

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

Mission Bay Park Committee

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 Committee 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
- Mission Bay Park Committee – created by an ordinance of the City Council (San Diego Municipal Code § 26.30)
- If the Committee creates any standing subcommittees with continuing subject matter jurisdiction, it also would be subject to the Act

Definition of “Meeting”

- The Brown Act applies to all “meetings” of the Committee
- “Meeting” = Any congregation of a majority of the members of the Committee 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 Committee is 6 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 Committee
- 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

Serial Meetings not Allowed

Examples of “serial” communications

- Daisy Chains - A talks to B, B talks to C, and so on
 - Hub & Spoke –A (the hub) talks to B, C, D, and so on
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- Be careful with e-mails, social media and blogs

Practice tip: Avoid discussing Committee issues on social media

Use Caution with Email Communications

- Email communications - a majority of the Committee members cannot email each other to discuss topics that are within the subject matter of the Committee
- Note: Staff may communicate with separate members to answer questions or provide information if member's comments are not shared with other members

Practice tip: Do not "reply to all" to emails that include other Committee 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:

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

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

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 Committee members, members should not respond outside the public meeting

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 & Access

- **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 any agenda items (including workshops and informational items) before action is taken on an item
- Reasonable regulations, including time limits, may be adopted
- Must allow criticisms and complaints

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- Action by secret ballot prohibited
 - All actions taken by the Committee and the vote (yeas, nays, abstentions) must be disclosed at the time the action is taken

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
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Public Right to Documents

- Public has a right to review agendas and other writings distributed to a majority of members
- Committee 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

Violations of Brown Act

- **Civil Actions**

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

- **Criminal penalties**

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