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CAC Brown Act Training

SAN MATEO COUNTY TRANSIT DISTRICT

CITIZENS ADVISORY COMMITTEE

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Government Ethics Laws

- Minimum standard
- Not always common sense
- Public opinion/media



THE BROWN ACT

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.

Government Code Section 54950

Who is Subject to the Brown Act?

- Meetings of:
 - Local legislative body
 - Any committee created by Board of Directors
 - Any committee created by a committee



What is a “Meeting”?



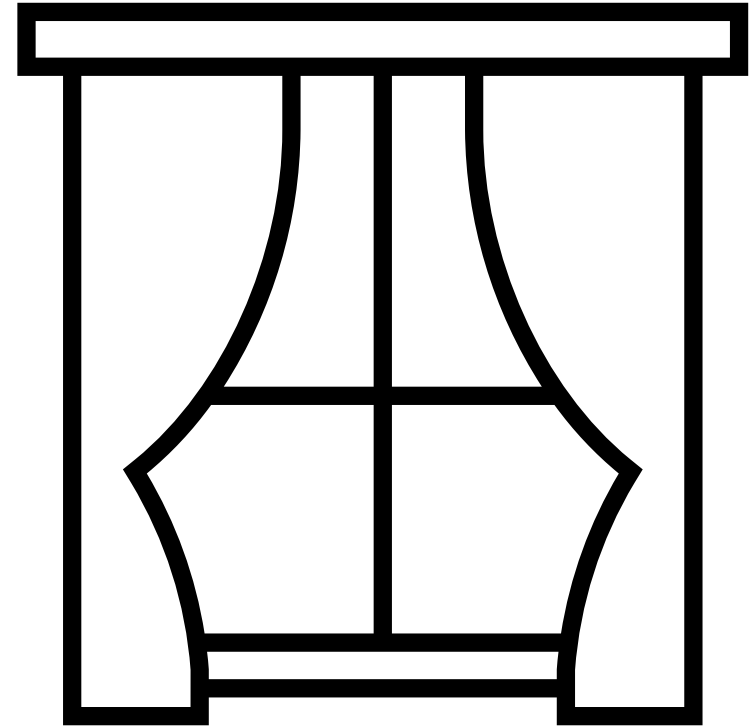
- Majority of members of a legislative body
- Same time and location
- Hear, discuss, deliberate, or take action
- Any item within the subject matter jurisdiction of the legislative body

What is not a “Meeting”?

- Contact between Member and a Non-Member
- Conference open to public
 - but no caucusing or discussion among members about business within the body’s subject matter jurisdiction
- Noticed public meeting of another committee or board

What does the Brown Act Require?

- Meetings in open and public location
- Notice (Agenda is often the notice)
- Specify time and location of meeting
- Posted in accessible location
- On the web (if there's a website)
- 72 hours prior to meeting for regular meetings
- 24 hours prior to meeting for special meetings



What does the Brown Act Require? (contd.)

- Agenda
 - Describe possible discussions/actions with appropriate level of detail, including indication of whether action may be taken (vs. informational only)
 - No more than ~20 words per item
 - Enough to know “Should I attend this meeting if I care about a certain issue?”
- Opportunities for public comment
- Availability of supporting documents
 - With agenda/at stated location if distributed after agenda is published
- Report out individual votes of every member present for all actions

TELECONFERENCING UNDER THE BROWN ACT

CAC as a "Eligible Subsidiary Bod[y]": Teleconferencing

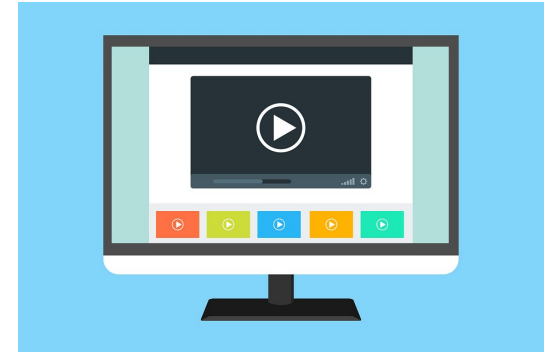
After SB 707, the CAC sought and received authority from the Board to participate remotely.

Meetings can be conducted fully remotely, if the following conditions are met:

- ✓ Board must make findings (initial + every 6 months thereafter) that remote meetings enhance public access and improve attraction, retention, and diversity of committee members
- ✓ Committee votes to allow remote meetings
- ✓ A staffed in-jurisdiction physical location is open for public to access meeting
- ✓ Committee members appear on camera
- ✓ Recommendations made remotely must be discussed at a regular District Board meeting before action; cannot be on consent calendar

Teleconferencing Challenges

- Public comment rights remain protected.
- Common issues:
 - Outages
 - Audio failure
 - Public can't access livestream
 - Loss of remote quorum
- Cannot take action on items on the agenda until public access is restored.
 - Actions taken during a disruption may be challenged.



Legislative Changes to Teleconferencing Rules

There have been several state bills that have changed the Brown Act's teleconferencing rules over the last few years—namely, AB 2449 and SB 707.

Here's what SB 707 didn't change:

- ✓ Each teleconference location must be identified on meeting notice and agenda
- ✓ Agenda must be posted at each teleconference location
- ✓ Each teleconference location must be open and accessible to public
- ✓ Members of public must be allowed to participate in meeting from each noticed teleconference location
- ✓ Quorum must participate in meeting from locations within District boundaries
- ✓ All votes must be by roll call

Legislative Changes to Teleconferencing Rules (contd.)

And here are the newer, more rigorous requirements:

Committee members can participate remotely without noticing or opening remote physical locations to public (or posting agenda at remote locations) for either:

- Just cause basis; or
- State or local emergency

Requirements:

- Public participation via:
 - Two-way audiovisual platform (video for public may be disabled), or
 - Two-way telephonic service + live webcast
- Publication of remote access details
- Real-time remote public comment
- If remote access is disrupted, no action until restored; actions during disruption can be challenged
- Minutes must list remote members and statutory basis for remote participation
- Disclosure of adults (18+) present (and their relationship) at remote locations

Just Cause [Gov. Code, § 54953.8.3]

The procedural requirements for participating remotely for "just cause":

- Members are limited to participating remotely under for "just cause" basis (e.g., twice per calendar year if monthly meetings).
- Members must notify agency of the reason for remote participation; meeting minutes must note the reason, and two-way audio/video is required.
- Substantive reasons for remote participation for just cause include:
 - Caregiving for family
 - Contagious illness or health needs
 - Official agency travel
 - Physical/family medical emergencies
 - Protecting an immunocompromised close relative from exposure to illness (new)
 - Military service obligations (new)

State or Local Emergency [Gov. Code, § 54953.8.2]

- Meetings may be held remotely when a state or local emergency is officially proclaimed under California law
- No physical location required for public attendance; meetings can use two-way telephonic service without webcast
- District Board of Directors must vote to reauthorize remote meetings every 45 days while the emergency remains active

Disability Accommodation Carve-Out [Gov. Code, § 54953(c)]

SB 707 exempts members who participate remotely as a reasonable accommodation for a disability (as defined by the ADA) from the traditional and alternative teleconferencing requirements. Instead, the following requirements apply:

- Remote participation as a reasonable accommodation under the ADA is treated as in-person for quorum and location requirements.
- The member must participate through both audio and visual technology, except if their disability requires off-camera participation.
- The member must disclose if any other individuals aged 18 years or older are present in the room at the remote location and the individual(s)' relationship(s) to the member.

WHAT ELSE DOES THE BROWN ACT COVER?

Closed Sessions



- Limited bases set forth by statute
- Very unlikely to apply to the CAC
- Specific format, notice, requirements
- Talk to legal counsel first
- Duty of confidentiality

Serial Communications Quorums Outside of Noticed Meetings

§ 54952.2 (b)(1) *A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, 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.*



Daisy chain

- A told B, B told C...



Hub and spoke

- H told A, B, and C...

FAQ: Can I respond to that comment/question?

- Cannot discuss items not on agenda, BUT
- Members can "briefly respond"
 - Direct staff to place an issue on a future agenda so other members of the public can join the conversation
 - Provide a reference for factual information
 - Ask staff for clarifying information
 - Request a report
 - Ask a question for clarification
 - Make a brief announcement
 - Report on their own individual activities

FAQ: I know it's not on the agenda, but it's related. Can we go back to that item from last meeting?

- Can't discuss items not on agenda except in three limited circumstances:
 - When a majority decides there is an "emergency situation" (as defined – refer to 54956.5)
 - 2/3 members present (or all members if less than 2/3 present) determine
 - need for immediate action; and
 - need to take action came to agency's attention after agenda posted
 - Item appeared on the agenda of a meeting held 5 or fewer days ago that was continued

FAQ: What if there's less than a quorum?

- A quorum is defined as a majority of the entire membership.
- All official acts of the legislative body require a quorum.
- If no quorum, we recommend that legislative body does not meet.
- If a legislative body still wants to meet:
 - No official acts may be taken;
 - There will be no minutes; and
 - Can't share information with members of the body who were not present because of danger of having a serial communication.



Penalties/Enforcement

- Opportunity to cure
- Law effective 1/1/2013 regarding cease-and-desist letters
 - Plaintiff cannot sue if agency makes commitment not to act in certain way
 - Even if underlying act was OK under the Brown Act, violating commitment is a violation!
 - Process for rescinding the commitment
- Civil action
 - Judge may invalidate
 - Judge may require recording of closed sessions
 - Judge may award attorneys' fees
- Criminal action
 - Misdemeanor for certain willful violations
- Employee discipline
- Media coverage / public opinion



QUESTIONS?