

Sloan Sakai  
ATTORNEYS AT LAW

# A Virtual Visit with the Brown Act

**Dogpatch NW Potrero Hill  
Green Benefit District**

Presented by: Judith Propp  
Sloan Sakai Yeung & Wong, LLP

May 19, 2021



# Introduction



- |                         |                                 |                   |
|-------------------------|---------------------------------|-------------------|
| 1. Brown Act Basics     | 4. Accessibility                | 7. Closed Session |
| 2. What Is a Meeting?   | 5. Notice & Agenda Requirements | 8. Penalties      |
| 3. Digital Age Cautions | 6. Public Comments              | 9. Q's & A's      |



# Objectives

---

- Provide a **basic knowledge** of ethics, open government principles
- Attempt to answer questions you may have about the **practical application** of these rules
- Discuss **best practices** that promote public confidence in the integrity of those entrusted with the management of the CBD
- Provide **YOU** with the knowledge and tools to serve on the Board of Directors



# Basics



# Brown Act Basics



Enacted in 1953 in response to a 10-part expose in the *San Francisco Chronicle* on the lack of transparency in local government, entitled “Your Secret Government”



# Brown Act Basics

The Brown Act requires that, absent narrow exceptions, “**all meetings** of the legislative body of a local agency shall be **open and public**, and all persons shall be permitted to attend any meeting of the legislative body of a local agency.”

(Gov’t Code section 54953)



# Brown Act Basics

---

A majority of members cannot “discuss among themselves, other than as part of the scheduled program or meeting, business of a specific nature within the agency’s subject matter.

(Gov’t Code section 54952.2(c))



# Brown Act Basics

---

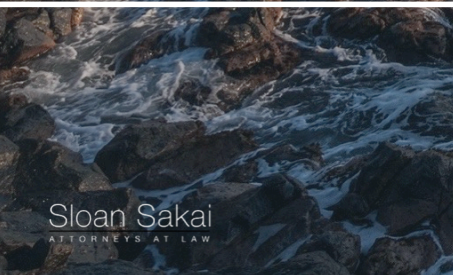
## The Presumption:

- In a close call, the Brown Act is interpreted in favor of public access.
- Closed sessions are permitted for limited purposes.
- Exceptions permitting closed sessions are narrowly construed.





# What Is a Meeting?





# What Is a “Meeting?”

- Any gathering of a majority of members of a “legislative body” to discuss or transact business under the body’s jurisdiction (Gov’t Code section 54952(a))
- General rule – any meeting within local agency’s jurisdiction
- Narrow exceptions  
(Gov’t Code section 54954(b))



# Committees

Most Committees are covered under the Brown Act

- A committee created by resolution or other formal action of the Board *if* it has a fixed meeting schedule
- A standing committee of the Board, with continuing subject matter jurisdiction

Not covered:

- *Ad hoc* committees are only less than a quorum of the Board are not subject to the Brown Act

-- “*Ad hoc*” means a committee charged with accomplishing a specific task in a short time period, ***and no fixed meeting schedule***



# Examples of Meetings

---

- Retreat
- Site visit
- Social gathering before or after a noticed meeting

# What is not a “meeting” ?

Individual conversations or contacts between less than a majority of legislative body members

Perception vs. Reality

[Gov't Code section 54952.2(c)]



# What is not a “meeting” ?

---

Staff may communicate with individual Board members outside of a meeting “to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency,” so long as any views or positions expressed by the member are not communicated to other members of the Board.



# What is not a “meeting” ?

---

Attendance of majority at:

- regional/state/national conference
- local meeting open to the public
- Community meetings
- social, recreational, ceremonial event not sponsored by or for the body

# Serial Meetings

- Sequential:

A talks to B

B talks to C

C talks to D

- Simultaneous:

A, B, C, and D have a joint conversation, by phone rather than in person



# Serial Meetings Can Occur

...

- Through use of technology
  - Phone
  - Text
  - E-mail



- Through staff or members of the public



# Digital Age Cautions





# Digital Age Cautions

---

- A serial meeting can result from **online communications** between a quorum of the Board regarding agency business
- *Reminder:* E-Mail communications regarding agency business may be subject to public disclosure

# Digital Age Cautions

Effective 1/1/21:

While local officials may use social media to communicate to the public, may **NOT** directly **RESPOND** or **REACT** to posts or shares concerning local agency business posted by another person of the same legislative body

(Government Code 54942.2 [AB 992])





# Teleconferences

---

- Identify each teleconference location in notice and agenda
  - Post agenda at each location
  - Public access to each location
  - Roll call votes
  - All other Brown Act requirements regarding the agenda items apply

(Gov't Code section 54953(b))

# Teleconferences

## Governor's Executive Order

- Suspended certain provisions of the Brown Act
- Allows local agencies to participate in meetings by teleconference
- Must allow public access to teleconference
- Must identify teleconference access on the agenda





# Teleconferences

---

- Telephone or video conferences are ok
- Quorum must be within agency's jurisdiction



# Accessibility







# Accessibility

---

- Accessible to the disabled
- No restrictions on admittance
- No entrance fees
- Documents must be placed in alternative format upon request

(Gov't Code sections 54961; 54954.2; 54957.5)



# Notice & Agenda Requirements



# Notice and Agenda Requirements

## REGULAR MEETINGS:

- Agenda contains brief, general description of each item to be discussed
- Agenda specifies time and location of meeting
- Agenda posted at least 72 hours prior to the meeting, in a public location & website
- Agenda provides opportunity for public comment

(Gov't Code sections 54954 and 54954.2)

# Notice and Agenda Requirements

## SPECIAL MEETINGS:

- 24 hour notice to legislative body members and to media requesting notice
- Notice contains brief, general description of each item to be discussed

(Gov't Code section 54956)

# Notice and Agenda Requirements in Emergencies

If an “emergency situation” disrupting or threatening the disruption of public facilities

- One hour notice to media
- No closed session items permitted

(Gov’t Code section 54956.5)

# Notice and Agenda Requirements - Exceptions

- Brief responses to public's statements or questions
- Brief announcements or reports on Board member's or staff's own activities
- Provide referral to staff, request staff to report back or place a matter on a future agenda

(Gov't Code section 54954.2)

# Notice and Agenda Requirements – Exceptions

- Need for immediate action on an item arose *after* posting
- Item cannot reasonably wait until next Board meeting
- 2/3 of Board members present vote to add item to agenda

(Gov't Code section 54954.2)



# Agenda Item Description

---

Meaningful description:

- Sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item ”
- Identify what action may be taken or if the item is or discussion only





# Agenda Item

---

A body subject to the Brown Act may not discuss or act on items not listed on the meeting agenda.



# Public Comment





# Public Comment Agenda Item

---

- ALL agenda items – discussion or action
- Must occur before
  - conclusion of consideration of discussion item
  - action taken on any item



# General Public Comment

---

- May occur any time in meeting, at the discretion of the Chair/Board majority
- Is limited to matters not on the agenda, but must concern matter within scope of Board's jurisdiction
- Members may not discuss or respond substantively



# Rights of the Speaker

---

- Right to equal time
- Right to criticize policy body, its members, and its staff
- Right to anonymity



# Limits on Public Comment

---

- “Up to” \_\_\_\_ minutes on an item
- Reasonable limit on total public comment time on an item
- No right to a response from Board members or Staff



# Unruly Speakers

---

- Board Chair may impose reasonable time, place, and manner restrictions on public participation
- Unruly speakers may be excluded from the forum if necessary to allow business to continue



# Closed Sessions







# Closed Sessions

  
Permissible Items:

- Personnel matters
- Pending or potential litigation/legal advice
- Real estate negotiations
- Labor negotiations



# Closed Sessions



## Basic Requirements:

- Agenda to follow statutory language  
(Gov't Code section 54954.5)
- Announcement prior to closed session  
(Gov't Code section 54957.7)
- Announcement of any reportable actions  
(Gov't Code section 54957.1)

# Closed Sessions – Personnel

- To consider the appointment, employment, evaluation of performance, discipline, or dismissal of an employee
- To consider complaints or charges against an employee
- employee must be given 24 hours notice and the right to have the charges heard in open session

(Gov't Code section 54957)

# Closed Sessions – Pending Litigation

- Pending Litigation:

Closed session may be held to receive advice from legal counsel regarding “pending litigation” where discussion in open session would prejudice agency

# Closed Sessions – Pending Litigation

\*

- Pending Litigation Details:
  - Existing litigation
    - Decision whether to initiate litigation
    - Situations involving “significant exposure” to litigation


(Gov’t Code section 54956.9)

# Closed Sessions – “Significant Exposure” to Litigation

- Tort claim or other written communication threatening litigation
- Verbal statement in open meeting threatening litigation
- Facts and circumstances exist that might result in litigation

# Closed Sessions – Real Estate

\*

 Closed session may be held with negotiator in connection with the purchase, sale, lease or exchange of real property

(Gov't Code section 54956.8)




# Penalties






# Penalties for Disclosure

-  Broad definition of “confidential information”
- Penalties for disclosure include injunctive relief and/or referral to grand jury for Brown Act violation.

(Gov’t Code section 54963)

# PENALTIES FOR DISCLOSURE

-  Criminal penalties for intentional acts (misdemeanor)  
(Gov't Code section 54959)
- Civil actions to stop action, invalidate actions or mandate corrections
- Court costs & attorney fees are recoverable  
(Gov't Code sections 54960, 54960.1, 54960.5)



# Q's & A's



Sloan Sakai  
ATTORNEYS AT LAW

**Judith Propp**  
[jjpropp@sloansakai.com](mailto:jjpropp@sloansakai.com)  
925-588-9922