separate members to answer questions or provide information if member’s comments are not shared with other members

Emails: Attorney General Opinion

- *“We thus conclude that a majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency’s Internet website, and a printed version of each e-mail is reported at the next public meeting of the board.”*

- 84 Ops. Cal. Atty. Gen. 30 (2001)

What is *not* a “Meeting”?

A majority of members may attend a:

- Conference open to the public
- Community meeting
- Open meeting of another legislative body or agency
- Social or ceremonial event

But, a majority of the members may not discuss Board matters among themselves at these events



Contacts with the Public

- Communication with a member of the public does not violate the Act
- If an individual contacts a majority of the Board, members should not respond outside the public meeting – deliberations should occur in public
- One-way transmission of background materials and solitary review by Board members would not violate Act

Public Participation

- Agendas: Written to Inform the Public
 - Date, time, and location of meeting
 - General description of each item to be discussed
 - Posted in a public place - at least 72 hours before a regular meeting (24 hours for a special meeting)
- Public Right to Attend
 - Cannot require names or other information as a condition of attending meeting
 - Voluntary sign-in is allowed



Public Participation

- Right to Comment at Meetings
 - Public may comment on any matter within the group's subject matter jurisdiction even if not on the agenda (non-agenda public comment)
 - Public may comment on agenda items before action is taken on an item
 - Reasonable regulations, including time limits, may be adopted
 - Must allow criticisms and complaints



Public Participation

- No discussion of non-agenda items raised during public comment
 - May provide a brief response to statements or questions, but no discussion or action
 - May ask questions for clarification
 - May refer the matter to staff for follow-up or to report back
 - May direct that the matter be placed on a future agenda



Public Right to Documents

- Public has a right to review agendas and other writings distributed to a majority of members
- Board records and communications shall be 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

Violations of Brown Act

■ Civil Actions

- Any interested person may file a civil action
- Board will have an opportunity to “cure or correct” any actions allegedly taken in violation of the Act
- With judgment, action is void, with certain exceptions
- Costs & 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
- Guilty of a misdemeanor

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 IV: A Guide to the Ralph M. Brown Act, (July 2010)* 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>