

The Brown Act: Overview of 2020's Public Meeting Rules and Commissioner Communications

Utilities Advisory Commission

September 2, 2020

OVERVIEW

1 OBJECTIVES

- Why the Brown Act?
- Overview of Brown Act “basics”: Meetings, Agendas, Public Comment
- Teleconference adaptations for Covid-19
- Communication challenges: e-mail, social media

2 HOW TO USE THIS PRESENTATION

- Overview/update, non-exhaustive
- If you have questions, ASK!
- Key takeaway: avoiding serial meetings in communications

3 YOUR QUESTIONS AND COMMENTS

PURPOSE OF THE BROWN ACT

*In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. **It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.***

- Cal. Govt. Code § 54950



Ralph M. Brown, 1959
Courtesy: The Modesto Bee

Key Values:

- Participatory democracy - connecting community members and government through public attendance and participation
 - = Agendas/notice rules
- Open and transparent deliberations and actions
 - = Communication rules and restrictions

THE BROWN ACT APPLIES TO A “LEGISLATIVE BODY”

Includes virtually all local government bodies, whether elected or appointed, engaged in decision-making or with advisory capacity

Elected Bodies

The Governing Body of the Local Agency

EXAMPLE: Council

Appointed Bodies

Created by formal action of the Legislative Body w/ cont. jurisdic^t.

EXAMPLES: the UAC, PTC, etc.

Standing Committees

Less than a quorum plus:

- Continuing subject matter jurisdiction; or
- A fixed meeting schedule

EXAMPLE: Finance Committee

New Member, not yet seated

- Brown Act still applies

EXAMPLES: Council Member elected to fill vacant seat in November; newly appointed Commissioner before first meeting

THE BROWN ACT DOES NOT APPLY TO...

THE BROWN ACT APPLIES TO MEETINGS AND COMMUNICATIONS WITH OTHER MEMBERS OF YOUR LEGISLATIVE BODY

The Public

The Act does not apply to meetings and communications between individual Council/Commissioners and the public.

Staff

The Act does not apply to meetings and communications between individual Council/Commissioners and staff.

Ad Hoc Committees

- Less than a quorum (3 or fewer UAC members)
- Only UAC Commissioners
- Temporary and short term
- No continuing jurisdiction or regular time/place to meet

WHAT IS A “MEETING” UNDER THE BROWN ACT

Any congregation of a majority of the members to hear, discuss, deliberate, or take action on any matter within their subject matter jurisdiction.

(Cal. Gov. Code § 54952.2(a))

Typically: In person meetings (e.g., regularly scheduled UAC meeting).

But also: when a majority of Commissioners use direct communication or intermediaries to *discuss or deliberate on items within the UAC’s jurisdiction* - can be by phone, email, text, social media, etc. (i.e., serial meetings)

MEETINGS USUALLY *DON’T* INCLUDE:

- Individual contact with staff
- Individual contact with other community members
- Conferences, community meetings
- Other legislative body meetings
- Social, ceremonial events

NUTS & BOLTS: PARTS OF A PUBLIC MEETING

Agendas: provide organization and structure for the meeting, and must be published at least 72 hours in advance.

UAC agendas typically include:

- Reports (usually from staff, sometimes from a Commissioner)
- **General Public Comment** (legally required, and before action is taken)
- Discussion of new business, item-specific public comment, and potentially **action on motions** (“a *collective decision made by a majority of the members...upon a motion, proposal, resolution, or ordinance*”)

Notes:

- Agenda items can be continued to a future meeting, or Commission can defer taking action after discussion.
- For items not on the agenda, the Commission cannot take action or discuss, except to: (1) respond briefly to statements or questions from public (2) request clarifications from staff or (3) direct staff to place a report or action item on a future agenda.

MEETING REQUIREMENTS (Gov. Code)

REGULAR TIME & PLACE

Must meet in Palo Alto EXCEPT:

- To inspect real or personal property
- Multi-agency discussions
- Federal/state officials
- Legal counsel office
- Teleconference ok – but, *special rules*

NOTICE & AGENDA

CONTENT:

- Meeting time, place
- ***“brief, general description” of items: sufficient to inform interested members of public of the subject matter so they can determine whether to participate***
- Action/Discussion or Info/Report only

POSTING:

- Public, accessible place + website
- 72 hours in advance (regular)
- 24 hours in advance (special)

IF AN ITEM IS NOT ON THE AGENDA:

- No action or discussion.
- OK: Limited response to public comment, brief question to staff/public, staff/member announcements, referral to staff, place on future agenda

MEETING REQUIREMENTS (E.O. N-29-20)

REGULAR TIME & PLACE

- Allows all-electronic and teleconference meetings
- No need to notice or provide access to each teleconference location
- No need for any physical meeting location
- Teleconference from outside the City okay

NOTICE & AGENDA

CONTENT:

- Advertise how members of the public may observe meeting and offer public comment
- Receive and resolve accommodation requests
- Advertise any changes in public observation/comment process

POSTING:

- Website only okay
- 72 hours in advance (regular)
- 24 hours in advance (special)

GENERAL PRINCIPLES:

- Use discretion and make reasonable efforts to adhere as closely as reasonably possible to public meeting laws
- “...maximize transparency and provide the public access to their meetings”

SERIAL MEETINGS ARE PROHIBITED

Within the Body's Jurisdiction

EXAMPLE

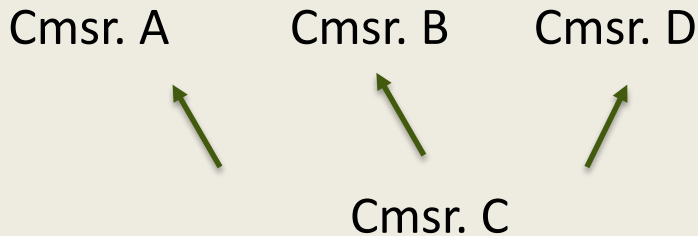
- UAC and electric utility wildfire response plans

The "Daisy Chain"

Comsr. A → Comsr. B → Comsr. C → Comsr. D to talk about the local wildfire impacts on City utilities

7 members of Commission, 4 is majority.

The "Hub and Spoke"



Email Re: Wildfires

Other Examples to Watch for:

- Forwarding or responding to email
- Pooling emails from a majority
- Conversations via social media
- Someone acting as an intermediary

SERIAL MEETINGS & SOCIAL MEDIA

Hypothetical 1: The UAC consists of 7 members. A Commissioner has a public Facebook profile on which she posts about her personal life and her life on the UAC.

Three other UAC Commissioners are her “friends” and all four frequently comment on each other’s posts, including those related to UAC issues.

Is this a violation of the Brown Act?

What if they don’t comment, but merely “like” the posts related to UAC issues?

What if they don’t “like” or comment on any of the posts related to UAC at all?



EMAIL COMMUNICATION: IS IT A MEETING?

Hypothetical 2: email contact with staff

- A) Can a Commissioner copy the entire UAC on communications to staff about items on the agenda?
 - Brown Act allows individual communications from Commissioners to staff.
 - Commissioners should avoid any appearance of “deliberation or discussion” of UAC business outside of the public meeting forum.
- B) Does it matter if the email addresses a technical question vs. sharing an opinion about the topic?
 - Technical questions are relevant to the public’s understanding of the issue as well. Staff can compile questions from individual Commissioners and respond at the public meeting.
 - Commissioners should not discuss opinions on UAC issues with a majority of other Commissioners except in the public meeting forum.
- C) Can Commissioners copy the entire UAC on questions or comments to staff about items NOT on the agenda?
- D) Are any of these okay if only 2 other UAC members are copied?

EMAIL COMMUNICATION: IS IT A MEETING?

Hypothetical 3: email contact with other Commissioners

- A) Can Commissioners email articles or interesting links to the whole UAC?
 - Without commentary, and as a one-way communication, no violation

- B) Can a Commissioner email the UAC to solicit input from other Commissioners on an item on the agenda? Does it matter if the item is an action or discussion item?
 - This is a serial meeting, whether the item is for action or discussion, and is expressly prohibited by the Brown Act:
 - **“A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” (Gov. Code 54952.2(b)(1))**

- C) Can a Commissioner email the UAC to solicit input from other Commissioners about procedural items (e.g., about meeting times)?
 - One-way communications are allowed, or communications among not more than 3 Commissioners. Ideally staff should handle communications about procedural items.

ENFORCEMENT

- Demand for cure or correction – **IF THERE'S A PROBLEM . . . FIX IT!**
- Court can: void the action, enjoin future violations, grant attorneys' fees
- Criminal prosecution for deliberate conduct and where action taken
 - Misdemeanor
 - Intent to deprive the public of information to which it is entitled

References

State laws:

- Government Code Section 54950 *et seq.* (the Brown Act)
- Executive Order N-29-20, N-35-20

Local Meeting procedures:

- Utilities Advisory Commission bylaws
- PAMC Chapter 2.23

The Commission's staff support person can assist with procedure.

The Commission's Council liaison can support alignment and connection with the Council.

The City Attorney's Office can answer any specific questions about procedures and communications in compliance with the Brown Act.

THANK YOU!

Questions?

