Brown Act Training

Clean Energy Alliance
Community Advisory Committee
June 2, 2022

Presented by: Lindsay Thorson
"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."
What is a “legislative body?”

- Governing body of the local agency
- Subordinate boards & commissions created by the governing body
- Standing committees with regular meeting schedule and continuing subject matter jurisdiction
What is not a “legislative body?”

- Advisory committees that are composed of less than a quorum of members of the legislative body
- Single, limited purpose
- Not perpetual
- Dissolve when task completed
What is a “meeting”? 

Elements:

- Majority of the legislative body
- Same time & location (or teleconference location)
- To hear, discuss, deliberate, or take action on any item
- Within subject matter jurisdiction
Serial Meetings Are Illegal

What is an illegal serial meeting?

- Series of direct or indirect communications
- By a majority of the body
- To discuss, deliberate, or take action on any item of business or potential business
2 Types of Illegal Serial Meetings

Hub & Spoke

Chain
We should provide the customer program!

I love the customer program!

Can we establish the customer program?

That one? Don’t worry – the Chair and Member B love it too.
Do not:

- Communicate your position on pending matter to a majority of Members
- Solicit responses from other Members when forwarding information you receive
- USE REPLY ALL
Inadvertent Serial Meetings: Social Media Posts (AB 992)

- Members cannot respond to communications on social media regarding a public matter that is made, posted, or shared by another member of the same body.
  - Comments, emojis, or icons to express reactions
    - No “liking,” “retweeting,” or “sharing”
  - Between 2 or more members
Inadvertent Serial Meetings: Social Media Posts (AB 992)

- Okay to use social media to:
  - Answer questions from the public
  - Provide information to the public
  - Solicit information from the public
Meeting Exceptions

- **When is a meeting not a meeting?**
  - Individual contacts
  - Conferences and seminars
  - Community meetings publicized and open to public
  - Another CEA body, if meeting is open and noticed
  - Social or ceremonial events
  - Ad hoc committee meetings
  - Observation of standing committee meetings
Regular Meeting

- Day, time, and location is set by resolution, ordinance, or other formal action.

- Agenda must be posted 72 hours in advance.

- General, brief description of items of business.
Special Meeting

Called by presiding officer or majority of body

- Notice posted 24 hours in advance -- time, place, and agenda
- Notice to each Member and press unless waived
- Do not need to allow general public comment time
Adjourned Meeting

Regular or special meetings may be adjourned to specific time/place

If no time stated, meeting is continued to regular meeting schedule

Secretary or Clerk may adjourn
Agendas & Agenda Packets

- Publicly accessible and distributed in advance to those who request copies
- Posted on Agency’s website
- Teleconference location, if any, must be included on the agenda*
Agendas & Agenda Packets

- Agendas and other meeting documents are public records
- If documents are distributed at meeting
  - If by staff or CAC member: make copy available to public during meeting
  - If by someone else: make copy available after meeting
Item not on Posted Agenda?

No discussion or action on items not on the posted agenda

- Absolute rule for special meetings
- Exceptions for regular meetings
Item not on Posted Agenda?

Exceptions for regular meetings

- Brief response to public comments
- Clarifying questions
- Refer to staff
- Brief announcement or report on activities
- Request for future report
- Place item on future agenda
Teleconferencing Under AB 361

- Legislation that allows legislative bodies to meet remotely during declared emergencies
- Builds upon Executive Order N-29-20, adopted in response to COVID-19 pandemic
-Suspends Brown Act’s teleconferencing requirements, if certain conditions are met
Conditions for Virtual Meetings Under AB 361

- **Prerequisites:** 1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines meeting in person would present imminent risks to the health or safety of attendees.

- **Public comment in real time:** No mandatory advance public comments; agenda must provide opportunity for call-in or internet-based public participation.

- **No action during internet outages/disruptions.**

- **Legislative body must make periodic findings every 30-days:** (1) reconsidered circumstances of state of emergency; and (2) unsafe to meet in person or health officials impose or recommend social distancing.
Public Participation

The public has a right to speak on:

- Any item within the subject matter jurisdiction of body (regular meetings)
- Specific items of business on the agenda (any meeting)
Public Participation

- *Cannot* prohibit criticism
- Reasonable regulations of public comments allowed:
  - Time limits
  - Speaker cards
  - Rules of decorum
  - Recording permitted
Enforcement & Consequences

Brown Act Enforcement Actions:

• **CIVIL** action to invalidate a decision or action
  • District attorney or any interested person
  • Notice and opportunity to cure, with commitment to refrain from alleged violation
  • If not cured and there is subsequent court action, challenger can recover attorneys’ fees and costs

• **CRIMINAL** prosecution
  • Brought by the district attorney
  • There must have been an *action taken at a meeting* in violation of the Brown Act, *with intent* to deprive public of information
  • Misdemeanor
Questions?
Thank you!

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