

# California's Open Meeting Law: LAFCOs and the Brown Act

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# PURPOSE

- 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
- To allow public to observe, monitor and evaluate its elected representatives
- To encourage public participation in local government



# HISTORY

- Introduced by Modesto Assemblyman Ralph M. Brown more than 60 years ago
- Legislature has frequently added to the Act's requirements
- Requirements are detailed, comprehensive, and complex



Ralph M. Brown

# APPLICATION

The Brown Act applies to:

- Local agencies
- Legislative bodies
- “Meetings”
- Persons elected to legislative bodies, even before assuming office
- By contract: *SEIU, Local 99 v. Options* (2011) 200 Cal.App.4th 869

# LEGISLATIVE BODY

- Governing body
- Board, commission, committee created by formal action of the governing body
  - Cf. *Californians Aware v. Joint Labor/Management Benefits Com.* (2011) 200 Cal.App.4th 972
- Private board, LLC, or other entity that:
  - Is created by the governing body; or
  - Receives funds and includes a member of the legislative body

# NOT A “LEGISLATIVE BODY”

The Brown Act does **not** apply to:

- Advisory committee of less than a quorum of the governing body
  - without continuing subject matter jurisdiction
  - e.g., ad hoc committee
- Attendance at a standing committee meeting (observer only)
- Attendance at open and noticed meetings of other local agencies

# “MEETING” DEFINED

A “meeting” is:

- A majority of Commissioners present at the same time and place “to hear, discuss, deliberate, or take action” on government business





# NOT A “MEETING”

The Brown Act does **not** apply to:

- Attendance at conferences open to the public on issues of general interest to the public or public agencies
- Town hall meetings or similar gatherings which are open, noticed and conducted by a person or organization other than the local agency
- Social or ceremonial occasions

# ILLEGAL “MEETING”

- “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.”
  - Gov. Code § 54952.2(b)(1)

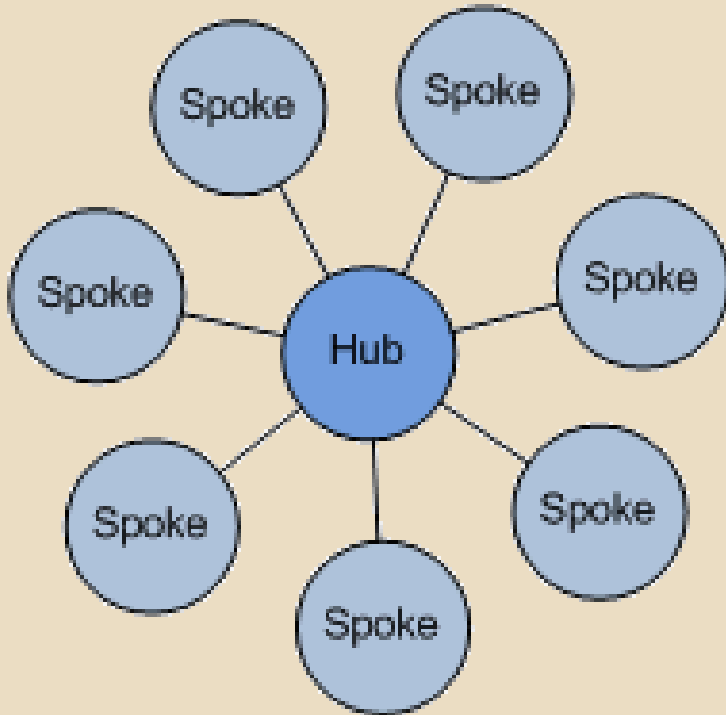
# PROHIBITED SERIAL MEETINGS

## Daisy Chain:

- Member A contacts Member B who contacts Member C to discuss actual or potential agency business or until a collective concurrence has been developed outside a noticed, agendized meeting.



# PROHIBITED SERIAL MEETINGS



## Hub and Spoke:

### ■ Where a 3rd party:

- contacts members of legislative body on a matter of actual or potential agency business to develop a “collective concurrence” on a proposed action; or
- briefs members of the legislative body individually and reveals information about other members’ views on a matter of actual or potential agency business.

# NOT SERIAL MEETINGS

- Distribution to each member of a legislative body of a memorandum of counsel in the absence of evidence members deliberated with respect to the memorandum (i.e., passive receipt of mail is ok)
- One-way transmission of background information by staff to members of legislative body
- Oral communication to each member of a legislative body of policy-related information
  - **Caveat:** Third parties ought not to carry views between members

# NOT SERIAL MEETINGS

*Golightly v. Molina* (2014) 229 Cal.App.4th 1501

- Special project agreements approved in series by Executive Officer of County Board of Supervisors, County Counsel, Auditor-Controller and CEO
- These officials were exercising approval authority and complying with internal controls over contracting
- They did not constitute a legislative body and their collective approval of contract did not amount of a meeting without notice in violation of Brown Act.

# BROWN ACT MEETING SPECIFICS

Meetings must:

- Be noticed in advance
- Include only business described in the agenda
- Take place within LAFCO's boundaries
- Be completely accessible by the public

# TYPES OF MEETINGS

- Regular meeting (Gov. Code § 54954, 54954.2)
- Special meeting (Gov. Code § 54956)
  - May be called at any time by presiding officer or majority of body
  - Items cannot be added to the agenda
  - Forbidden topic: compensation
- Emergency meeting (Gov. Code § 54956.5)
  - Permitted only when prompt action is necessary due to disruption or threatened disruption of public facilities
  - As little as 1 hour telephonic notice required if certain criteria met



# AGENDA POSTING REQUIREMENTS

- Post in a location freely accessible to public
- Post on LAFCO website if it has one and the meeting involves elected or compensated officials (Gov. Code § 54954.2(a)(1) & (d))
- 72 hours before regular meeting
  - Weekend hours count if posted so as to be viewed from outdoors (78 Ops.Cal.Atty.Gen. 327 (1995))
- 24 hours before special meeting

# AGENDA REQUIREMENTS

- Brief general description of every item of business to be discussed, including closed-session items:
  - What is to be discussed under each item
  - What actions are under consideration, including CEQA determinations (*San Joaquin Raptor Rescue Center v. Co. of Merced* (2013) 216 Cal.App.4th 1167)
  - Need not exceed 20 words
- Goal is to allow reader to understand what is under consideration to decide whether to attend
- Include time for public comment
- Instructions on how to get ADA assistance for meeting must appear on agenda (Gov. Code § 54954.2(a)(1))

# AGENDA REQUIREMENTS: SUBSTANTIAL COMPLIANCE

*Castaic Lake Water Agency v. Newhall County Water District*  
(2015) 238 Cal.App.4th 1196

- Newhall authorized suit to challenge CLWA's rates in closed session
- Closed session agenda title used outdated Brown Act section
- Newhall failed to announce action to authorize suit at the meeting, but did so after demand for cure by CLWA
- Court of Appeal found agenda substantially complied with agenda posting requirement though trial court had not ruled on that ground and did not reach the question of the validity of the cure, on which trial court did rely.

# LOCATION OF MEETINGS

All meetings “shall be held within the boundaries of the territory over which the local agency exercises jurisdiction,” with certain exceptions, e.g.:

- Inspect real/personal property
- Participate in multi-agency meetings within boundaries of one of them
- Meet with state or federal officials
- Discuss litigation at legal counsel’s office



# TELECONFERENCING

- At least a quorum of the legislative body must participate from locations within the agency
- Agenda must identify each teleconference location
- Agenda must be posted at each location
- Each location must be accessible to the public during the meeting
- Public comment at each teleconference location
- All votes by roll call



# DOCUMENTS CIRCULATED AFTER AGENDA POSTED

- Any documents related to an agenda item must be available at the meeting
- Any documents submitted to a majority of a legislative body in connection with an agenda item must be made available upon request without delay
- Useful to state on agenda where these are available; many agencies post entire agenda packets to the web
  - Gov. Code § 54957.5

# NO ACTION ALLOWED

No action or discussion allowed for any item not on agenda except:

- Majority vote to discuss emergency item
- $\frac{2}{3}$  vote to add items needing immediate action that came to attention of the agency (not just the legislative body) after agenda was posted
- Item continued from another meeting within 5 calendar days
- Brief response to statement or question from public and questions to staff
- Brief announcement or report on official's or staff's own activities

# PUBLIC COMMENT

- Every **regular** meeting agenda must allow public comment:
  - On items of interest to the public whether or not on agenda (but within agency's jurisdiction)
  - Before or during consideration of item
- Every **special** meeting agenda must allow for public comment:
  - On items on the agenda only
  - Before or during consideration of item





# PUBLIC COMMENT

The legislative body may:

- Adopt regulations limiting time for public testimony for an issue and for each speaker
- Order the room cleared of persons actually disrupting the meeting



# DUTY TO REPORT VOTES

- “The legislative body or a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.”
  - Gov. Code § 54953(c)(2)

# CLOSED SESSION

- Closed sessions are narrowly authorized for specific matters
- Special disclosures have to be made by the Commission before and after holding a closed session
- Closed session discussions must not go beyond the limited scope of the agendized item
- Public must be permitted to comment on closed session items before the closed session

# CLOSED SESSION

Agenda should use statutory safe-harbor language (Gov. Code § 54954.5):

- Real property transactions — Price & terms of payment only
- Litigation — Existing, anticipated and initiation
- Personnel issues — Appointment, performance evaluation, discipline/dismissal/release
- Liability claims
- Labor negotiations
- Security matters with Governor, AG, DA, counsel, sheriff, police chief (Gov. Code § 54957)

# CLOSED SESSION CONFIDENCES

- Any person who willfully discloses confidential information discussed during a closed session is subject to:
  - Injunctive relief
  - Disciplinary action
  - Referral to a grand jury for removal from office (Gov. Code § 54963)
- Person must have been informed of obligation not to disclose confidential information before discipline can be imposed (Gov. Code § 54963(d))

# REMEDIES: CIVIL

- Violations of Act may be prevented or cured by mandamus, injunction or declaratory relief.
- Actions not in substantial compliance with open meeting, notice or agenda requirements may be invalidated after demand for cure if prejudice shown (*Galbiso v. Orosi PUD* (2010) 182 Cal.App.4th 652)
- New requirements for demand for cure in 2013 (Gov. Code § 54960.2)
- Action may be brought to determine if past actions were compliant, only if agency does not unconditionally commit to refrain from challenged actions (Gov. Code § 54960.2)

# REMEDIES: CRIMINAL

- Each member of a legislative body who attends a meeting at which action is taken in violation of the Act,
- With intent to deprive the public of information to which it is entitled,
- Is guilty of a misdemeanor (Govt. Code § 54959)



# QUESTIONS?

