



**Redwood**  
Public Law



# The Brown Act

Alex Mog, City Attorney

December 17, 2024

# Brown Act

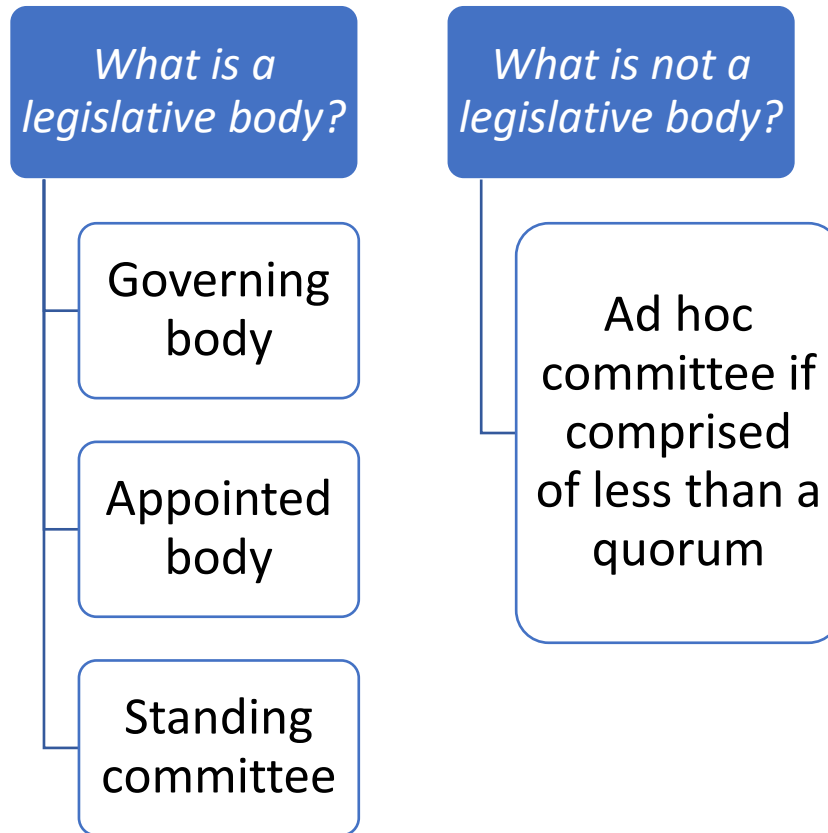
## *Open Meeting Requirements*

- Meetings...
- Of Legislative Bodies...
- *Shall be open and public*



# Brown Act

## Legislative Bodies



# Brown Act

## Definition of “Meetings”

- A congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on an item of business within the agency’s subject matter jurisdiction
- Does not need to be an item actively pending before the body



# Brown Act

## Exceptions

- Conferences
- Community Meetings (open to the public)
- Individual contacts
- Meetings of other legislative bodies
- Standing Committees (but can't participate)
- Social or ceremonial events

*BUT a majority must not congregate to discuss anything within its subjective matter jurisdiction.*



# Brown Act

## Avoiding “Serial Meetings”

- A majority may not, outside a meeting, use a series of communications to discuss, deliberate, or take action on any item of business
  - Does not prevent employees and officials from engaging in separate conversations outside of a meeting provided that the comments or positions of other members are not communicated



# Brown Act

## Avoiding “Serial Meetings”

### *Examples*

#### Hub and spoke

A staff member (the hub) communicates with members of a legislative body (the spokes) one-by-one for input on a proposed action and in the process reveals members’ positions to other members in advance of the meeting.



# Brown Act

## Avoiding “Serial Meetings”

*Examples*



### Daisy Chain

Member A contacts Member B,  
Member B contacts Member C,  
Member C contacts Member D  
and so on, until a quorum has discussed,  
deliberated or taken action on an item within the  
legislative body’s subject matter jurisdiction.





# Brown Act

## Avoiding “Serial Meetings”

### *Examples*

#### Emails

Informal nature of email communication is ripe for inadvertent Brown Act violations



# Brown Act

## Avoiding “Serial Meetings”

- Prohibition applies on a topic-by-topic basis
- Whether conversation is about the same topic should be construed broadly
- There is a temporal element to whether two conversations are about the same topic, but no bright line rule



# Brown Act

## Ad-Hoc Committees

- Ad hoc committee is a committee of less than a quorum that serve limited or single purpose
- Members not on the Ad hoc can't attend meetings
- Overlap with standing committees requires caution



# Brown Act

## Social Media



- Government Code section 54952.2
  - Members of a legislative body may not respond directly to any communications posted on the internet by other members of the same legislative body regarding a matter within the jurisdiction of the legislative body.
  - This includes comments and digital icons (emojis)
- Applies to all generally accessible social media platforms



# Brown Act

## Closed Sessions

- Closed session discussions are confidential
- Required to publicly report certain actions taken in closed session

### Examples of Permissible Closed Session Topics:

- Real estate negotiations
- Threatened or existing litigation
- Initiation of litigation
- Personnel
- Labor negotiations
- Public security



# Brown Act

## Posted Agendas



- Posting requirements:
  - ***Regular meetings*** must be posted **72** hours before meeting
  - ***Special meetings*** must be posted **24** hours before meeting
- ***Exceptions***
  - Emergency
  - Urgency → need for immediate action came to agency's attention after posting the agenda



# Brown Act

## Public Participation Rights

- Regular meetings must provide an opportunity for the public to speak regarding any matter within the body's jurisdiction
  - Legislative body may briefly discuss these items and refer matters to staff, ***but cannot take action***
- Public can address the legislative body on matters on the agenda before or during consideration of the item



# Brown Act

## Public Participation Rights

- May ask, but may not require members of public to identify themselves or state address
- No secret ballots
- Can't limit negative comments
- Allocated time doubled if translator required





# Brown Act

## Public Participation Rights

- Individuals may be removed if engaged in disruptive conduct
- Behavior must actually disrupt, disturb, impede, or render infeasible the orderly conduct of the meeting
- Must warn individual that their behavior is disrupting meeting and they may be removed if they don't stop



# Brown Act

## Public Participation Rights



# Brown Act

## Teleconference- Traditional Rules

- Agenda posted at all locations, with teleconference locations specifically identified
- All locations open to the public with public participation possible at each location
- At least quorum of legislative body member must participate from locations within city boundaries
- Roll call votes only



# Brown Act

## Teleconference- Traditional Rules

- No limit on number of meetings it can be used
- No requirement to provide similar option for public
- Can participate by phone or video



# Brown Act

## *AB 2449*

- Provides alternative teleconference procedures
- At least a quorum of the legislative body must participate in person from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the local agency;
- A member may only teleconference for publicly disclosed "just cause" or in "emergency circumstances" approved by the legislative body; and
- A member may only teleconference for a limited number of meetings.



# Brown Act



## AB 2449

- Qualifying Circumstances:
  - "Just cause" means: (1) childcare or caregiving need; (2) contagious illness; (3) physical or mental disability needs; or public official business travel.
  - "Emergency circumstances" means a physical or family medical emergency.
- Allowed for 5 meetings per year (new change enacted by AB 2302)
  - Of this limit, "just cause" can only be used twice per year



# Brown Act

## *AB 2449*

- Member must make request to participate remotely as soon as possible
  - Must provide general description of reason
  - Identify any adult in the room with the member
  - Member must participate through both audio and visual technology
- Must provide public the option of participating in the meeting through similar audio/visual technology



# Brown Act

## Consequences of Violating the Brown Act

- Nullification of a decision made in violation of the Brown Act's requirements;
- Requirement to Cure & Correct and/or court injunction
- Criminal penalties
- Award of attorneys' fees
- Loss of public confidence.





# Questions?

