

# San Diego Community Power Citizens Advisory Committee

## Briefing on Brown Act and Other Applicable Laws

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# Overview

- Purpose of the Brown Act
- Application of the Brown Act
- Serial Meetings
- Rules Governing Meetings
- Violations
- Brown Act and COVID-19 Response
- Public Records Act



# The Ralph M. Brown Act

- In 1951, S.F. Chronicle reporter Mike Harris spent six weeks looking into how local agencies conducted meetings
- State law had required business to be done in public, but Harris discovered secret meetings or caucuses were common
- Harris wrote a 10-part series on “Your Secret Government” that ran in 1952



# The Ralph M. Brown Act

- Out of the series came a push for new state open meeting laws
- Assemblymember Ralph M. Brown authored the law
- The “Brown Act” has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws



# Purpose of Brown Act

To ensure that almost all aspects of the decision-making process of legislative bodies of local agencies are conducted in public and open to public scrutiny.

*“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”*

(Gov. Code § 54950.)



# Application

*To whom does the act apply?*

- “Meetings” of legislative bodies of local agencies
  - Including persons elected to legislative bodies, even prior to assuming office



# Application

- *Local Agency*
  - A city, county, city and county, town, school district, special district political subdivision, or any board, commission or agency thereof, or other local public agency
  - Includes joint powers agencies, like SDCP
- *Legislative Body*
  1. Governing body
  2. Board, commission, committee created by formal action of the governing body (e.g., Citizens Advisory Committee)
  3. Private organizations (in limited circumstances)



# The Key to the Brown Act

- All meetings shall be open and public except when the Brown Act authorizes otherwise





# Application



- What is a meeting?
- When is a meeting not a meeting?



# Application

- *Meeting*

- Any gathering of a majority of the members at the same time and place (even electronically) to **hear, discuss or deliberate** upon any matter under their jurisdiction
- No action needs to be taken for a meeting to occur
- Conversations, sharing of comments/questions, collective exchange of facts, etc. between and among members of a legislative body about agency issues is sufficient



# Application

- *Not a Meeting*

- Individual contacts (less than a quorum)
- Conferences and seminars
- Community meetings
- Purely social or ceremonial occasions
- Attendance at standing committee meetings
- Meetings of other legislative bodies – majority of body may attend as long as they do not discuss among themselves issues related to the agency



# Serial Meetings

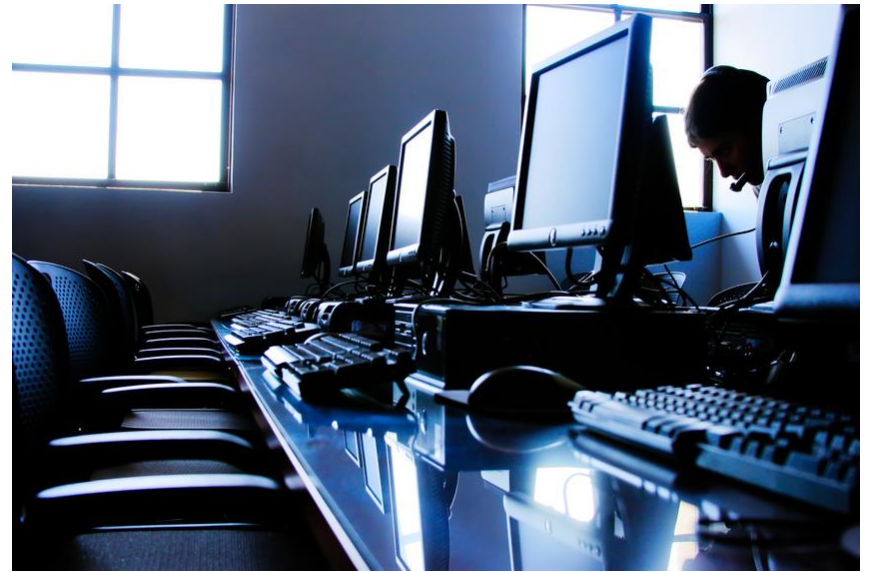
- *Serial Meetings – Expressly Prohibited*
  - “Use of direct communication, personal intermediaries, or technological devices employed by a majority of the legislative body members in order to develop a collective concurrence as to action to be taken on an item by the legislative body is prohibited.”



# Serial Meetings

## *Ways Serial Meetings Can Happen*

- Personal Meeting
- Telephone
- E-mail (especially “reply all”)
- Written Correspondence
- Use of Intermediaries
- Social Networking Sites such as Facebook and Twitter



# Social Media

## *Beware of the Comments Section...*

- Engaging in discussions using social media, the comments section of article, etc. can qualify as a meeting
- Meeting does not have to be a physical meeting
- Example: A series of comments on a news article or Twitter or Facebook post may qualify as a meeting



# Serial Meetings

## *Elements of a Serial Meeting*

- Series of communications
- Between less than a quorum
- But taken as a whole involves the majority
- Concurrence
  - Advances or clarifies the understanding of an issue
  - Facilitates an agreement or compromise among members
  - Advances the ultimate resolution of an issue





# Serial Meetings

## *Two types of Serial Meetings*

### 1. Chain

- Member A speaks to Member B who speaks with Member C about a particular matter and in the process they all form a collective concurrence on a matter

### 2. Hub and Spoke

- An intermediary acts as the hub of a wheel with members relaying information back and forth to each other through the hub, and in the process a majority of the legislative body develops a collective concurrence





# Serial Meetings

## *Serial Meeting Exceptions*

- While the Brown Act prohibits serial meetings, it explicitly allows one-on-one communications by a non-member (i.e., staff) with members of the legislative body
- But does NOT allow sharing of views, comments, concerns, etc. of different members



# Serial Meetings

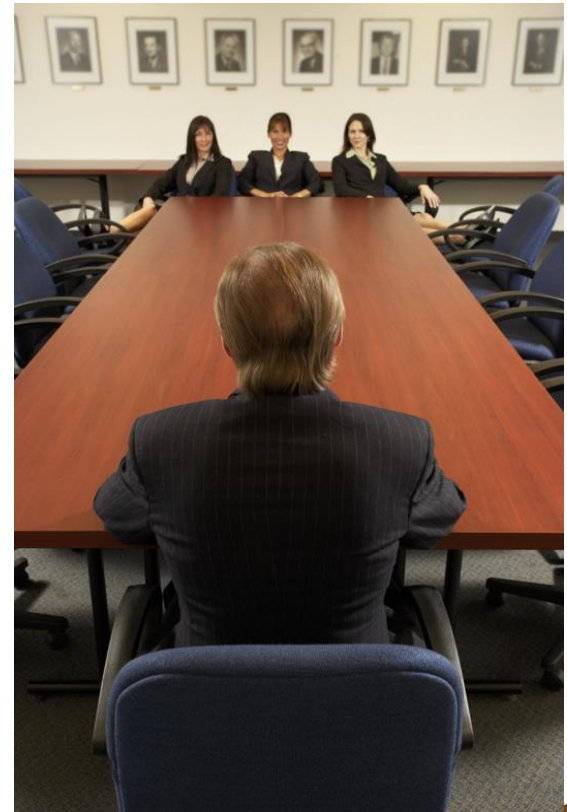
## E-mail Tips

- Refrain from “reply all” in e-mails
- Ensure that any individual e-mails do not become a serial meeting
- Take caution
- Ensure compliance with law



# Rules Governing Meetings

- Regular meeting
- Special meetings
- Public's right to comment



# Rules Governing Meetings

## *REGULAR MEETINGS - Agenda Requirements:*

- ⑩ Post 72 hours prior to the meeting
- ⑩ Must include the time and location of the meeting
- ⑩ Must contain a brief general description of each item to be discussed or addressed
- ⑩ Must provide opportunity for comment on non-agenda items



# Rules Governing Meetings

## *SPECIAL MEETINGS - Agenda Requirements:*

- Posted no later than 24 hours prior to the meeting
- Must include the time and location of the meeting
- Must contain a brief general description of each item to be discussed or addressed



# Rules Governing Meetings

## *Distribution of Agenda Packet to Public*

In addition to posting an agenda, local agency must also make the agenda packet available to the public when the materials are distributed to all or a majority of the legislative body, whichever is first



# Rules Governing Meetings

## *The Public's Right to Comment*

- ⑩ At every regular meeting, members of the public have the right to directly address the body on any item under the jurisdiction of the body
- ⑩ For agenda items, the public must be given an opportunity to comment before or during the body's consideration of the item
- ⑩ At special meetings, members of the public have the right to address the body about any item that is listed on the agenda





# Willful Interruptions

- Legislative body may remove persons from a meeting who willfully interrupt proceedings
- Ejection justified only when audience members *actually disrupt* the proceedings
  - Agency may not prohibit “insolent” remarks by members of the public absent actual disruption
  - If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. Legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance





# Rules Governing Meetings

## *Public Recording of Meetings*

- Public is allowed to audio or video tape a meeting unless the agency can make a reasonable finding that the recording would constitute a persistent disruption of the proceedings
- Recordings of public meetings by the agency are public records



# Rules Governing Meetings

*No action or discussion allowed for any item not listed on agenda except under rare circumstances:*

- ⑩ Emergency situations
- ⑩ Adding items by 2/3 vote because of need for “immediate action” that came to the agency’s attention after the agenda was posted



# Rules Governing Meetings

- Brief responses to statements or questions from public
- Questions to staff for clarification of matters based upon public comments
- Brief announcements or reports on member's or staff's activities
- Providing references or information to staff
- Asking staff to report back at a future meeting



# Remedies for Violations

- For violations, Court may:
  - Enjoin action
  - Invalidate action
  - Mandate correction
- Court costs & attorney fees are recoverable
- Individuals who intentionally violate may be guilty of a misdemeanor



# Brown Act Exceptions During the Covid-19 Crisis

- By executive orders issued in March 2020, the Governor suspended various parts of the Brown Act, including:
  - Meetings can be held telephonically or using videoconferencing , without a physical meeting location
  - Information on how the public can observe the meeting and provide comments must be stated on the agenda



# California Public Records Act

- Every person has a right to inspect public records of any state or local agency
- What is a public record?
  - Any writing containing information related to the conduct of the public's business retained by a public agency



# California Public Records Act

Emails, social media and other communications on private devices and accounts:

“Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act.”

*(City of San Jose v. Superior Court (2017) 2 Cal.5th 608)*



# California Public Records Act

- Why the Court Ruled As It Did
  - “Access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state” under the Public Records Act and state constitution
  - Court would not permit public officials to conduct public business on private devices and place those communications beyond reach of the Public Records Act
  - Courts will carefully analyze whether record relates to conduct of the public’s business





# California Public Records Act Exemptions

- The Act exempts various records from disclosure:
  - Certain draft documents
  - Atty-client communications
  - Medical records
  - Certain personnel records
- Procedures:
  - If a request is received and you may have responsive records, SDCP will contact you to provide records
  - SDCP, in consultation with our office, will make a determination on whether records are disclosable



# Questions?

