



Legal Training for Commissioners: Brown Act Requirements, Public Records Requests, and other applicable laws for Commissioners

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August 2021

Welcome and Roll Call Introductions!

Commissions Invited for our Joint Special Meeting - Brown Act Training:

1. Commission on the Environment
2. Fish & Wildlife Advisory Commission
3. Hazardous Materials Commission
4. Water Advisory Commission

Agenda and Overview

Objective: Commissioners will receive legal training and information pertaining to their duties and responsibilities serving on a commission or board for Santa Cruz County.

Goals:

- 1) Commissioners will learn about and/or review their understanding of Brown Act requirements for meetings;
- 2) Commissioners will learn about the Public Records Act and other applicable laws for their positions.

Different Types of Commissions and Board

- The Santa Cruz County Board of Supervisors, through our County Code, has authorized the creation of Commissions and Boards.
- Some are legally mandated by federal and/or state laws, and others are created at the discretion of the Board of Supervisors.
- Generally, Commissions and Boards can be classified into:

Advisory Commissions/Boards	Decision-Making Commissions/Boards
Advise and make recommendations to the Board of Supervisors on specific subject matters as outlined in their purpose, powers, and/or duties. Serve as “eyes and ears” and as representatives of the BOS.	1) Advise and make recommendations AND 2) <i>Conduct Quasi-Judicial/Administrative Hearings and make decisions that may impact a community member’s life, liberty, and/or property rights.</i>

Santa Cruz County Code - Chapter 2.38

- Chapter 2.38 - Boards, Commissions, Committees and Department Advisory Groups Generally - “Commissions Policy Ordinance of Santa Cruz County”
- Outlines important areas such as creation procedures, membership qualifications, applications, terms in office, vacancies, etc.
- 2.38.110 - Compliance with the Brown Act
- 2.38.120 to 2.38.160 - Officers, Meetings, Bylaws, Quorums, Meeting Minutes.
- 2.38.230 - Subcommittee establishment or dissolution
- 2.38.260 - Public Records Maintenance

Statutory Authority for Your Commissions

1. Commission on the Environment - [Chapter 2.54](#)
2. Fish & Wildlife Advisory Commission - [Chapter 2.90](#)
3. Hazardous Materials Commission - [Chapter 2.92](#)
4. Water Advisory Commission - [Chapter 2.96](#)

Part I. The Brown Act - Background

- 1952: San Francisco Chronicle published a 10-part series of articles about “Secret Backdoor” Government Dealings in Sacramento.
- 1953: Ralph A. Brown, California Senator, sponsored legislation, now known as the “Brown Act” for Open Government.
- 2004: Added to the California Constitution via Prop 59 ensuring the public right of access to government information and actions.
- Cal. Gov. Code section 54950 et seq. + exceptions.

“All people have the right of access to information concerning the conduct of the people’s business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

The Brown Act - Applicable Entities

- In the original statute, the Legislature designated the law applies to “legislative bodies”:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and their deliberations be conducted openly.”

- Broad coverage: applies to members of nearly every type of local government body, elected or appointed, decision-making or advisory.
- BOS has appointed you in their place to be their “eyes and ears” regarding specific subject matters, and in doing so, delegated some of their powers and responsibilities on behalf of their constituents and districts. Therefore, the Brown Act applies to each commissioner.

The Brown Act - General Requirements

- **“Meaningful Agenda”**
 - Must be posted at least 72 hours before a Regular Meeting in location “freely accessible to the public” and on the local agency’s website (if it has one);
 - Must state the Meeting time and place; and
 - Must provides a **brief general description** but “must be **sufficiently detailed** to give notice to the public of the subject matter to be considered and of actions that may be taken by the body at the meeting.”
 - Should be clear for each Agenda item: to be discussed only, will have “action” take on it, or if necessary, both; reports for information purposes, etc.
- **Prohibits any action or discussion of items NOT listed in the Posted Agenda (with a few very narrow exceptions: emergency/immediate need type item)**

The Brown Act - Public's Participatory Rights

- Protects the public's right to attend, observe, and participate in meetings.
 - Public Comment Section: Community member can speak on any item of interest, *within the body's subject matter jurisdiction*;
 - Can't be required to register their names, provide info, etc. Any "sign in list" and/or name on speaker cards are completely voluntary.
 - BUT a person CAN be removed who is "willfully interrupting proceedings" and "meeting breaks" are allowed to restore order.
 - Reasonable speaking time limits also okay. Chair should announce how much time each speaker has before the comment period begins.

Brown Act - Public Participatory Rights

- Public Comment: No action or discussion shall be undertaken on any item not appearing on the posted agenda, except to:
 - ✓ Briefly acknowledge and thank speaker for their comment
 - ✓ Briefly respond to receive information
 - ✓ Ask a clarifying question
 - ✓ Ask staff to place on next month's agenda
 - ✓ Ask staff to follow-up and report back at a subsequent meeting
- Listening Period: Time for Commissioners to truly “listen” to public's concerns, ideas, and allow input into their local government.

Brown Act - Public Participatory Rights

Other:

- Gives public access to review agendas and any other writings or written materials related to any subject matter or action for upcoming or past meeting, or that has been distributed to Commissioners. (includes Calif. Public Records Act.; with exceptions.)
- **ADA Accessible Language:** Agenda must also include information on how, to whom, and when a request for a disability-related modification or accommodation can be made by a person with a disability to participate meaningfully in the meeting.
- Translation/Bilingual Services: additional time to give the same opportunity to participate.

Quick Poll Time!

- 1) How many people typically comment at your commission meetings?
- 2) What “grade” would you give this Agenda?

<http://scparks.com/Portals/12/PRC%20full%20Agenda%206-7-2021.pdf>

The Brown Act - “Meetings”

- Defined as:
 - “any congregation of a majority of the members ...
 - at the same time and same location, including teleconference ...
 - to hear, discuss, deliberate, or take action
 - on any item that is within the subject matter jurisdiction of the legislative body.” Cal.Gov.Code § 54952.2(a)
- Quorum: 50% +1 of commissioners appointed, not just those present
- Intent is to limit “business” from being conducted outside of our public scheduled meetings.

The Brown Act - Types of Meetings

- Types of Meetings: Differences in Notice, time, and subject matter requirements
 1. **Regular ** - 72 Hours Notice; Posted Agenda and Materials**
 2. Special - 24 Hour Notice; Posted Agenda and Materials
 3. Emergency
 4. Adjourned
 5. Closed Sessions
- Always welcomed to: talk to County Staff Department Liaison (who will contact County Counsel, if necessary) with questions, scheduling matters, agenda items, etc.

The Brown Act - “Meetings”

- **Exceptions** to “Meetings” definition:
 - ✓ Making/receiving Individual Contacts *** (exception on next page)
 - ✓ Attending Conferences
 - ✓ Attending Community Meetings
 - ✓ Attending *other* legislative bodies meetings, including standing committees
 - ✓ Attending social or ceremonial events

→ AS LONG AS there is NO discussion or action of any business related to board or committee’s jurisdiction
- **But meetings DO include**: collective briefings, retreats, workshops, field trips, study sessions, etc.

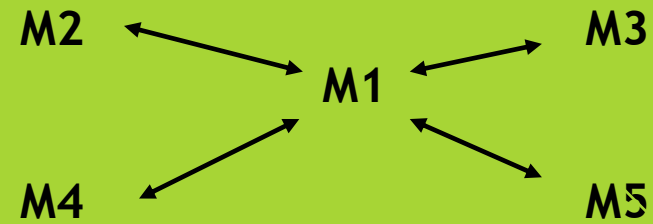
The Brown Act - Watch out for “Serial Meetings”

- Serial Meetings: “a majority of members ... shall not, outside of a called meeting ... use a series of communications of any kind, direct or *indirect*, or *through intermediaries*, to discuss, deliberate, or a take action on any item of business ...”
- Two types to be aware of:

“Daisy Chain”

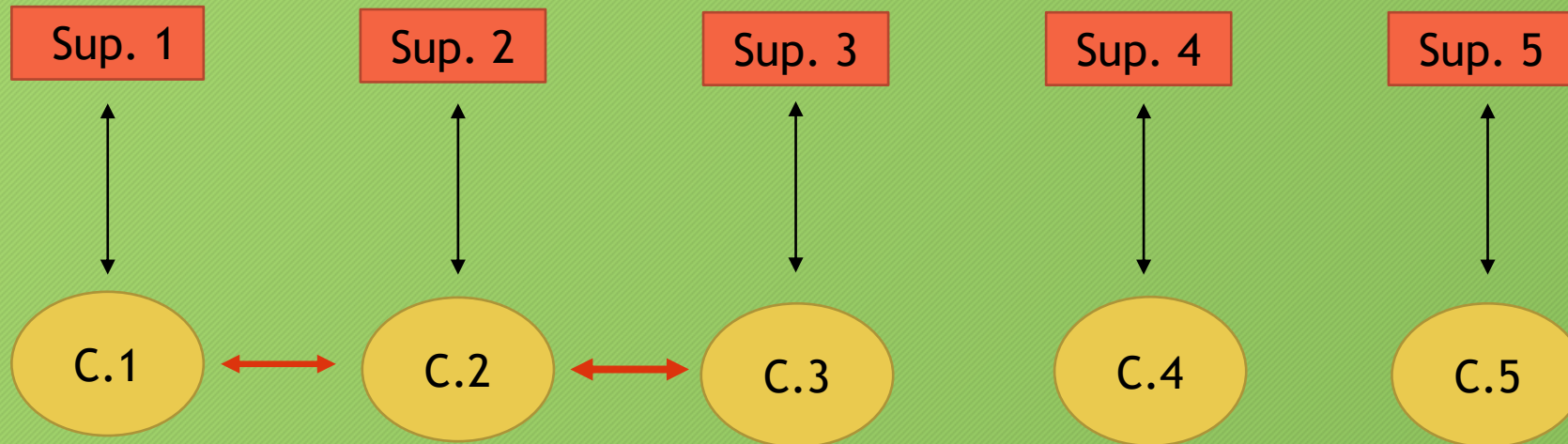
M1 → M2 → M3 → M4 → M5 → M6

“Hub and Spoke”



The Brown Act - Watch out for “Meeting by Proxy”

- Proxy: Accidental (or intentional) meeting held by sharing information with and among your elected officials on business or matter that may be an discussion or action item at an upcoming meeting.



The Brown Act: Watch out!

- Social Functions, gatherings, and other community events that give the “appearance” of meetings.
- Emails: Do not engage in “reply all” responses, “BCC”, group emails, or forwarding emails. Best to send a 1-1 email to dept staff person only.
- Social Media: Comments on Facebook, Twitter, blogs, where other commissioners could see or respond to an item that may come up during a future meeting for discussion or action.
 - AB 992 - Jan. 2021: creates a bright-line rule that members of a legislative body may not respond *directly* to any communications posted on the internet *by other members of the same legislative body* regarding a matter within the jurisdiction of the legislative body.

The Brown Act: Minutes

- Minutes are the official written record of what transpires during a meeting and serves as the permanent record of actions taken and gives future direction for staff, agencies, and the public.
- Should include the following:
 - Name, date, and location of the meeting
 - The word “minutes” reflected on the document and the person preparing the minutes
 - Time the meeting convened and adjourned
 - Names of Commissioners and Staff Members present (minimum)
 - Public Comments: if none, indicate “none”
 - Approval of Minutes
 - For EACH ITEM OF THE AGENDA: must include, but is not limited to - motions (1st/2nd); how each member voted; and a brief summary of the discussion and/or action taken.

Quick Poll Time!

- What do you think of these Minutes?

<http://scparks.com/Portals/12/PRC%20full%20Agenda%206-7-2021.pdf>

The Brown Act: Special COVID Rules

- Governor's Executive Order - N29-20, 35-20, and others: Special COVID exceptions, suspends several rules, including -
- In “Normal” Times - Teleconferencing:
 - to identify the physical location of members participating by teleconference
 - to post agendas at all teleconference locations
 - for a quorum of the legislative body's members to be within the jurisdiction when the meeting is taking place
- But still requires local legislative bodies to:
 - provide advance notice of and post agendas for public meetings in accordance with the Brown Act's time frames
 - provide information by which members of the public may observe and offer public comment
 - advertise and implement a procedure for receiving and resolving reasonable Americans with Disabilities' (ADA) accommodation requests.

*Pending: 3
related
Brown Act
Bills in
Sacto!*

The Brown Act - Remedies/Consequences

- Invalidation of improper agenda item: usually begins with an opportunity to “cure or correct” and re-address properly at an agenda meeting;
- Civil Actions: with possible costs and attorney’s fees awarded, and other corrective steps;
- Criminal Complaints: 1) an overt act and 2) where intent to “deprive the public of information to which member should know or has reason to know the public is entitled”- punishable as a misdemeanor

II. The California Public Records Act (CRPA)

- Purpose: Under Gov. Code § 6250 seq., to provide access to information about the conduct of the public's business.
- Gives the public right to inspect and/or obtain copies of records from gov't entities.
- Can receive most records which include written documents (both paper and electronic, i.e. emails), any existing video & audio records at the time of the request.
 - With limited exceptions
- **Application:**
 - All records received, distributed, created, etc by the commission should be saved and accessible.
 - Your Emails related to this Commission: also subject to PRA. (Even if saved in your personal email account.)
- Remember: If you don't want to see it in the Sentinel, use your best judgment accordingly before putting it in writing.

III. Conflicts of Interest and Bias

- A conflict of interest is a situation in which a person has an *actual or perceived competing professional or personal interest* on the outcome of a matter before or action made by the commission.
- Competing interests can make it difficult to be impartial in fulfilling duties.
- Can exist even if no unethical or improper acts have taken place.
- Exists to ensure that leaders are acting in the public's best interest and not to further their own self-interests.
- Different types:
 - Financial - \$\$, real property, personal property
 - Familial - including spouse, partner, and children
 - Professional/Work/Employer

III. Conflicts of Interest and Bias

- Important for Commissioners to avoid the appearance of favoritism to certain people and organizations with whom a Commissioner is affiliated in daily/outside personal and/or professional life.
- What to do:
 - disqualify self by stating for the record
 - Leave room or refrain from discussion
 - Abstain from voting on that matter
- If uncertain whether you have a conflict on an item on the agenda, please email me: Ruby.marquez@santacruzcounty.us

Other Considerations

Cannot use your title or position as a Commissioner:

- To influence decisions on other bodies or people, unless a majority of the body has voted to take up/speak on that issue
 - Otherwise, must indicate that you are speaking as a “private citizen” or other professional capacity
- For financial gain or benefit
 - Not Okay: personal website, ads for your business, non-county email signature, political endorsements and/or campaigns.
 - Okay: Resume/Linkedin (Volunteer experience)

☺ *Thank you for your time and service!!* ☺

Questions and Answers!

If time permits, what questions and concerns do you have about serving on a Board or Commission?