

POST MEETING MATERIAL

Item 6A

RTC 24-1149



Bicycle and Pedestrian Action Committee

**Overview of the Brown Act,
Rules of Procedure, Public
Records Act**

Item #6A

January 27, 2025

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The Brown Act

- State law, passed by the State Legislature in 1953
- Incorporated into the State Constitution in 2004
- Intended to:
 - Provide openness and transparency
 - Ensure that the public has meaningful access to its agencies
 - Provide the public with the means to provide input



Core Tenets of the Brown Act:

“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.” California Government Code § 54953(a)

- Is Santa Clara a “local agency”? **YES**
- Is the BPAC a “legislative body”? **YES**



What Constitutes a “Meeting”?

(GC § 54942.2)

- Congregation of a majority of the Committee (quorum)
- In the same location at the same time (teleconference included)
- To *hear, discuss, deliberate, or take action* on any item
- Within the Committee’s subject matter jurisdiction



What is Not Considered a “Meeting”?

1. Gatherings/Communications among less than a majority
2. Qualified “Ad Hoc” Subcommittees
3. Exceptions: Certain other gatherings so long as Committee business is not discussed
 - Conferences
 - Community meetings
 - Attending an open/noticed meeting of another local agency legislative body
 - Social/ceremonial event

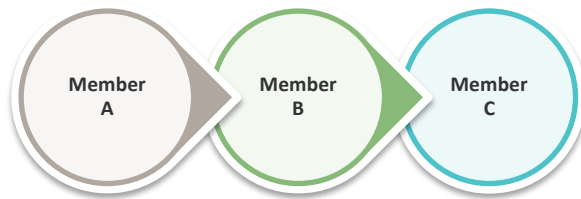


“Serial” Meetings Prohibited

- Serial meetings are:
 - A series of communications of any kind (including any type of electronic means), either directly or through intermediaries
 - Involving a majority of the body
 - To discuss, deliberate, or take action
 - On an issue within the body’s subject matter jurisdiction

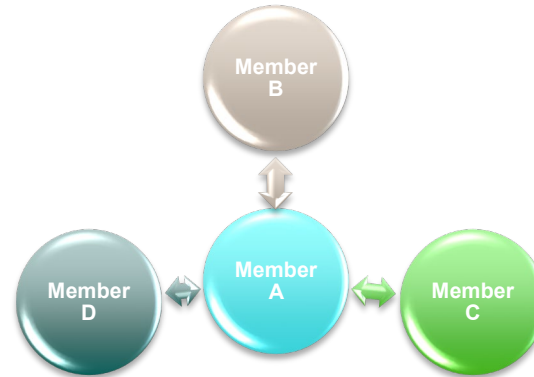
Serial Meeting Examples

Daisy Chain



A chain of communications (via phone, email, in person, etc.) involving contact from Member A to Member B, who then communicates with Member C would constitute a serial meeting in the case of a five-person body.

Hub & Spoke



When a person acts as the hub of a wheel (Member A) and communicates individually with the various spokes (Members B and C) regarding a matter under the jurisdiction of the board/commission a serial meeting may have occurred.



What About Social Media?

- Had been a gray area
- AB 922 effective January 1, 2021
- Provides some guidance on what's allowed and what's not



Can Use Social Media to Do the Following:

- provide information to the public,
- solicit information from the public
- answer questions

...regarding a matter that is within your subject matter jurisdiction



Cannot Use Social Media to Have Discussions Among Committee Members

- New, bright-line prohibition on responding to social media posts of other Committee Members:
 - No Comments
 - No Retweets
 - No Emoji's
 - No *Likes*



Conduct of Meetings: Open and Public

- Notice Requirements
 - 24 hrs. notice for special meetings
 - 72 hrs. notice for regular meetings
- Can only discuss what's posted on the agenda
 - Otherwise, must refer item to a future agenda



Conduct of Meetings: Open and Public cont.

- Public input must be allowed
 - Can impose reasonable time limits
- Quorum required to meet
- Majority vote required to act



Consequences of Brown Act Violation

- Invalidation of Actions Taken
- Personal Liability in Extreme Cases
- Loss of Public's Trust



Remote Attendance

A legislative body may meet by teleconference for the benefit of the public and the agency, so long as the meeting and remote attendee meet additional requirements. Two ways to attend a meeting remotely:

1. Notable Requirements for Standard Remote Attendance:
 - Remote location must be published on agenda
 - Public access must be allowed at remote location
 - Advance notice
2. AB 2302 Remote Attendance (“Just Cause” and “Emergency Circumstances”) requirements:
 - No more than 2 meetings per calendar year
 - Limited justifications such as a family caregiving need or a physical medical emergency



Practice Tips

- Don't gather and discuss committee business in groups outside of formal meetings
- Do not direct or cc emails to a quorum or more of your Committee, or "reply all" on committee business
- Don't respond to committee members on Social Media
- Don't discuss items not on agenda; instead, refer them to staff for future discussions with consensus of your Committee
- If unclear, seek advice from City Attorney's office-in advance whenever possible



Rules of Procedure

- City Code § 2.10.020 requires that City Council meetings be conducted pursuant to “Robert’s Rules of Order”
- Boards and Commissions follow this requirement as well
- The purpose of such rules is to promote orderly conduct, clarity, and protect the rights of the minority by facilitating discussion
- Other city standards and practices should also apply



“Quorum” Required to Meet and Act

Quorum:

- Majority of the entire membership of the body
- For this 9-member Committee, a quorum is **5**
- The act of a majority of Committee present at a meeting at which a quorum is present shall be the act of the Committee
- If only 5 members are present, the meeting may continue, but all votes must be unanimous to act



Process for Consideration and Action for each agenda item:

1. Chair reads the agenda item description
2. Chair asks for staff report/presentation
3. Members can ask questions of staff
4. Chair invites public comment on the item
5. Chair invites Committee discussion or further questions
6. Chair invites a motion and second
7. Chair asks Members to discuss motion
8. Vote is taken



Role of Chair and Vice-Chair

- Chair is “presiding officer” responsible for conducting meeting
- Vice-Chair serves in absence of Chair
- Chair typically spokesperson for the Committee
- Other procedural rules may be developed by majority vote of the Committee



Public Records Act (PRA)

- Enacted in 1968, modeled on Freedom of Information Act (FOIA)
- Was incorporated into the California Constitution
- Basic Tenet: Public records shall be disclosed to the public, upon request, unless there is a legal basis not to do so (exemptions)
- As a legislative body of the City, the work of the Committee is subject to the PRA



What is a Public Record?

The PRA defines “public records” as “***any writing*** containing information relating to the ***conduct of the public’s business prepared, owned, used, or retained*** by any state or local agency regardless of physical form or characteristics.”

- Committee business conducted on private devices or accounts is subject to the PRA and such records must be kept and disclosed upon request
- Records must be retained for 2 years
- Penalties/Enforcement



City of Santa Clara

The Center of What's Possible

