

# Brown Act Training

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**SamTrans  
Citizens Advisory  
Committee**



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# Government Ethics Laws

- Minimum standard
- Not always common sense
- Appearances matter
  - Media/Public Opinion





# 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 Committee



# What's a "Meeting"?

- Majority of the 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





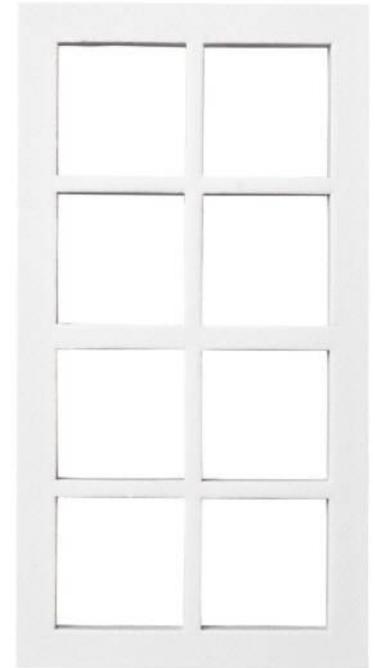
# What's *Not* a “Meeting?”

- 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?

- 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



# Teleconference Requirements (Pre-COVID)

- Teleconferencing can be used for all purposes during any meeting
- BUT:
  - At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction
  - Teleconference location must be accessible to the public
  - Must allow public comment at all locations
  - Noticed
  - All votes have to be taken by roll call
- If can't meet requirements, can still call in, but not part of quorum and can't vote





# Executive Orders Temporarily Modify the Brown Act

- **Executive Order N-25-20 (March 12, 2020) (Superseded)**
- **Executive Order N-29-20 (March 17, 2020)**
  - Suspends in-person meeting requirements and certain teleconference and location requirements.
  - Allows teleconferencing (video and/or phone) as exclusive means of meeting, so long as certain notice and accessibility requirements are satisfied.



# Executive Order Regarding Permissible Briefings

- **Executive Order N-35-20 (March 21, 2020)**
  - Board/Committee members may receive updates from/ask questions of government officials regarding the COVID-19 emergency.
  - Board/Committee members cannot discuss amongst themselves, or take action on, information outside of a properly noticed public meeting.
  - Reiterates rules for permissible Board/Committee briefings.



# Special Requirements for Virtual Meetings

- Agenda must include:
  - Web access and/or call-in information for public
  - Clear description of method for public comment
  - Procedure for receiving requests for and implementing reasonable modifications for persons with disabilities
- Ability for legislative body and staff to hear and be heard
- Ability for public to hear and be heard
  - Avoid interruption, inappropriate conduct
  - Ability to be anonymous
  - For some, comments submitted in writing only
- All votes by roll call





# Teleconference Requirements in the Future

- **Executive Order N-08-21 (June 11, 2021)**
  - Extends suspension of certain Brown Act in-person meeting, teleconferencing, and location requirements in Executive Order N-29-20 until September 30, 2021
- The pandemic may be a catalyst for Brown Act modernization
- Many of us recognize the significant benefits of meeting virtually:
  - Increased public access
  - Efficient use of staff and consultant time
  - Reduced commuting time
- Hybrid meetings

# Closed Sessions

- Limited bases set forth by statute
- *Very unlikely to apply to this committee*
- Specific format, notice, requirements
- *Ask 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 time?**

- 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 is 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?**

