

# The Brown Act

Inyo County Counsel's Office

2023

# Declaration of Public Policy

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## ► Government Code § 54950

- In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the 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 that their deliberations be conducted openly.
- The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

# Purpose

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- To facilitate public participation in local government decisions
- To curb misuse of the democratic process by public bodies

# Application

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- The Brown Act applies to:
  - Local agencies
  - Legislative bodies (and subsidiary bodies) and their members
  - Persons elected or appointed to legislative bodies, even prior to assuming office
  - Boards and commissions created by statute or ordinance

# Open Meetings

All of the deliberative processes of legislative bodies, including discussion, debate and the acquisition of information, must be open and available for public scrutiny (limited exceptions are discussed later in this presentation).



# Public Participation

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- Members of the public can attend and testify, without giving their names.
- Information given to the legislative body in connection with an open meeting must be equally available to members of the public.
- Unless it's disruptive, any person may record (video or audio) or broadcast an open meeting.

# Voting



- No private votes (except for closed session matters)
- The legislative body must publicly report actions taken and the vote or abstention on that action of each member present during open session – and for specified closed session actions.

# Opportunity to Speak

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- Every regular meeting agenda must provide opportunity for the public to speak:
  - On items on the agenda
  - Before, or during consideration of, each item
  - On items not on the agenda (but within the jurisdiction of the legislative body)



# Reasonable Regulations

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- ▶ The legislative body may not:
- ▶ Prohibit a speaker from criticizing the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body.

# Public Access

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- Agendas or any other writings, unless exempt from disclosure, distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public upon request.

# Meeting

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Any congregation of a majority of the members of a legislative body to hear, discuss, deliberate or take action on a matter within the subject matter jurisdiction of the agency



# Serial Meetings Prohibited

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- Serial meetings – a series of communications, each of which involves less than a quorum of the legislative body, but when taken as a whole, involve a majority of the body's members
  - Conducted through direct communications, personal intermediaries or technological devices to discuss, deliberate or take action on any item of business that is within the SMJ of the legislative body

# Examples of Serial Meetings



## ► Chain (A-B-C)

- A talks to B
- B talks to C

## ► Hub (A-B, A-C)

- A talks to B
- A talks to C

# E-mail deliberations prohibited

A quorum of members may not e-mail each other about a topic within the jurisdiction of the body without violating the Brown Act



# Social Media

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- AB 992 (2020)
- Under new rules, Board Members may use “publicly open and accessible” social media to:
  - Answer questions posed by the public
  - Provide information to the public
  - Solicit information from the public
- Board Members may not respond to the posts of other Board Members (no “likes” or emojis either)

# “Meeting” does not include:

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- Contacts by individual board members with the public
- Attendance at a standing committee meeting (observation only)
- Purely social or ceremonial occasions
- ▶ Attendance at open & noticed meetings of other local agencies
- ▶ Attendance at conferences open to the public on issues of general interest to the public or public agencies
- ▶ Town meetings or similar gatherings which are open, noticed and organized by a person or organization other than the local agency

**But, don't talk shop outside of the program!**



# Teleconferencing

## Government Code § 54953(b)

- Since COVID, there are two ways to hold a teleconferenced meeting:
- the 'old school' way; or
- the AB 2449 way.



# The Old School Way

## AKA the “Normal” Brown Act Way

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- Under the original rules, remote participation by board member(s) is allowed if:
  - During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction; and
  - Agendas are posted at each teleconference location and the public is able to attend and/or address the board from each teleconference location.

# AB 2449

- Effective until January 1, 2026
- Permits remote participation by board member(s) if:

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  1. At least a quorum of the board is there in person
  2. The board votes on the remote appearance request and approves it
  3. The member participating remotely must
    - a. Have “just cause” or an “emergency circumstance”
    - b. Use both video and audio
    - c. Disclose whether anyone over 18 years old is in the room with them
  4. A commissioner may only use AB 2449 for 20% of regular meetings in a calendar year or 2 meetings if the board meets less than 10 times in a year. Also limited to a 3-month stretch.

# Agendas – Posting & Notice Requirements

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- Agendas must be posted in a location freely accessible to the public 24 hours a day **and** on the Agency's website
- Regular meeting - 72 hours prior
- Special meeting - 24 hours prior

# Agenda Contents

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- Time and place of meeting
- Public comment period
- Brief general description (20 words or less) of every item of business to be discussed or transacted
- For closed session items, there is suggested agenda language in the Brown Act which should be followed
- CEQA Findings (pursuant to recent case law)

# Agenda Packets

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- ▶ Agenda packets should be made available to the public at time agenda is posted or when the materials are distributed to all or a majority of the legislative body, whichever is first
- ▶ Must post on the Agency's website
- ▶ Materials distributed during a meeting:
  - ▶ If prepared by the local agency, must be made available for public inspection at the meeting
  - ▶ If prepared by some other person, must be made available for public inspection after the meeting

# Agendas

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With limited exceptions related to emergencies, no action or discussion is allowed on any item not listed on an agenda.

**No**



# Penalties & Remedies

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- Opportunity to Cure
- Cease and Desist/Unconditional Commitment
- Injunction
- Court Costs & Attorneys' Fees
- Criminal penalties



# Opportunity to Correct

## Government Code § 54960.1

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This time we will get it right.

- Written demand to cure or correct the alleged violation
  - 90 days from the date action was taken
  - 30 days if action was taken in open session
- Failure to correct may lead to judicial determination that action taken is null and void.

# Penalties & Remedies

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- A person who violates the Brown Act is guilty of a misdemeanor if action is taken and the person intended to deprive the public of information to which the person knows of or has reason to know the public is entitled.



# THE END

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Questions?

