

THE BROWN ACT

California's Open Meeting Law

CITY OF MERCED
CITIZENS ADVISORY CHARTER REVIEW COMMITTEE

JUNE 18, 2019

The Brown Act

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

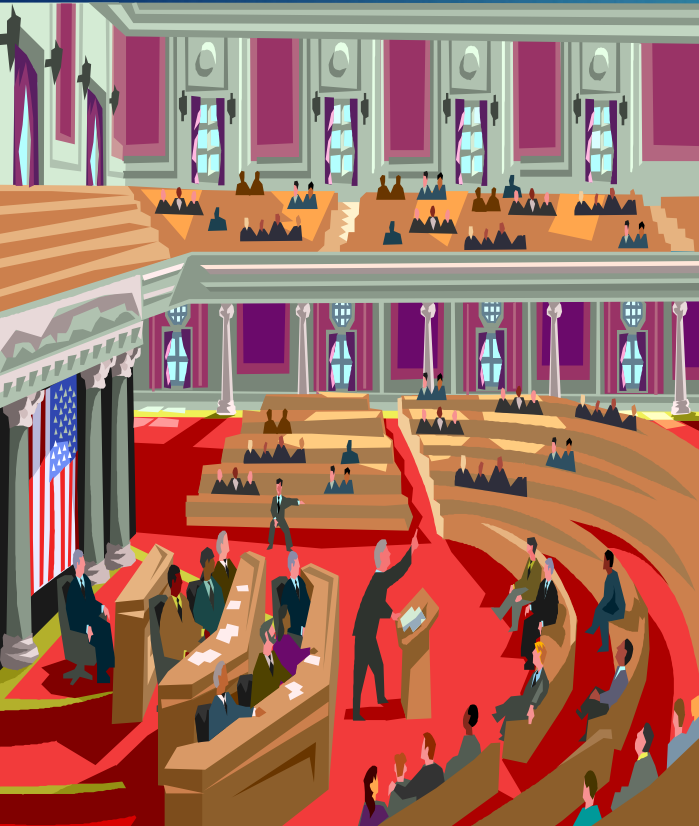
Key Points

- ▶ All meetings shall be open and public except when the Brown Act authorizes otherwise.
- ▶ The public has a right to attend and participate in public meetings.
- ▶ A meaningful agenda must be posted in advance of meetings. Discussion and action is limited to the matters listed on the agenda.
- ▶ That discussions outside of noticed meetings by a majority of Committee Members about an item of business within the subject matter jurisdiction of the Committee are prohibited.

Common Questions and Issues

- ▶ Who is covered 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 of violating the Brown Act?

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.
- ▶ Citizens Advisory Charter Review Committee is an advisory body.

WHAT IS A MEETING?

- ▶ The Act defines a meeting as:
 - ▶ Any congregation of a majority of the members of a legislative body 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 legislative body.
 - ▶ For the Citizens Advisory Charter Review Committee, Brown Act meetings are typically going to be regular meetings.

SERIAL MEETINGS

Are a chain or series of communications, each of which involves less than a quorum of a legislative body, but which together involve a majority of the body's members. It is also a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next and excluding the public. (*Sutter Bay*

Assoc. v. County of Sutter (1987) 58 Cal. App.4th 860)



WHAT CONSTITUTES A SERIES OF COMMUNICATIONS?

- A “series of communications” includes conference calls and emails shared among the majority of commission 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
[*Common Cause v Stirling* (1983) 147 Cal.App.3d 518]

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 Committee.
- ▶ Refrain from emailing or forwarding an email to a majority of Committee Members.

Issue/Challenge

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

WHEN THE ISSUE IS:

- Within subject matter jurisdiction of the Committee; and,
 - A majority of Committee Members participate; and,
 - “Meeting is held”; and,
 - Brown Act is not followed.
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- ▶ *This deprives the public of an opportunity for meaningful observation of and participation in the decision-making.*

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]

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.

Exceptions (cont'd):

- ▶ **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.

Agendas and Notice

- ▶ Every meeting of the Citizens Advisory Charter Review Committee must be preceded by a posted agenda.
- ▶ The agenda must be posted at least 72 hours before the regular meeting.
- ▶ 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.

Action on Non-Agendized Items

- ▶ The Committee Members or staff may “briefly” respond to statements or questions posed by the public at a public meeting.
- ▶ A Committee 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.

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, provide information or involuntarily provide information in order to attend or participate in a meeting.
- ▶ Secret balloting is prohibited.
- ▶ All actions taken by the Committee in open session and the vote of each member must be disclosed to the public at the time the action is taken.

CRIMINAL ENFORCEMENT ACTIONS:

- Why do we take this so seriously?
- It is a misdemeanor for a member to attend a Committee 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 the public was entitled.

CIVIL ENFORCEMENT ACTIONS:



- ▶ Enforcement actions can be brought by the district attorney or any interested person to get a court to order a stop to any violations of the Brown Act.
- ▶ A court action may also void actions in violation of the Brown Act.
- ▶ Before bringing suit, the plaintiff must demand the board cure or correct the offending action.



CONCLUSION

Discussion, Questions, &
Answers