

# BROWN ACT AND GOVERNANCE TRAINING

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A LAW FIRM FOUNDED ON THE  
PRINCIPLE OF SERVICE

## PURPOSE OF THE BROWN ACT

- GOVERNS OPEN MEETINGS FOR LOCAL GOVERNMENT BODIES
- REQUIRES THAT LOCAL GOVERNMENT BODIES, LIKE THE BOARD OF SUPERVISORS AND PLANNING COMMISSION, DELIBERATE AND TAKE ACTIONS IN OPEN PUBLIC MEETINGS
- CODIFIES THE RIGHT OF THE PUBLIC TO ATTEND AND PARTICIPATE IN DECISION MAKING PROCESS (GOV. CODE §54950, ET SEQ.)
- CRITICAL TO KEEPING THE PEOPLE INFORMED OF THE ACTIONS OF THEIR GOVERNMENT AND THE BASIS FOR THOSE ACTIONS

## WHAT IS A “MEETING” UNDER THE BROWN ACT

- A “MEETING” IS ANY GATHERING OF A MAJORITY OF THE GOVERNING MEMBERS OF A LEGISLATIVE BODY (QUORUM) TO HEAR, DISCUSS, OR DELIBERATE ON MATTERS WITHIN THE LEGISLATIVE BODY’S JURISDICTION. (GOV. CODE §54952.2(A))
  - CONSTRUED VERY BROADLY
  - GATHERING NEED NOT BE FORMAL (CAN BE JUST LUNCH)
- INCLUDES ANY USE OF DIRECT COMMUNICATION, PERSONAL INTERMEDIARIES, OR TECHNOLOGICAL DEVICES OR PLATFORMS WHERE THE MAJORITY OF MEMBERS OF THE LEGISLATIVE BODY DEVELOP, DISCUSS, OR TAKE ACTION
  - INCLUDES “SERIAL MEETINGS”: A SERIES OF COMMUNICATIONS OF LESS THAN A QUORUM THAT ULTIMATELY INVOLVES A MAJORITY OF THE MEMBERS OF THE LEGISLATIVE BODY

## WHAT IS NOT A BROWN ACT “MEETING”

- CONFERENCES AND RETREATS
  - MUST NOT DISCUSS ITEMS WITHIN THE SUBJECT MATTER JURISDICTION OF THE LEGISLATIVE BODY AMONG THEMSELVES
- MEETING TO ADDRESS TOPIC OF LOCAL CONCERN NOT HOSTED BY THE AGENCY ITSELF
  - MUST NOT DISCUSS ITEMS WITHIN THE SUBJECT MATTER JURISDICTION OF THE LEGISLATIVE BODY AMONG THEMSELVES
  - MUST BE OPEN TO THE PUBLIC AND WELL PUBLICIZED IN ADVANCE
- SOCIAL OR CEREMONIAL OCCASIONS
  - MUST NOT DISCUSS ITEMS WITHIN THE SUBJECT MATTER JURISDICTION OF THE LEGISLATIVE BODY AMONG THEMSELVES
- “AD HOC” MEETINGS: MADE UP OF LESS THAN A QUORUM, WITH LIMITED SCOPE
  - CAN ONLY BE ADVISORY / NO DECISION MAKING

## TYPES OF PUBLIC MEETINGS

- REGULAR MEETINGS: OCCUR AT TIME AND LOCATION SET BY ORDINANCE, RESOLUTION, OR BYLAWS
- SPECIAL MEETINGS: CHAIR OR MAJORITY OF LEGISLATIVE BODY MAY CALL
  - CAN ONLY DISCUSS THAT WHICH WAS NOTICED ON THE POSTED AGENDA
- EMERGENCY MEETINGS: MAY BE CONDUCTED IF MAJORITY OF BODY DETERMINES THERE IS AN "EMERGENCY"
  - "EMERGENCY" = WORK STOPPAGE, CRIPPLING ACTIVITY, OR OTHER ACTIVITY THAT SEVERELY IMPAIRS PUBLIC HEALTH AND/OR SAFETY

## NOTICES FOR PUBLIC MEETINGS

- TIMES AND DATES OF ALL MEETINGS MUST BE NOTICED AND A WRITTEN AGENDA MUST BE PREPARED WHICH PROVIDES A BRIEF GENERAL DESCRIPTION OF THE ITEMS TO BE DISCUSSED AT THE MEETING
  - PROVIDES PUBLIC WITH KNOWLEDGE OF WHAT IS TO BE DISCUSSED/DECIDED UPON
- REGULAR MEETINGS: AGENDA MUST BE POSTED AT LEAST 72 HOURS PRIOR TO MEETING
- SPECIAL MEETINGS: WRITTEN NOTICE MUST BE SENT AT LEAST 24 HOURS IN ADVANCE TO EACH MEMBER OF THE BODY AND TO MEDIA WHO HAVE REQUESTED SUCH NOTICE
- EMERGENCY MEETINGS: ONE HOUR PRIOR TO THE EMERGENCY MEETING, MUST NOTIFY LOCAL NEWSPAPER, AND RADIO IF REQUESTED

## PUBLIC ACCESS

- ATTENDANCE: MEETINGS MUST BE OPEN TO THE PUBLIC
  - MAY REQUEST, BUT CANNOT REQUIRE NAME OR ADDRESS TO PARTICIPATE
- ACCESS TO MEETING MATERIALS: AS A GENERAL RULE, WRITTEN MATERIALS PROVIDED TO A MAJORITY OF THE MEMBERS MUST BE MADE AVAILABLE TO THE PUBLIC UPON REQUEST AND W/O DELAY
  - ESSENTIALLY FOLLOWS PUBLIC RECORDS ACT
  - MATERIALS PROVIDED BY MEMBER OF PUBLIC MUST BE MADE AVAILABLE AT THE CONCLUSION OF THE MEETING
- RIGHT TO RECORD PROCEEDINGS: MEMBERS OF PUBLIC MAY RECORD MEETINGS
  - AUDIO AND/OR VIDEO
- PARTICIPATION: BEFORE OR DURING CONSIDERATION OF EACH AGENDA ITEM, PUBLIC MUST BE GIVEN OPPORTUNITY TO COMMENT ON THE ITEM
- MEMBERS OF THE PUBLIC HAVE BROAD CONSTITUTIONAL RIGHTS TO COMMENT ON ANY SUBJECT RELATING TO THE BUSINESS OF THE GOVERNMENTAL BODY
  - MAY NOT RESTRICT THE CONTENT OF SPEECH EXCEPT IN VERY LIMITED CIRCUMSTANCES

## REMOVAL OF DISRUPTIVE MEMBERS OF PUBLIC

- THE LEGISLATIVE BODY MAY EXCLUDE PERSONS WHO WILLFULLY CAUSE A DISRUPTION OF A MEETING SO THAT IT CANNOT BE CONDUCTED IN AN ORDERLY FASHION
- EFFECTIVE AS OF JANUARY 2023, THE FOLLOWING PROCESS WAS PUT IN PLACE FOR THE REMOVAL OF DISRUPTIVE MEMBERS OF PUBLIC:
  - CHAIR IS TO WARN THE INDIVIDUAL THAT THEIR BEHAVIOR IS DISRUPTING THE MEETING AND THEIR FAILURE TO CEASE THEIR BEHAVIOR MAY RESULT IN REMOVAL
    - DISRUPTIVE BEHAVIOR = DISTURBING, DISRUPTIVE, IMPEDING, RENDERS INFEASIBLE THE ORDERLY CONDUCT OF THE MEETING
    - INCLUDES FAILURE TO COMPLY WITH REGULATIONS ADOPTED BY THE LEGISLATIVE BODY
    - SPECIFICALLY INCLUDES USE OR THREAT OF FORCE
  - THEN MAY REMOVE THE INDIVIDUAL IF THEY DO NOT "PROMPTLY" CEASE THEIR DISRUPTIVE BEHAVIOR
  - WHERE REMOVAL OF THE DISRUPTIVE PERSON IS NOT SUFFICIENT TO RESTORE ORDER, THE BODY MAY CLEAR THE ROOM OF ALL PERSONS, EXCEPT FOR MEDIA NOT INVOLVED IN DISTURBANCE

## TELECONFERENCING / REMOTE MEETINGS

- THE LEGISLATIVE BODY MUST PROVIDE NOTICE OF HOW THE PUBLIC CAN ACCESS THE MEETING AND OFFER COMMENT
- MUST PROVIDE SAME ACCESS TO PUBLIC TO MAKE PUBLIC COMMENT
- THE LEGISLATIVE BODY CANNOT REQUIRE COMMENTS TO BE SUBMITTED BEFORE THE START OF THE MEETING
- MEMBERS PARTICIPATING REMOTELY MUST DO SO THROUGH AUDIO AND VISUAL TECHNOLOGY
- MEMBERS PARTICIPATING REMOTELY MUST PUBLICLY DISCLOSE ANYONE ELSE 18 YEARS OR OLDER IS PRESENT, AND THE GENERAL NATURE OF THE MEMBER'S RELATIONSHIP
- ALL VOTES TAKEN DURING A TELECONFERENCED MEETING SHALL BE BY ROLL CALL
- IF BROADCAST IS DISRUPTED OR PUBLIC IS NOT ABLE TO PARTICIPATE AND MAKE PUBLIC COMMENT, NO FURTHER ACTION SHALL BE TAKEN ON AGENDA ITEMS UNTIL ACCESS IS RESTORED

## REMOTE ATTENDANCE OF IN PERSON MEETING BY MEMBER OF GOVERNING BODY

MEMBER OF GOVERNING BODY MAY ONLY PARTICIPATE IN MEETINGS REMOTELY IF THEY ESTABLISH "JUST CAUSE" OR IF THEIR ABSENCE IS DUE TO AN "EMERGENCY CIRCUMSTANCE"

- JUST CAUSE IS DEFINED AS ANY ONE OF THE FOLLOWING:
  - CHILD CARE OR CAREGIVING OF A CHILD, PARENT, GRANDPARENT, GRANDCHILD, SIBLING, SPOUSE, OR DOMESTIC PARTNER THAT REQUIRES A MEMBER TO PARTICIPATE REMOTELY
  - A CONTAGIOUS ILLNESS THAT PREVENTS A MEMBER FROM ATTENDING IN PERSON
  - A NEED RELATED TO A PHYSICAL OR MENTAL DISABILITY
  - TRAVEL WHILE ON BUSINESS OF THE LEGISLATIVE BODY OR ANOTHER STATE OR LOCAL AGENCY
- MEMBER IS TO NOTIFY BODY AT EARLIEST OPPORTUNITY, INCLUDING AT START OF MEETING IF NECESSARY
- CAN ONLY USE FOR TWO MEETINGS PER CALENDAR YEAR
- EMERGENCY CIRCUMSTANCE: A PHYSICAL OR FAMILY MEDICAL EMERGENCY THAT PREVENTS MEMBER FROM ATTENDING IN PERSON
  - LEGISLATIVE BODY TO BE NOTIFIED AS SOON AS POSSIBLE, INCLUDING AT START OF MEETING IF NECESSARY
  - NEEDS TO BE APPROVED BY GOVERNING BODY AFTER GENERAL DESCRIPTION OF EMERGENCY PROVIDED BY MEMBER
  - GENERAL DESCRIPTION DOES NOT NEED TO EXCEED 20 WORDS AND DOES NOT REQUIRE DISCLOSURE OF PERSONAL MEDICAL INFORMATION OR DIAGNOSIS

## ROSENBERG'S RULES OF ORDER

- GENERALLY ACCEPTED RULES OF ORDER FOR PARLIAMENTARIAN PROCEDURE (I.E., PUBLIC MEETINGS)
- ADOPTED AS PART OF PLANNING COMMISSION'S BYLAWS
- FOUR PILLARS:
  - RULES SHOULD ESTABLISH ORDER
  - RULES SHOULD BE CLEAR
  - RULES SHOULD BE USER FRIENDLY
  - RULES SHOULD ENFORCE THE WILL OF THE MAJORITY WHILE PROTECTING THE RIGHTS OF THE MINORITY (BALANCE OF ENCOURAGING DISCUSSION AND FACILITATING DECISION MAKING)

## ESTABLISHING A QUORUM

- THE MINIMUM NUMBER OF MEMBERS OF THE BODY THAT NEED TO BE PRESENT TO HOLD THE MEETING
- DEFAULT RULE IS ONE MORE THAN HALF (3/5) IS NECESSARY TO ESTABLISH QUORUM
  - MAJORITY OF MEMBERS PRESENT MAY APPROVE ITEM (2/3)
    - UNLESS OTHERWISE PROVIDED BY LAW
  - TIE VOTE DOES NOT PASS (2/4)

## ROLE OF CHAIR

- ESSENTIALLY LEADS THE MEETING
- RESPONSIBLE FOR APPLYING THE RULES OF CONDUCT OF THE MEETING
- ALL DECISIONS BY THE CHAIR ARE FINAL UNLESS OVERRULED BY LEGISLATIVE BODY ITSELF
- SHOULD GENERALLY TRY TO FACILITATE DISCUSSION AND TAKE A LESS ACTIVE ROLE IN DEBATE
  - SHOULD GENERALLY NOT MAKE OR SECOND MOTION

## BASIC FORMAT FOR AGENDA ITEM DISCUSSION

- GOVERNED BY THE AGENDA (ACTS AS ROADMAP FOR MEETING)
  - ORDER OF ITEMS MAY BE ADJUSTED BY CHAIR
- PROCEDURE:
  - CHAIR ANNOUNCES AGENDA ITEM
  - CHAIR INVITES APPROPRIATE PERSON/STAFF TO SPEAK ON ITEM
  - CHAIR ASKS MEMBER IF ANY TECHNICAL/CLARIFYING QUESTIONS
  - CHAIR INVITES PUBLIC COMMENT
  - CHAIR ASKS FOR MOTION AND SECOND
  - CHAIR INVITES DISCUSSION FROM BOARD/COMMISSION
  - CHAIR/SECRETARY TAKES VOTE
  - CHAIR/SECRETARY ANNOUNCES RESULT OF VOTE

## COURTESY AND DECORUM

- GOAL IS TO HAVE A FORUM FOR THE MEMBERS OF THE BODY AND MEMBERS OF THE PUBLIC CAN ATTEND TO BUSINESS EFFICIENTLY, FAIRLY, AND WITH FULL PARTICIPATION
- DEBATE SHOULD BE FREE AND OPEN, BUT ALSO FOCUSED ON THE ITEM AT HAND
- FOCUS ON ITEM AT ISSUE AND POLICY IN QUESTION, NOT ON PERSONALITIES
- IT IS THE RESPONSIBILITY OF THE CHAIR AND THE BODY TO MAINTAIN COMMON COURTESY AND DECORUM
- CHAIR HAS RIGHT TO CUT OFF DISCUSSION THAT IS TOO PERSONAL, TOO LOUD, OR TOO CRUDE