

Citizens Advisory Committee

Brown Act Training Presentation

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# Purpose of Brown Act

- ▶ Promote Government Transparency - Ensure deliberations of local government are open and public; exceptions to right of access narrowly construed to promote meaningful access
- ▶ Promote Public Participation - Public notice of items to be considered, public access to materials, and right of public to participate in decision making
- ▶ The courts rely heavily upon these purposes when interpreting the Brown Act and determining if violations have occurred

# Application of Brown Act

- ▶ Meetings of “legislative bodies” of local agencies, including the governing bodies, subsidiary bodies and any other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body is itself a legislative body
- ▶ Specifically applies to the CAC per authorizing resolution and Article III, Section 2 of its Bylaws

# How Much Notice is Required for Public Meeting?

- ▶ **Regular Meetings:**
  - Agenda posted in publicly accessible location 72 hours before meeting.
- ▶ **Special Meetings:**
  - Called by chair or majority of committee members; agenda posted 24 hours before meeting.
  - Notify committee members in writing and notify requesting newspapers.
- ▶ **Emergency Meetings:**
  - For health and safety emergencies.
  - Same notice requirements as for special meetings, but only one hour notice required.

# What Must the Meeting Agenda Include?

- ▶ Must contain brief description of each item of business (20-word limit)
- ▶ Must inform the public about the subject matter under consideration and cannot be misleading or incomplete
- ▶ Should provide public with sufficient information to decide whether to participate
- ▶ Meeting agendas are considered public records

# Exceptions to Notice Requirement

- ▶ Briefly respond to public comment or request clarification
- ▶ Request staff to report back at next meeting
- ▶ Report on member's own activities or make announcement
- ▶ Consider an item upon determination by a vote of two-thirds of the members (or unanimous vote if less than two-thirds are present) that there is a need to take immediate action and that the need for the action came to the agency's attention after agenda was posted
- ▶ Consider an item that was included on a prior committee agenda for a meeting occurring not more than 5 days before the current meeting and that was continued at the prior meeting

# Public Participation

- ▶ Open and public: All persons must be permitted to attend
  - ▶ No conditions on attendance and may not require to sign-in
  - ▶ Must be ADA-accessible
  - ▶ Must allow photos, audio/videotaping of the meeting (unless it is disruptive to the meeting)
- ▶ Rights of the public
  - ▶ May address Committee via public comment though reasonable time limitations and other regulations are permitted
  - ▶ Cannot prohibit criticism by members of the public, but disruptive conduct and personal attacks need not be permitted

# What Constitutes a Meeting

- ▶ Congregation of a majority at same time and location
  - ▶ To hear, discuss, or deliberate agency business
  - ▶ Can include use of technology by a majority of members to discuss an issue



# Exceptions to What Constitutes a Committee Meeting

- ▶ Conferences and seminars open to the public
- ▶ Community meetings
- ▶ Noticed meeting of another public agency
- ▶ Social events or ceremonial occasions
- ▶ CAC members should still refrain discussing CAC business at these events

# Avoiding Serial Meetings

- ▶ Hub and spoke - Member A contacts Member B, Member A contacts Member C and relays Member B's position, etc.
- ▶ Daisy chain - Member A contacts Member B who contacts Member C, etc.
- ▶ Email and text messages - avoid "reply all"
- ▶ Collective concurrence not required

# Use of Social Media

- Members are permitted to use social media platforms such as Facebook and Twitter to engage in communications with the public regarding matters within CAC's jurisdiction:
  - Answer questions
  - Provide information
  - Solicit information
- Members are prohibited from using social media platforms to engage in communications with a majority of their colleagues regarding matters within CAC's jurisdiction, including through the use of emojis
- Members are prohibited from using social media platforms to:
  - Respond to a colleague's post
  - Share a communication posted by a colleague

# Example 1: Ribbon-Cutting Ceremony

A majority of the members of the CAC attend a public ribbon-cutting ceremony at a new Caltrain station. One of the speakers, who is not a CAC member, urges the CAC to approve an item on the agenda for the Committee's next meeting. Has a meeting occurred?

What if a majority of the CAC members meet for dinner after the ceremony and one member explains why he thinks the speaker was wrong?

## Example 2: Serial Meetings

- ▶ Use of a series of communications to discuss, deliberate, or take action on item within CAC's jurisdiction.
  - ▶ Telephone calls, email, text communications, face to face meeting
  - ▶ Use of staff as intermediaries

## Example 3: Serial Communications

A member of the CAC texts several CAC members in advance of a CAC meeting to ask them how they plan to vote on an item on the CAC's agenda and why. She subsequently expresses her views on the matter to other CAC members by telephone but does not relay how the members plan to vote. In total, she communicates with less than a majority of the CAC.

Unbeknownst to her, three of the CAC members she contacts communicate with a total of two other CAC members to discuss their position on the vote. Together, the members who have communicated about the item comprise a majority of the CAC, but because some of the communications were one way, the members do not come to a collective concurrence regarding the vote. Has a serial meeting occurred?

# Enforcement

- ▶ Knowing violation of Brown Act is a misdemeanor
- ▶ Private litigation to enforce compliance with the Brown Act can be brought by individual citizens
- ▶ Legislative bodies can cure violation by rescinding its action, re-noticing item, and ensuring that the public has the opportunity to provide input during the agency's deliberations

# Resources

- ▶ “Open and Public V”–League of California Cities  
<http://www.cacities.org/Resources-Documents/Resources-Section/OpenGovernment/Open-Public-2016.aspx>
- ▶ “The Brown Act–Open Meetings for Local Legislative Bodies)–California Attorney General, 2003  
[http://ag.ca.gov/publications/2003\\_Intro\\_BrownAct.pdf](http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf)
- ▶ The Brown Act, California Government Code § 54950-54963