

# Boards and Commissions

## Overview of the Ralph M. Brown Act

Presenter: Deputy City Attorney Jane M. Boardman

February/March 2023

## What is the Brown Act? (Cal. Gov't Code §§ 54950 – 54963)



“It is the intent of the law that [the actions of public agencies] be taken openly and that their deliberations be conducted openly.”  
Cal. Gov't Code § 54950.

The purpose of the Brown Act is to promote transparency and public participation in local government.

# City Video on the Brown Act

- The City produced a video on the Brown Act specifically for Boards and Commissions members:
- [https://www.youtube.com/watch?v=o\\_4copyoRCg](https://www.youtube.com/watch?v=o_4copyoRCg)
- Staff who support Boards and Commissions and members should watch this video.



Ralph M. Brown Act Overview



City of San Diego

Subscribe

65



Share



# Core Principles of The Brown Act

- All meetings of a legislative body of a local agency shall be open and public.  
Cal. Gov't Code § 54953(a).
- All persons shall be permitted to attend and participate in the meetings.



# Basic Rules for Public Access

- Meetings must be open to the public.
- Agendas and materials must be available to the public in advance.
- No secret ballots/votes allowed.
- Rules are interpreted liberally in favor of public access.



# Does the Brown Act apply to Boards and Commissions?



- Yes, the Brown Act applies to legislative bodies.
- California Government Code section 54952 defines “legislative bodies” and includes:
  - Commissions, committees, boards, or other bodies of a local agency created by charter, ordinance, resolution, or formal action of a legislative body (i.e. Planning Commission, Parks & Recreation Board, Community Planning Groups, etc.)

# What about Committees/Subcommittees?

- It depends.
  - Certain committees and subcommittees are not “legislative bodies” under the Brown Act. Cal. Gov’t Code § 54952(b). These must be:
    - Made up of less than a quorum of members;
    - Advisory only; and
    - Usually temporary with no fixed meeting schedule.
  - Standing committees or subcommittees with continuing jurisdiction or a meeting schedule fixed by formal action of the legislative body are legislative bodies subject to the Brown Act.

# What is a “Meeting”?

- “Meeting” includes any gathering of a majority of the members of a legislative body at the same time and place to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.  
Cal. Gov’t Code § 54952.2(a).





# Meetings can also include:

- Substantive discussions with no vote
- Social media activity
- Emails or group texts
- Retreats



# What is NOT a meeting?

- Individual conversations with others
  - But beware of serial meetings
- Conferences open to the public\*
- Community meetings (not related to the board)\*
- Open meetings of another legislative body\*
- Ceremonial or social occasions\*

\*A majority of the members may not discuss business within their subject matter jurisdiction at these events, other than as part of the scheduled meeting.

**This Is Not A Meeting**



# Teleconferencing/Virtual Meetings Pre-COVID

- Before COVID, the Brown Act required that any teleconferenced meetings where one or more members appeared via teleconference do the following:
  - Post agendas at all teleconference locations containing information about the meeting, including the address of all teleconference locations;
  - Allow public to access all teleconference locations;
  - Allow public to make public comment from each teleconference location; and
  - All votes taken by roll call.

# Teleconferenced/Virtual Meetings During COVID

- During COVID, the Governor's declaration of the state of emergency allowed some flexibility in how legislative bodies hold meetings.
- AB 361 allowed members to participate in virtual meetings with relaxed access rules:
  - Ability to meet virtually was dependent on: (1) the continuation of the state of emergency; and (2) City Council adopting the required findings that physical meetings present imminent risks to health or safety of attendees. Findings must be adopted every 30 days. Cal. Gov't Code § 54953(e)(1)(A)-(C).
  - Under AB 361, each teleconference location did not have to be identified on the agenda and public access was not required at each teleconference location.
  - AB 361 is effective until Jan. 1, 2024, or until the Governor withdraws the state of emergency related to COVID.
    - Council last adopted AB 361 findings on Jan. 10, 2023.
    - Expect the state of emergency to be withdrawn on Feb. 28, 2023.

# “Hybrid” Meetings in March 2023



- AB 2449 – allows “hybrid” meetings in limited circumstances where member(s) can attend virtually without disclosing each teleconference location or allowing public access at each teleconference location.
- A quorum of the members must participate in person at the same location within the jurisdiction that is accessible to the public.
- A member who wants to appear virtually can do so for 2 reasons:
  - Just cause
  - Emergency circumstances

# Just Cause



- The member must notify the body (staff liaison or chair) at the earliest opportunity that they need to participate remotely AND provide a general reason why they cannot attend in person.
  - A general description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information already exempt under existing law.
- Reasons for just cause include: childcare or caregiving needs; contagious illness; a defined physical or mental disability that cannot be accommodated; and traveling for official City business.
- A member can use a just cause excuse only twice in a calendar year.

# Emergency Circumstances



- The member wanting to appear virtually must make a request to the board asap to allow the virtual appearance AND provide a general reason justifying the virtual appearance.
- If time allows, the request must be placed on the agenda as an action item and the board must vote to approve the request.
- If time does not allow to place the request on the agenda, the board must take up the request at the beginning of the meeting.
- Regardless, the member cannot participate virtually until the board has taken a vote on the request and approved it.
- “Emergency circumstances” is defined as a physical or family emergency that prevents the member from attending in person.
- Total number of times a member may participate virtually within a calendar year under either just cause or emergency circumstances is limited to no more than 3 consecutive months or 20% of regular meetings.
  - If the body meets less than 10 times per year, the limit is 2 meetings.

# Remote Participation by the Member

- The member must publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room with the member and the general nature of the member's relationship with any such individual. Cal. Gov't Code § 54953(f)(2)(B).
- Remote participation must be through both audio and visual technology. Cal. Gov't Code § 54953(f)(2)(C).
- The body cannot take any action if the livestream or broadcast is interrupted. Cal. Gov't Code § 54953(f)(1)(D).



# Public Access During Hybrid Meetings

- Must allow the public to remotely observe meetings and address the body. Cal. Gov't Code § 54953(f)(1)(A).
- Must offer the public a call-in option AND an in-person option to address the body. Cal. Gov't Code § 54953(f)(1)(C) .
- Public comment must be in real time.  
Cal. Gov't Code § 54953(f)(1)(E).
- Meeting agenda and notice must state how the public can access the meeting and offer public comment. Cal. Gov't Code § 54953(f)(1)(B).

# What If a Member Needs to Appear Virtually More Than the Limit?

- If a member uses up the number of times they can appear virtually under AB 2449 (just cause or emergency circumstances), then we use the pre-COVID rules for a member who wants to appear virtually:
  - Post agendas at all teleconference locations containing information about the meeting, including the address of all teleconference locations;
  - Allow public to access all teleconference locations;
  - Allow public to make public comment from each teleconference location; and
  - All votes taken by roll call.

# How Long Does This Last?

- AB 2449 sunsets Jan. 1, 2026.
- After that, we revert to the pre-COVID rules, unless there is another legislative change.



# Serial Meetings

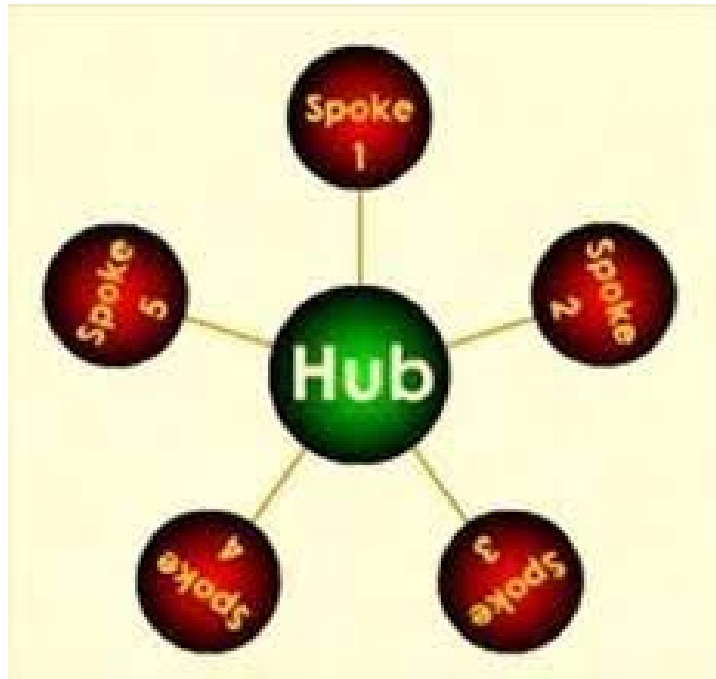


S E R I A L

- “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.”  
Cal. Gov’t Code § 54952.2(b)(1).

# Examples of Serial Meetings

## Hub and Spoke



## Daisy Chain



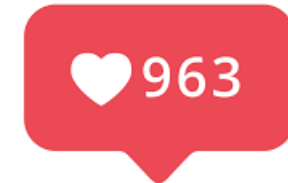
But, an employee or official of a local agency may engage in “separate conversations or communications” outside of a meeting to “answer questions or provide information” so long as that person “does not communicate to members . . . the comments or positions of any other member or members.” Cal. Gov’t Code § 54952.2(b)(2).

# Serial Meetings and Technology

- Use of email, text messages, social media, or other platforms by a majority of the body to discuss, deliberate, or take action on items within the body's jurisdiction violates the Brown Act.
- Emailing/texting a quorum or more of members may be a serial meeting.
  - Avoid emailing/texting all members.
  - When City staff communicates with all members, they should use the "bcc."
  - Avoid "reply all" in emails.
  - Think before sending emails or texts or posting on social media.
  - When in doubt, ask your City staff liaison.

# Serial Meetings and Social Media

- Commenting and using digital icons, i.e., liking another member's social media post could, unintentionally, cause a serial meeting to occur, within a matter of seconds.
- Think before you post, comment, or like/dislike.



# Use of “Likes” and “Dislikes” in Social Media

- Members of a legislative body cannot respond directly to communications or comments posted or shared by another member of the body, including the use of digital icons expressing reactions, such as the “Like” button on Facebook because a serial meeting may inadvertently occur.



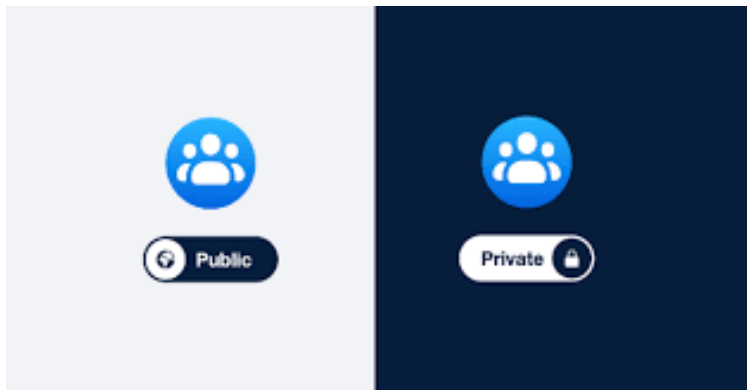


# Assembly Bill 992 & Social Media Communications

- AB 992 added language to the Brown Act to permit certain social media communications to clarify that the Brown Act does not prohibit:
  - . . . a member of the legislative body from engaging in separate conversations or communications on . . . social media . . . to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the . . . social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body . . .  
Cal. Gov't Code § 54952.2(b)(3)(A).

# Open and Accessible Requirements

- Social media platforms used to communicate on matters within the legislative body's jurisdiction should be open and accessible to the public, free of charge, and do not require approval for participation from the social media site or a third party. Cal. Gov't Code § 54952.2(b)(3)(B)(iii).
  - Nextdoor is not open and accessible because it requires approval to join.
  - Private groups on Facebook that require approval of a moderator to join are not open and accessible.



# What About Other Forms of Communications?



© CanStockPhoto.com - clip61206567

- AB 992 applies only to communications about public business on social media.
- AB 992 does not apply to other forms of communications, such as texts or emails.
  - However, communications via text, emails, etc. about public business by members of a legislative body could still violate the Brown Act or cause a serial meeting to occur.

# Other Social Media Considerations

- Use caution and seek advice from your City staff liaison before blocking individuals from a public account.
- Removing posts should not be based on the viewpoint expressed by the user.
- Court guidance suggests the removal of offensive posts or temporary blocking of a user may be warranted for posts that:
  - Contain sexually explicit, profane, or obscene language or content;
  - Are threatening, abusive, or harassing;
  - Incite or promote violence or illegal activities;
  - Contain information that reasonably could compromise safety;
  - Violate privacy, copyright, trademark or intellectual property laws; or
  - Contain links to malware.

# Other Social Media Considerations

- Public and Personal Accounts
  - For public accounts that are not regularly checked, consider a disclaimer that the account is not regularly checked and provide how the public can best contact the public official.
  - For personal accounts, consider a disclaimer that says it is a personal page.
    - **Do not use personal accounts for public business.**
  - There is no prohibition on one public official “liking” or commenting on another public official’s personal or private matter, for example, liking a family photo or a birth announcement.

QUESTIONS

