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# The Ralph M. Brown Act

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Workforce Investment Board

February 6, 2014

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# Brown Act Policy Declaration

- Government Code section 54950 provides, in relevant part, that “It is the intent of the law that their actions be taken openly and their deliberations be conducted openly.”
  - Exceptions are those matters which are subject to closed session
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# Balancing The Public's Right To Know with the Efficient Conduct of Business

- Must assure full participation of the public
  - Must preserve the integrity of the decision making process
  - Should not be used as a mechanism for hindering efficient and orderly meetings
  - Must not impede the effective operation of government
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# Public Participation

- General comments within the Board's purview must be allowed
  - Public comment on each specific agenda item must be allowed
  - Length of any person's public comment may be limited by Board rule
  - Closed sessions limited to specific matters designated by law – litigation, real estate negotiations, public employment, labor negotiations
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# Who is Subject to the Brown Act?

- Applies to the legislative bodies of local agencies and includes virtually every type of public commission, subsidiary committee, board, task force, council, and agency
  - If created by formal action of the governing board, it is a legislative body
  - This is true whether the body is permanent or temporary, decision-making or advisory
  - But...there are exceptions
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# Subject to the Brown Act or Not?

- Standing Committees – Yes
    - Members of a legislative body
    - Which have either
      - Continuing subject matter jurisdiction; or
      - A meeting schedule fixed by charter, ordinance or resolution or formal action of a legislative body
    - Examples: Executive Committees, Finance Committees, Rules Committees
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# Subject to the Brown Act or Not?

(cont.)

- Temporary Advisory Committees – No
    - Composed of less than a quorum
    - Serves a limited or single purpose
    - Is not perpetual and will be dissolved once task is completed
    - Examples: interview panels, working groups
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# Agendas

- Agenda must list the items to be considered in general language
- Items off agenda may not be discussed; no action may be taken on such items . . . except
  - Commission Members may report on their activities,
  - In response to public comment on a non-agenda item
    - Brief questions may be asked
    - Staff can be requested to respond
    - Item can be placed on future agenda



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# Agendas (cont.)

- Items that need immediate attention
  - Came up after 72 hour noticing period
  - 2/3's of members vote there is need for immediate action



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# Agenda Posting Requirements

- Must be posted in an area freely accessible to the public 24 hours/day
  - Regular Meetings: must be posted at least 72 hours in advance of a meeting
    - Inside an accessible bulletin board
    - Internet posting alone is inadequate
  - Special Meetings: must be posted 24 hours in advance
  - ***Practical Pointer:*** Agendas take time to plan, set and create.
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# What Constitutes a Meeting?

- “...any congregation of a majority of the members...at the same time and place to *hear, discuss, or deliberate* upon any item that is within the subject matter jurisdiction...” .
  - This definition is not limited to meetings where action is taken but also includes deliberative proceedings or any type of discussion about matters that may come before the Board.
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# What Constitutes a Meeting (cont.)

- Teleconferences
    - Members are in different locations
    - Connected via phone, Skype, etc
    - Quorum must be in locations within jurisdiction (i.e. SLO County)
    - Each location must be identified in the notice and agenda
    - Each location must be accessible to the public
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# Meetings

- “Regular meetings” – occurring at dates, times, and location set by resolution, ordinance, or other formal action by the legislative body, subject to 72-hour posting requirements (Gov’t Code § 54954(a))
  - “Special meetings” – called by presiding officer or majority of the legislative body to discuss only discrete items on the agenda, subject to 24-hour notice requirements (Gov’t Code § 54956)
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## Meetings (cont.)

- “Emergency meetings” – held only when prompt action is necessary due to the actual or threatened disruption of public facilities; may be held without notice in emergency situation (Gov’t Code § 54956.5)
  - “Adjourned meetings” – regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment (Gov’t Code § 54955)
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# Exceptions to Definition of Meeting

- Individual Contacts with staff or members of the public
  - Conferences
  - Community Meetings
  - Meetings of Other Legislative Bodies
  - Social or Ceremonial Events
  - Attendance at Standing Committee Meetings as Observers
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# Not Exceptions to Definition of Meeting

- Collective Briefings
  - Informal Gatherings (unless scrupulous avoidance of topics within body's jurisdiction)
  - Retreats or Workshops
  - Teleconferencing
  - Serial Meetings
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# Serial Communications Prohibited

- Effective January 1, 2009, the Act prohibits a majority of members of a legislative body from using 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.”**
  - “hub-and-spoke”
  - “daisy chain”
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# Still Permitted . . . Separate Conversations With Agency Staff

- Separate conversations or communications between an employee or official of a local agency and members of its legislative body
  - Purpose:
    - Efficiency/Effective Operation of Government
    - To answer questions or provide information regarding a matter within the subject matter jurisdiction.
    - Agency staff must not communicate to a member or members of the legislative body the comments or position of any other member or members.
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# Reporting Actions and Votes at Meetings (effective 1/1/14)

- Any action taken at an open meeting must be publicly reported and the vote or abstention of each member present for the action must be reported.
  - Unanimous voice votes may be sufficient if it is clearly reported in the minutes which members are present for the vote.
  - Otherwise, roll call votes may be necessary to record the vote or abstention of each member.
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# Closed Session

- Closed sessions limited to specific matters designated by law – litigation, real estate negotiations, public employment, labor negotiations
  - Must be briefly described on the agenda with specific statutory exemption identified
    - General language and samples provided in the Act
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## Closed Session (cont.)

- Purpose of closed session is to allow the legislative body to discuss confidential information with legal counsel and staff.
  - Closed sessions are allowed so as to discuss, in private, those matters that may otherwise prejudice or compromise the legal or negotiating position of the legislative body.
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# Closed Session (cont.)

- Reporting Out
    - Act identifies certain issues that must be reported out of closed session if final action is taken
    - Examples: settlement of litigation, agreement to purchase property
  - Prohibition Against Disclosing Information Discussed in Closed Session
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# Violations & Remedies

- **Invalidation** – any interested person may seek to invalidate certain actions of a legislative body through court action
  - **Civil Action to Prevent Future Violations** – any interested person can file a lawsuit asking the court to take action
  - **Costs and Attorney's Fees** – someone who successfully invalidates an action taken in violation of the Brown Act may seek court costs and attorney's fees
  - **Criminal Charges** – may be brought against a member whose intent was “to deprive the public of information to which the member knows or has reason to know the public is entitled” by the Brown Act (rarely occurs)
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# Avoiding Violations

- Regular Training
  - Ask for advice and assistance from County Counsel
  - We are here to help
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