

THE BROWN ACT

California's Open Meeting Law

Office of the City Attorney
2021

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THE BROWN ACT

- The Brown Act was **enacted in 1953**.
- Is codified in the **California Government Code**, section 54950, et seq.
- Requires the **deliberations** and **actions** of California's public agency governing boards, commissions and councils be taken openly and in public.



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KEY PROVISIONS



- A meeting shall be **open** and **public** except when the Brown Act authorizes otherwise.
- The public has a **right to attend** and **participate in the meeting**.
- A meaningful agenda must **be posted in advance of the meeting**.
- Discussion and action is limited to the matters **listed on the agenda** for the meeting.
- Discussions (a) outside of noticed meetings (b) by a majority of Board of Ethics Members (c) about an item of business within the subject matter jurisdiction of the Board of Ethics (d) are prohibited.



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COMMON QUESTIONS AND ISSUES



- Who is governed by the **Brown Act**?
- What constitutes a **meeting**?
- What are the **notice** and **agenda requirements**?
- What are the **public's rights** under the Brown Act?
- What are the **consequences** for violating the Brown Act?



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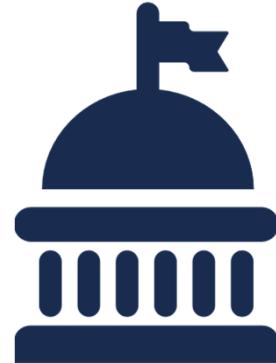
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WHO IS GOVERNED BY THE BROWN ACT?

- Any “**legislative body**”
- **Governing body of any local agency**, i.e., the City Council
- Local agency commissions, appointed either permanently or temporary, who have **decision making** or **advisory powers**.
- The Board of Ethics is an advisory body and covered by the Brown Act



(Government Code §54952)

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WHAT IS A MEETING?

A meeting is: _____



- Any congregation of a majority of the Members of the Board of Ethics at the same time and locations including teleconference locations . . . to hear, discuss, deliberate, or take action on any item that is within subject matter jurisdiction of the Board of Ethics .



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WHAT IS THE SUBJECT MATTER JURISDICTION OF THE BOARD OF ETHICS (RMC 2.80.020)?

- It is the purpose of the Board of Ethics:
 - To advise and make recommendations to the City Council on all matters pertaining to the adoption, revision, administration, and enforcement of the Code of Ethics and Conduct (RMC Chapter 2.78)
 - To conduct hearings upon complaints



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SERIAL MEETINGS - HUB AND SPOKE/DAISY CHAIN



- 1) A **chain or series** of communications
- 2) Each of which involves **less than a quorum** of the Board of Ethics
- 3) But when taken together involve a **majority of the body's members** (or)
- 4) A concerted plan to **engage in collective deliberation** on public business through a series of letters, telephone calls, e-mails, that pass from one member of the governing body to the next and excluding the public.



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WHAT CONSTITUTES A SERIES OF COMMUNICATIONS?

- A “**series of communications**” includes conference calls, emails, text messages shared among the majority of Board of Ethics Members, or conversations among members in which the position of other Members are shared to the majority.
- **Technological devices** may create a “virtual serial meeting” so be careful when using social media, e-mails, “IM”, texts, chat rooms, blogs, etc.
- **Case held letter** circulated for signature among a legislative body was a violation of the Brown Act.



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ISSUE / CHALLENGE



When can an issue or discussion become an **issue for Brown Act purposes?**



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WHEN THE ISSUE IS:



- **Within subject matter jurisdiction** of the Board of Ethics ; and,
- A majority of Board of Ethics Members participate; and,
- “Meeting is held”; and,
- Brown Act is not followed.

This deprives the public of an opportunity for meaningful observation of and participation in the decision-making.

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E-MAIL



- Remember **e-mails never go away**.
- E-mail can create a **“virtual serial meeting”**

- **Don't hit “reply all”** in response to email from staff to all Members of the Board of Ethics .
- **Refrain from emailing or forwarding** an email to a majority of the Board of Ethics Members.



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EXAMPLE: E-MAIL

What starts out as “legal” under the Brown Act:

- I think we should do “x” at our next meeting

Becomes “illegal” when it is replied to by a majority or by “Reply to All”:

- “I agree” [Reply to All]
- “Good idea!!!” [Reply to All]
- “Concur . . .” [Reply to All]



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USE OF SOCIAL MEDIA



Board of Ethics Members may not respond directly to any communication from another Member on an internet based social media platform regarding a matter within your subject matter jurisdiction



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USE OF SOCIAL MEDIA

What **did not** make it into the new legislation – language that would have allowed:

- Commenting on another Member's post
- Retweeting
- Forwarding
- Posting an emoji
- Clicking the "like" button



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EXCEPTIONS TO MEETING



- **Individual Contacts:** Individual contacts or conversations between a member of a legislative body and any other person.



- **Conferences:** Public or educational conferences on matters of general interest.



- **Community Meetings:** Publicized and public meetings to discuss a topic of local community concern organized by someone other than the City.



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EXCEPTIONS TO MEETING



- **Other Legislative Bodies:** Open and noticed meeting of another body of the public agency.



- **Standing Committees:** Open and noticed meeting of a standing committee within own agency, provided not a member of standing committee.



- **Social or Ceremonial Events:** Purely social or ceremonial events as long as no discussion of business w/in subject matter of jurisdiction of local agency.



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AGENDAS AND NOTICE



- Every meeting of the Board of Ethics **must be preceded by a posted agenda.**
- The agenda must be posted **at least 12 days** before the regular meeting. (See Riverside Sunshine Ordinance)
- The agenda must **advise the public of the meeting** and the **matters to be transacted or discussed**.
- The agenda must state the **meeting time and place**.
- **Each item of business** to be transacted must be briefly described.



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ACTION ON NON-AGENDIZED ITEMS

- The Board of Ethics Members or staff may **“briefly”** respond to statements or questions posed by the public at a public meeting.
- A Board of Ethics Member may ask **“a question for clarification, make a brief announcement, or make a brief report** on his or her own activities.”
- Otherwise, **no action** can be taken on issues or items that were not agendized.



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PUBLIC PARTICIPATION



- The public has a right to **attend, observe and participate in meetings.**
- Members of the public **cannot be required to register their names or provide information.**
- All actions taken by the Board of Ethics must be **in open session**, unless a closed session is authorized and the vote of each Member must be disclosed to the public at the time the action is taken.



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CRIMINAL ENFORCEMENT ACTIONS

Why do we take this so seriously?

- It is a **misdemeanor** for a Member to attend a meeting where action is taken that violates the Brown Act, and the Member intended to deprive the public of information that the Member knew or had reason to know that public was entitled.



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CIVIL ENFORCEMENT ACTIONS



- Enforcement actions can be brought by the **District Attorney** or **any interested person** to get a court order to stop a violation of the Brown Act.
- A court action may **also void actions** that were taken in violation of the Brown Act.
- Before bringing suit, the plaintiff must demand the Board of Ethics **cure** or **correct** the offending action.



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CONCLUSION



**Discussion, Questions,
& Answers**



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