



The Brown Act

Community Orientation Workshop

May 2, 2009

The Brown Act

- Is intended to ensure that deliberations and actions of local agency legislative bodies are open and public and that there is meaningful public access to their decisionmaking
- The Act requires that meetings be open to the public, held on a regular schedule, and conducted in accordance with an agenda available in advance of the meeting
- The legislative body cannot take action by secret ballot
- Meetings must be open unless there is a specific section in the Act that permits a closed session

Who is Subject to the Brown Act?

- Applies to “legislative bodies” including advisory boards created by “charter, ordinance, resolution or formal action” of a legislative body, i.e., the San Diego City Council
- Applies to those bodies which the City Council has had a role in bringing into existence, or the City Council creates the reason for the bodies’ existence
- Board members, from time of appointment
- Subcommittees created by formal action of the advisory board
 - But not temporary ad hoc advisory committees made up solely of board members and constituting less than a quorum

What Constitutes a Meeting?

- Any congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on any item that is within the subject matter jurisdiction of the board or commission

- Serial meeting / series of communications
 - Beware of email communications
 - A majority cannot email each other to discuss a matter within the board's subject matter jurisdiction
 - Beware of “serial” contacts
 - “A to B” and “B to C” can lead to a “collective concurrence.”

What is Not a Meeting?

- Individual contacts between a board member and another person
 - Majority of the board members at a:
 - Conference open to the public
 - Local public meeting
 - Open meeting of another body
 - Social or ceremonial event
- But, cannot discuss board matters among themselves at these events



Public Contacts

- Communication with a member of the public does not violate the Act, but may raise due process issues for quasi-judicial matters
- If individual contacts a quorum of the board, the board members should not respond outside public meeting – deliberations should occur in public
- One-way transmission of background materials and solitary review by board members would not violate Act

When Can Meetings Be Held?

- Regular meetings:
Agenda posted 72 hours before
- Special meetings:
Called by chair or majority of board members,
agenda posted 24 hours before
- Emergency meetings:
Immediately, must be a real emergency: “work
stoppage, crippling activity, or other activity that severely
impairs public health, safety, or both, as determined by a
majority of the members of the legislative body.”




Where Can Meetings Be Held?

- Within the boundaries of the City, unless a specific exemption applies
- Exemptions: to comply with state or federal law, to attend judicial or administrative proceedings which the CPC or CPG is a party to, inspect property, attend multi-agency meetings, to use closest meeting facility, to meet with elected officials, facilities owned by the legislative body, or to visit legal counsel for closed session on pending litigation when to do so would reduce legal fees/costs.
- Meetings must be accessible under the Americans with Disabilities Act of 1990



Agenda Descriptions

- Brief general description of each item (need not exceed 20 words)
- Include the date, time and location of the meeting
- Must inform public of scope of the intended plans so public can decide whether to participate (i.e., information item or action item)
- Must be posted in a location “freely accessible to members of the public”



Limited Response to Public Comment on Items Not on Agenda

- Brief response to statements or questions permitted, but no discussion or action
- Briefly announce or report on member's own activities
- May ask questions for clarification
- Refer to staff for:
 - Information
 - Request to report back
 - Direct to place matter on a future agenda



Consideration of Matters Not on the Meeting Agenda

- Only if:

- Majority vote determines “emergency” exists; should not apply to items before most boards
- Two-thirds vote determines the need to take immediate action occurred after agenda was posted



Public Right to Comment

- Regular meeting
 - Public may comment on any matter within the board's subject matter jurisdiction even if not on the agenda (non-agenda public comment)
 - Public also must be allowed to comment on agenda items
 - Reasonable regulations, including time limits may be adopted



Public Right to Comment

- Special meeting
 - Comments must be allowed on agenda items
 - Board may allow non-agenda comment, but not required
- Board must allow criticisms and complaints
- Public comments are made before action is taken



Public Right to Attend

- Public cannot be required to register their names or provide other information as a condition of attending meeting
 - Voluntary sign-in is allowed



Public Right to Attend

- Public has a right to record the meeting with an audio or video tape recorder, or take photographs
- Public has a right to review agendas and other writings distributed to a majority of the board

Violations of Brown Act

■ Civil Actions

- Any interested party may begin action
- The board would have chance to cure and correct actions
- With judgment, action is void
- Costs & attorney fees may be awarded

■ Criminal penalties

- With intent to deprive public of information
- Guilty of a misdemeanor

Overview

- All meetings shall be open and public
- Actions and deliberations must be taken openly
- All persons shall be permitted to attend and participate in the meetings