

LOS OLIVOS COMMUNITY SERVICES DISTRICT



The Ralph M. Brown Act



RALPH M. BROWN ACT

KEY POINTS:

- ❖ Deliberate and take actions in open session
- ❖ Public comment is a critical part of the process
- ❖ Notice = letting the public know what, when, where, why, and how
- ❖ The Agenda drives the discussion
 - ❖ When in doubt put the item on a future Agenda

THE BROWN ACT

FUNDAMENTAL PROVISION

“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.”

(Gov. Code § 54953)



CONDUCTING BUSINESS AT OPEN MEETINGS

- ❖ A majority may not consult outside a properly noticed meeting that is open to public

- ❖ Key concept: what constitutes a meeting

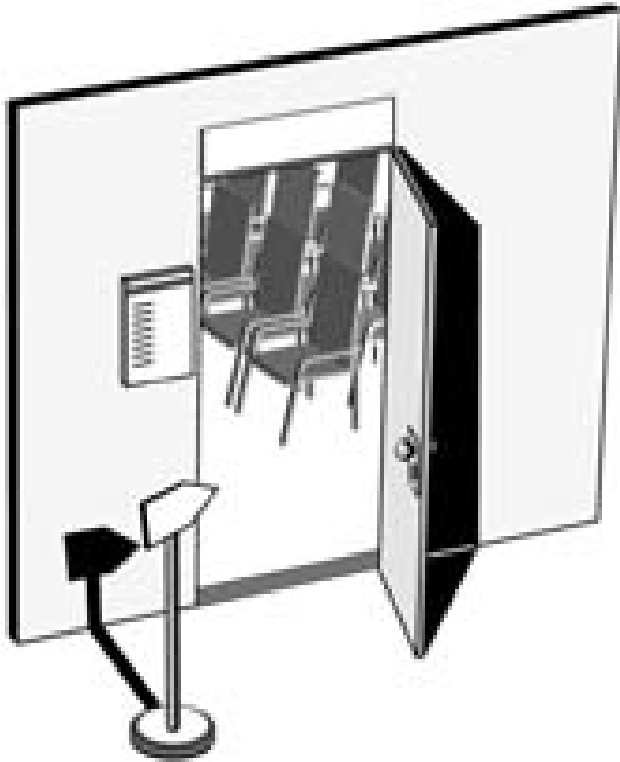
 - ❖ Example: Serial communications

- ❖ Exceptions for certain kinds of events

 - ❖ As long as a majority does not consult among themselves



WHAT IS A MEETING? (1)



Definition:

"Meeting" includes any gathering of a *majority* of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its subject matter jurisdiction*.

WHAT IS A MEETING? (2)

Means of Communication: A meeting includes *any use of direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body *to develop a collective concurrence* on action to be taken by members of the legislative body.

(Gov. Code § 54952.2)



WHAT IS A MEETING? (3)



- ❖ Meetings take place if quorum receives information on, discusses, deliberates on any item on which the body may legally act
- ❖ Must be within the boundaries of the agency
- ❖ Applies to “legislative” bodies and advisory
- ❖ Serial and rotating meetings or polling prohibited, but social gatherings are permitted

WHAT IS NOT A MEETING?

If a quorum does not receive information on, discuss, deliberate on any item, on which the body may legally act, then the following generally are NOT meetings:

- ❖ Individual contact (including messenger apps)
- ❖ Public conferences
- ❖ Other local agency meetings
- ❖ Community meetings
- ❖ Social gatherings

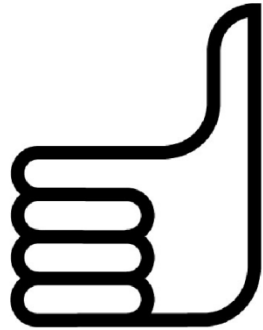
DANGER
BROWN ACT
VIOLATIONS

SOCIAL MEDIA RESTRICTIONS

(AB 992)



- ❖ A Director may not respond directly to any communication posted or shared by another Director regarding District business on social media.
- ❖ **This includes likes, thumbs up, emojis, sharing, or commenting**
- ❖ Social media is any online platform that “is open and accessible to the public.” Includes traditional “private” social media sites such as Facebook, Twitter, or Nextdoor, but also smaller forums such as a discussion section on a news website.



KEY TAKE-AWAYS

- ❖ Don't discuss agency business with fellow decision-makers outside meetings
- ❖ Don't discuss items not before you
- ❖ Exceptions...

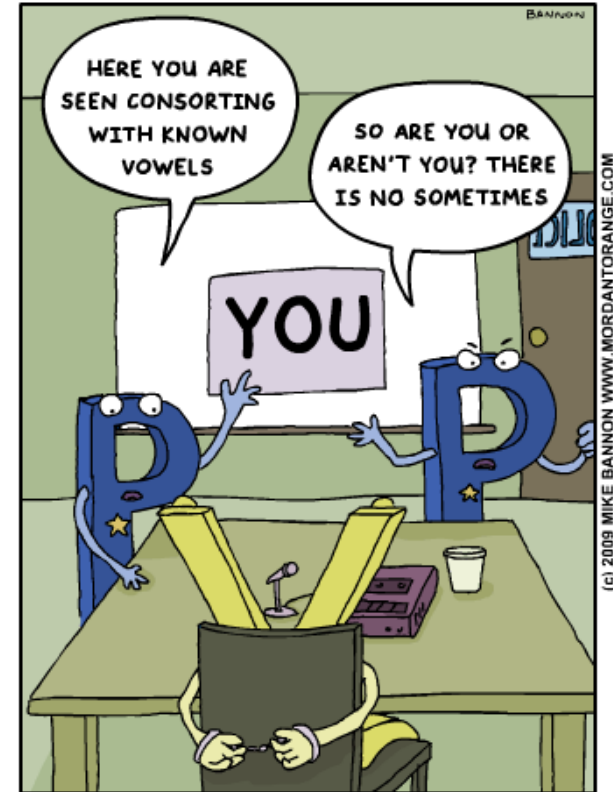


...EXCEPTIONS

No discussion of any item not on agenda

... Except:

- ❖ Brief responses.
- ❖ Statements or questions.
- ❖ Questions for clarification.
- ❖ Reference to staff or other resources for factual information.
- ❖ Request staff to report at a subsequent meeting.



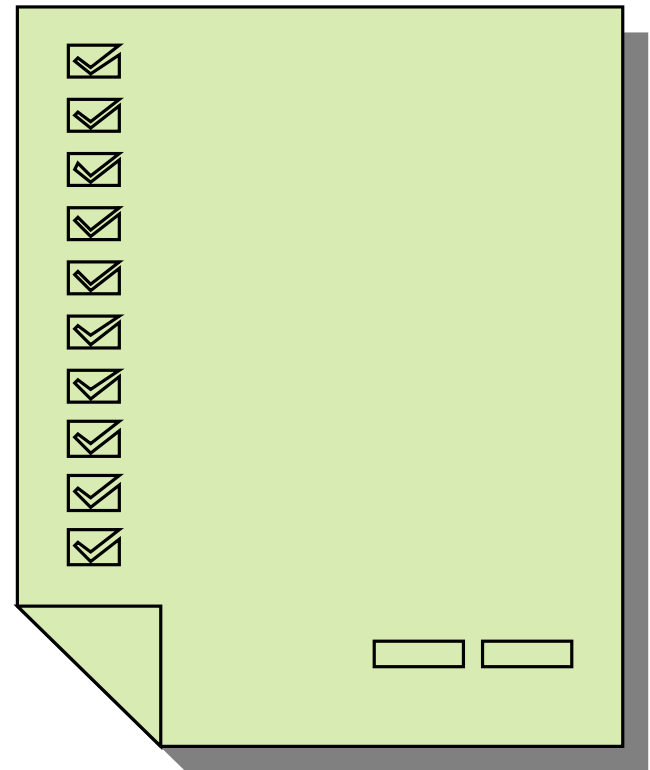
AGENDA REQUIREMENTS (1)

- ❖ A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.
- ❖ Action or discussion on any item not appearing on the posted agenda is generally prohibited

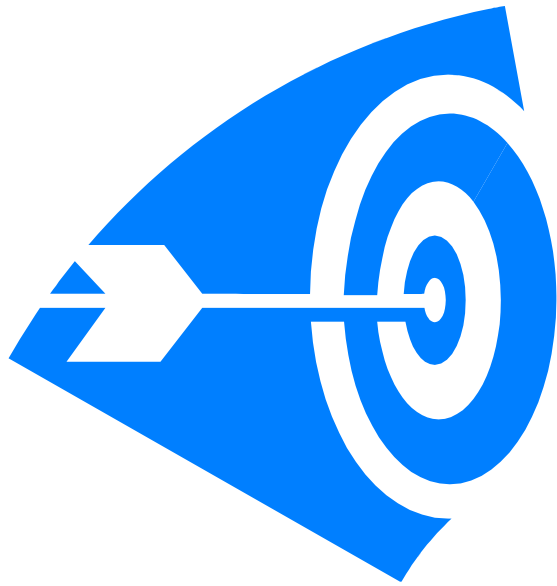


AGENDA REQUIREMENTS (2)

- ❖ Posted within 72 hours
- ❖ Brief description sufficient to inform public of the nature of each item



STAY ON POINT!



- ❖ All matters to be transacted or discussed on agenda
- ❖ Must include reasonable period of time for public comment before or during consideration
- ❖ To add a new matter body must find:
(1) District became aware of the need for action after agenda was posted, (2) immediate action is necessary, (3) there must be a 2/3 vote of membership—unanimous vote if less than 2/3 present.

PUBLIC PARTICIPATION IN MEETINGS

- ❖ Anyone can attend open meetings
- ❖ Cannot require names, questionnaires, or conditions to attendance
 - ❖ Exception: can require masks and social distancing for health and safety concerns
- ❖ Public may record proceedings by video, film, or audiotape



Closed Session Discussions

- ❖ Limited to only the following:
 - ❖ Litigation
 - ❖ Real Estate Negotiations
 - ❖ Public Employment
 - ❖ Labor Negotiations
 - ❖ Security Matters
 - ❖ Uncommon: license applicants with criminal records; hospital peer review/trade secrets; multi-jurisdictional law enforcement
- ❖ Closed session authorizations are construed narrowly
- ❖ Confidentiality protected by attorney-client privilege and statutory protections for closed session discussions



AB 361 AND THE BROWN ACT: NOTICE AND AGENDA

- ❖ Adds additional requirements to the regular Brown Act notice and agenda requirements:
 - ❖ Must provide notice of the means by which members of the public may access the meeting and offer public comment
 - ❖ Agenda must identify and include an opportunity for all persons to attend via a call-in option or an Internet-based service option
- ❖ But note that you do not need to:
 - ❖ Post agendas at each teleconference location
 - ❖ Keep each teleconference location open to the public
 - ❖ Have at least a quorum of the members of the legislative body participate within the boundaries of the agency



REGULAR TELECONFERENCE v. AB 361 TELECONFERENCE

	Regular	AB 361
Agenda	Must be posted at every teleconference location.	Not posted at every teleconference location.
Accessibility	Each teleconference location is accessible to the public.	Teleconference locations NOT accessible to the public.
Notice	No special notice requirements.	Must provide notice by which the public can access meeting and offer comment.
Quorum	At least a quorum of the legislative body must participate within the boundaries of the agency.	Not Applicable.
Resolutions	Not Applicable.	Initial resolutions and ongoing findings.
Disruption	No special requirements.	Halt meeting until access restored.



AB 2449

❖ *Newly Added Teleconference Rules Available Jan. 1, 2023*

Under new rules added by AB 2449, a legislative body may hold a hybrid meeting—partial teleconference and in-person—without complying with regular teleconference requirements (post agendas at teleconference locations, identify teleconference locations in the agenda, make all teleconference locations open to the public) in the following limited circumstances:

- ❖ One or more members of the legislative body (but less than a quorum) have “just cause” for not attending the meeting in person (childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business); or
- ❖ One or more members of the legislative body (but less than a quorum) experience an emergency circumstance (a physical or family medical emergency that prevents in-person attendance).



THE BROWN ACT

PENALTIES: FAILING TO COMPLY

- ❖ Nullification of decision
- ❖ Criminal Misdemeanor – for intentional violations (up to 6 months in jail/\$1000 fine)
- ❖ Injunction, Mandamus & Declaratory Relief
- ❖ Challenger **must** demand corrective action within 90 days of action -- or 30 days if agenda issue
- ❖ 30 days to correct action before suit
- ❖ Loss of public trust



Additional Resources

❖ CalCities (formerly League of California Cities):

❖ <https://www.calcities.org/resource/open-public-v-a-guide-to-the-ralph-m.-brown-act>

❖ CSDA (California Special Districts Association):

❖ <https://csda.net>

THANK YOU!

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