



THE BROWN ACT

California's Open Meeting Law

Office of the City Attorney
2021

RiversideCA.gov

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.



2

RiversideCA.gov

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 Public Utilities Members (c) about an item of business within the subject matter jurisdiction of the Board of Public Utilities (d) are prohibited.



3

RiversideCA.gov

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?



4

RiversideCA.gov

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 Public Utilities is an advisory body and covered by the Brown Act



(Government Code §54952)

5



RiversideCA.gov

WHAT IS A MEETING?



A meeting is: _____

- Any congregation of a majority of the Members of the Board of Public Utilities 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 Public Utilities.

6



RiversideCA.gov

WHAT IS THE SUBJECT MATTER JURISDICTION OF THE Board of Public Utilities (City Charter Sec. 1202)?

- Consider the RPU annual budget
- Approve public works contracts and contracts and any purchase of equipment, materials, supplies, goods or services, or any acquisition, construction, improvement, extension, enlargement, diminution, or curtailment of all or any part of any public utility system when the amount exceeds \$50,000



7

RiversideCA.gov

WHAT IS THE SUBJECT MATTER JURISDICTION OF THE Board of Public Utilities (City Charter Sec. 1202)?

- Authorize RPU to perform work done at the request of and at the expense of a customer or if there is an urgent necessity to preserve life, health or property, with Board approval thereafter;
- Make appropriations from the contingency reserve fund for capital expenditures directly related to the appropriate utility function.



8

RiversideCA.gov

WHAT IS THE SUBJECT MATTER JURISDICTION OF THE Board of Public Utilities (City Charter Sec. 1202)?

- Require of the City Manager monthly reports of receipts and expenditures;
- Establish rates, subject to the approval of the City Council;
- Authorize the Director of Public Utilities to negotiate and execute contracts with individual retail customers for water, electric and any other utility service



9

RiversideCA.gov

WHAT IS THE SUBJECT MATTER JURISDICTION OF THE Board of Public Utilities (City Charter Sec. 1202)?

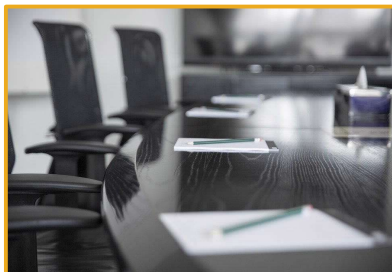
- Approve or disapprove the appointment of the Director of Public Utilities;
- Designate its own secretary;
- Make such reports and recommendations in writing to the City Council regarding the Department of Public Utilities as the City Council shall deem advisable.



10

RiversideCA.gov

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 Public Utilities
- 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.

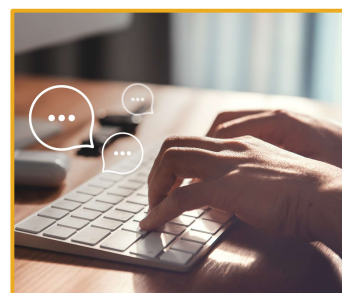


11

RiversideCA.gov

WHAT CONSTITUTES A SERIES OF COMMUNICATIONS?

- A “**series of communications**” includes conference calls, emails, text messages shared among the majority of Board of Public Utilities 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.



12

RiversideCA.gov

ISSUE / CHALLENGE



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



13

RiversideCA.gov

WHEN THE ISSUE IS:



- **Within subject matter jurisdiction** of the Board of Public Utilities; and,
- A majority of Board of Public Utilities 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.



14

RiversideCA.gov

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 Public Utilities .
- **Refrain from emailing or forwarding** an email to a majority of the Board of Public Utilities Members.



15

RiversideCA.gov

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]



16

RiversideCA.gov

USE OF SOCIAL MEDIA



Board of Public Utilities 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



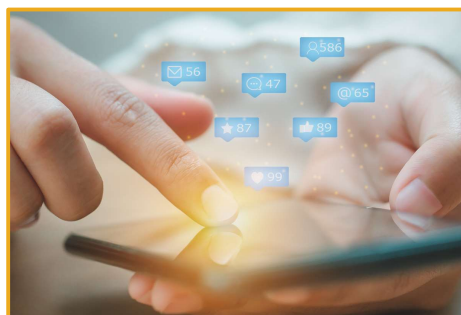
17

RiversideCA.gov

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



18

RiversideCA.gov

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.



19

RiversideCA.gov

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.



20

RiversideCA.gov

AGENDAS AND NOTICE



- Every meeting of the Board of Public Utilities **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.



21

RiversideCA.gov

ACTION ON NON-AGENDIZED ITEMS

- The Board of Public Utilities Members or staff may **“briefly”** respond to statements or questions posed by the public at a public meeting.
- A Board of Public Utilities 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.



22

RiversideCA.gov

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 Public Utilities 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.



23

RiversideCA.gov

CRIMINAL ENFORCEMENT ACTIONS

Why do we take this so seriously?

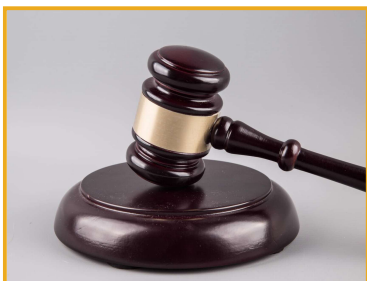
- It is a **misdemeanor** for a Member to attend a meeting where action is taken that violates the Brown Act, and the Member intended to deprive the public of information that the Member knew or had reason to know that public was entitled.



24

RiversideCA.gov

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 Public Utilities **cure** or **correct** the offending action.



25

RiversideCA.gov

CONCLUSION



**Discussion, Questions,
& Answers**



26

RiversideCA.gov