

# BROWN ACT OVERVIEW



## RICHMOND RENTBOARD

Wednesday, April 26, 2017  
Provided by City Attorney's Office

# Government Transparency: Brown Act

**Brown Act:** All meetings of a legislative body of a local agency shall be open and public, unless an exception applies

- **Purpose** – Conduct the people’s business in the open and give the public access to decision making
- “Public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business...”

# THE BROWN ACT

1. Meetings
2. Notice
3. Public Comment
4. Closed Session

# What is a Meeting?

A meeting occurs whenever a majority of the members of a **legislative body** come together at the same time or place to hear, discuss or deliberate on an item within its jurisdiction.

**Legislative body** includes any body created by formal action of the City Council or other legislative body.

Includes standing committees, appointed bodies, advisory committee/ task force. Does not include temporary advisory committee composed solely of less than a quorum.

# Government Transparency: Brown Act

- **Meetings:**
  - *Includes:* direct communication, use of technology, and serial meetings
  - *Excludes, for example:* individual contacts, conferences that are open to the public, community meetings, or social or ceremonial occasions. However, majority of members cannot discuss among themselves business within their local agency's subject matter jurisdiction.

# Unlawful Meetings

- Pre-meetings
- Post-meetings
- Seriatim or serial meetings



•“A majority of the members of a legislative body shall not, outside a meeting . . . 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.”

# Types of Serial Meetings

**Sequential:** A talks to B, B talks to C, C talks to D

**Hub-and-spoke:** A or staff talks to B, A or staff talks to C, A or staff talks to D

**Note:** Beware of email (no reply all) and social media

# Posting the Agenda

- Post at least 72 hours before meeting (for regular meetings – set by resolution or other formal action by body)
- Post at least 24 hours before meeting (for special meetings – called by presiding officer or majority of body to discuss discrete items)
- Post where “freely accessible to members of the public”

# Describing an Agenda Item

- Meaningful description:
  - “ [S]ufficiently 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 as action or discussion item
- Members of the public allowed to speak on all items – time limits OK

# The Public's Place on the Agenda

- Every agenda for a regular meeting must allow members of the public to speak on any item of interest that is within the subject matter jurisdiction of the legislative body
  - Open forum
  - Can limit time, but not content and cannot prohibit criticism

# Why does it matter what is listed on the agenda?

A LEGISLATIVE BODY  
CANNOT DISCUSS OR ACT  
ON ITEMS NOT ON AN AGENDA.

# Very Limited Exceptions

1. Public health/safety emergency
2. Need to take immediate action before next regular meeting and comes to the attention of the agency after the agenda is posted (2/3 vote)
3. Item on previous agenda, and continued to next meeting no more than 5 days later

# Brown Act: Closed Session

## Limit Closed Sessions:

- Allowable only for specific matters
  - Your attorney will determine, but could include, e.g., hiring and existing/anticipated litigation
- Do not disclose closed session info unless authorized
  - Entire body = holder of privilege
- Public Comment before going into closed session

# Brown Act: Penalties and Remedies

- **Criminal Penalties** – misdemeanor if undertaken intentionally to deprive public of information to which the public is entitled
- **Civil Remedies** – invalidation of actions and attorneys' fees

# Public Records Act

- **Reminder:** Emails, documents, voicemails, text messages, etc. about Commission work are public records and are subject to disclosure to the public under the Public Records Act
- Supreme Court Case *San Jose v. Superior Court*. Personal email accounts used for conduct of public business=public records.

# Public Records Act

- Public record = any writing containing information relating to conduct of people's business prepared, owned, used or retained by any local agency regardless of physical form or characteristic
- Disclosable to public unless specific exemption applies
  - Example: Attorney-client privileged, personnel files

# Conflicts of Interest

- Training in September
- Prohibition on having a financial interest in a contract made by them or board
- Prohibition on participating in decision or using influence a decision when have a disqualifying financial interest (Political Reform Act)
  - 1-866-ASK-FPPC
- Form 700 from Clerk's office within 30 days of assuming office and April 1 annually
  - Gift restrictions (\$470 in calendar year)