



(GOVERNMENT CODE §§54950 – 54963)

EEO ADVISORY COMMITTEE, NOV. 28, 2022

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## General Rule

- ▶ Provides legal minimums for transparency in decision-making
- ▶ Decision-making bodies must conduct business in open and in public meeting to ensure that the public is fully informed about local decisions
- ▶ Articles in San Francisco Chronicle title "Your Secret Government"

# The Act Applies to Legislative Bodies of Local Agencies

- ▶ Governing bodies-Board of Supervisors/City Council/School Boards etc. etc.
- ▶ Subsidiary bodies-commissions, committees created by Statute, charter, ordinance, resolution or formal action of a legislative body
- ▶ Bodies like the JJCC, created pursuant to WIC § 749.22 for limited purpose of creating plan are subject to Brown Act

## WHAT IS A MEETING?

- ▶ A meeting is any situation involving a **majority** of a **decision-making body** in which business is transacted or discussed.
  - ▶ Does not require that action be taken
  - ▶ Majority of governing body cannot talk privately about an issue before the body no matter how the conversation occurs, whether by
    - ▶ telephone,
    - ▶ e-mail or
    - ▶ at a local coffee shop

# Serial Meetings Prohibited

- ▶ Serial meetings are prohibited
- ▶ Serial meeting is a series of meetings conducted through direct communications, intermediaries or technological devices **to develop a concurrence as to action to be taken.**
- ▶ Hub and spoke-A to B, A to C and A to D
- ▶ Sequential-A to B, B to C, C to D
- ▶ Simultaneous-A,B,C and D have joint conversation by phone or other means

# Serial Meetings: Practice Tips

AVOID SUBSTANTIVE COMMUNICATIONS (DIRECTLY OR THROUGH OTHERS) WITH OTHER MEMBERS RE ITEMS THAT ARE ON AN AGENDA OR LIKELY TO BE PLACED ON A FUTURE AGENDA

DISCUSSING PROCEDURAL ISSUES (TIME, DATE AND ORDER OF MATTERS ON AN AGENDA) IS NOT PROHIBITED, BUT DO NOT DISCUSS SUBSTANTIVE COMMUNICATIONS

STAFF BRIEFINGS ARE PERMISSIBLE TO ANSWER QUESTIONS/PROVIDE INFORMATION TO MEMBERS IF STAFF DOES NOT COMMUNICATE THE COMMENTS OF MEMBERS TO OTHER MEMBERS OF THE LEGISLATIVE BODY

## Permissible Gatherings

- ▶ Not every gathering of governing body members amounts to a violation
- ▶ Attendance at an educational conference or a social event is not a violation if a majority of the governing body does not discuss business at the event.

## Types of Lawful Meetings

- ▶ Regular meetings-time and place established by ordinance, resolution or bylaws
- ▶ Special meetings-called 24 hours before meeting by the presiding officer or a majority of the board/legislative body
- ▶ Emergency meetings-crippling activity, work stoppage or other activity that severely impairs public health/safety-1 hour notice



# Basic Rights of the Public

- ▶ To receive agenda materials
- ▶ To notice of meetings
- ▶ To attend meetings
- ▶ To record meetings
- ▶ To comment at meetings
  - ▶ Items on the agenda
  - ▶ Non-agenda matters



# Access to Written Materials

- ▶ Agenda and any written materials related to items on agenda that are distributed to a member are public records
  - ▶ Emails or other written material relating to an agenda item that is sent by staff directly to a member must be provided to all members
  - ▶ Draft staff reports that are provided to individual members for comment/input must be provided to others
  - ▶ "On the agenda" includes items not only on upcoming agenda but items which are reasonably foreseeable to be on any future agenda
  - ▶ Draft staff reports provided to individual members for comment must be provided to other members.
- ▶ Documents provided less than 72 hours before meeting must be made available to the public at the same time as provided to majority of members
- ▶ Documents provided by others (public) must be made available promptly after the meeting



# Agenda Requirements

- ▶ Agenda must contain a brief description of each item of business to be transacted or discussed
- ▶ Closed session must be on the agenda
- ▶ Must include time for public comment before or during agenda item



# Right to Attend Meeting

- ▶ Accessible to disabled persons
- ▶ No precondition to attend
- ▶ If sign-in sheet, must clearly state that it is optional



# Conducting Meeting

- ▶ Must permit audio/videotape recording by public and media unless disrupts meeting
- ▶ No secret ballots
- ▶ May use teleconferences for public comment



# Right to Comment

- ▶ On each agenda item
  - ▶ Before conclusion of consideration of item (if discussion item) or before action taken (if action item)
- ▶ On any matter within the body's jurisdiction that is not an agenda item
  - ▶ May schedule for any time in meeting
  - ▶ Members may not discuss or respond substantively

## Limits on Public Comment

- ▶ May limit amount of time for each item
- ▶ Reasonable limit on total public comment time on an item
- ▶ No right to disrupt
- ▶ No right to a response from body or its members

## Consequences of Brown Act Violation

- ▶ Civil action
  - ▶ Injunction against violation
  - ▶ Decision voidable (right to cure)
  - ▶ Attorneys fees and costs
- ▶ Criminal sanctions
  - ▶ Misdemeanor





# AB 361/2449

- ▶ Allows for virtual meetings to continue during declared emergency
- ▶ Sunsets possibly on January 31, 2023 (anticipated)
- ▶ AB 2449 and Remote Meetings
  - ▶ allows a member of a legislative body to attend meetings remotely in limited circumstances which are related to illness/dependent care. Only be used 2x a year
  - ▶ A quorum of the body must be physically present in the physical meeting place