

# BPAC ROLE / RESPONSIBILITIES, COUNTY LEGISLATIVE PROGRAM, AND BROWN ACT UPDATE

SAN MATEO COUNTY ATTORNEY

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# BPAC ROLE / RESPONSIBILITIES

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# BPAC FOUNDING DOCUMENT: BOARD OF SUPERVISORS RESOLUTION NO. 073998 (JANUARY 21, 2015)

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## RESOLUTION NO. 073998

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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### RESOLUTION AUTHORIZING THE ESTABLISHMENT OF THE SAN MATEO COUNTY BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE

**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, on January 27, 2015, this Board authorized the designation of the San Mateo County Parks and Recreation Commission as the Bicycle Advisory Committee (BAC) pursuant to Metropolitan Transportation Commission Resolution No. 4108; and

**WHEREAS**, the Board continues to seek ways to improve community health and bicycling and walking for daily transportation results in improved individual and community health, reduced incidence of chronic disease, and reduced emissions of greenhouse gases; and

**WHEREAS**, the advisory role for bicycling and pedestrian mobility extends beyond recreation to include the needs of school children through Safe Routes to Schools, business districts, seniors, people with disabilities, and disadvantaged communities; and

**WHEREAS**, despite recent advances in construction of bike lanes and sidewalks, more can be done to increase rates of active transportation and to improve

# NINE PURPOSES OF THE BPAC

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- a. Advise the Board of Supervisors regarding funding priorities for bicycle and pedestrian projects and programs in the County.
- b. Advise the Board of Supervisors regarding project priorities for funding programs including the Transportation Development Act Article 3 grant program.
- c. Make recommendations to the Board of Supervisors regarding the County's annual priority list of bicycle and pedestrian projects for the capital improvement program.
- d. Make recommendations to the Board of Supervisors regarding the County's annual road resurfacing, maintenance, and operations program.

- e. Make recommendations to the Board of Supervisors regarding encouragement and education programs to increase walking and bicycling for transportation.
- f. Coordinate with jurisdictions, partners, and bicycle and pedestrian advisory committees of other agencies on multi-jurisdictional issues.
- g. Provide recommendations to committees, commissions, and departments on issues related to bicycling, walking, and complete streets.
- h. Review and provide recommendations to **County staff** regarding plans, policies, routes, Safe Routes to Schools, transit, traffic enforcement, and guidelines related to walking and bicycling.
- i. Report and make recommendations to the Board of Supervisors no less than once in every twelve (12) month period.



# POWERS AND DUTIES OF BPAC

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The duties, functions and powers of the Committee shall be as follows:

- a. To advise and make recommendations to the Board of Supervisors;
- b. Develop and implement a yearly work plan;
- c. Provide a public forum for input from members of the public and to identify unmet needs;
- d. To act as an advocate for people walking and bicycling;
- e. Other duties and activities as directed by the Board of Supervisors.

# COUNTY LEGISLATIVE PROGRAM



- PURPOSE:
- To secure legislation
- To oppose or amend legislation
- To shape public policy
- To secure state and federal funding

# STATE LEGISLATIVE PRIORITIES

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- Reserved for major issues with broad impacts
- Consistent and proactive advocacy
- Examples of 2023 Priorities:

Ending homelessness

Creating affordable housing

Modifying the Brown Act



# COUNTY LEGISLATIVE PRIORITIES

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- Wide ranging, chapters typically organized by department
- Allows IGPA to respond to bills and budget proposals
- The County supports:
  - Implementation of policies, programs and services to assist and improve outcomes for all foster youth including LGBTQ foster youth, transitional age youth and immigrant youth in foster care
  - Programs and funding that support foster youth access to extracurricular and enrichment activities.

# FEDERAL LEGISLATIVE PRIORITIES

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- Lists priority areas of concern to the County at a federal level.

Example federal legislative priorities:

- Reproductive Rights
- Immigration Reform
- Infrastructure

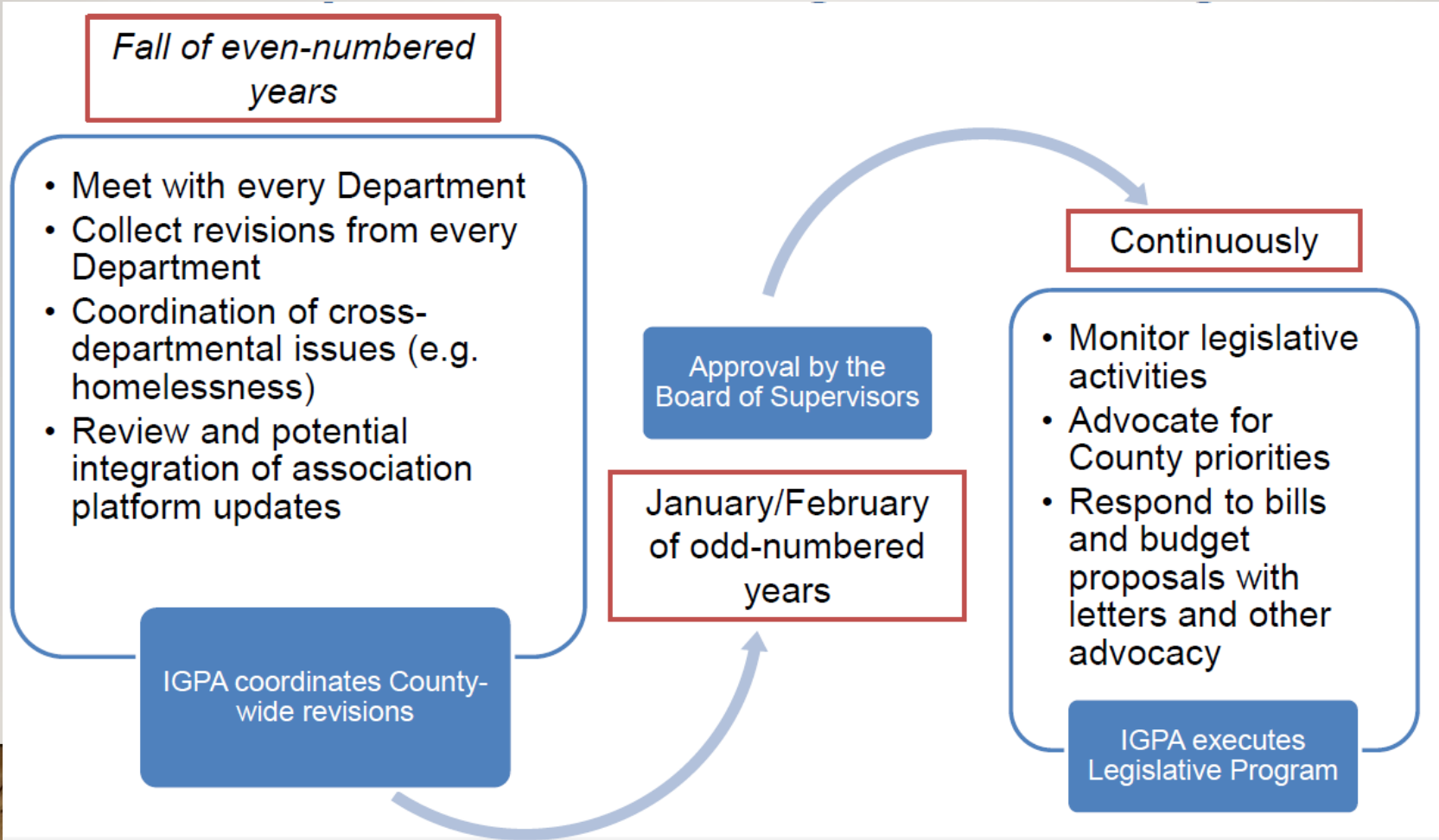
# WHO IMPLEMENTS THE COUNTY LEGISLATIVE PROGRAM?

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- County has an Intergovernmental and Public Affairs Unit (IGPA), which
  - Liaises with state and federal officials,.
  - Develops and executes the County Legislative Program.
  - Coordinates and leads County advocacy efforts
  - Works with lobbying consultants



# HOW DOES THE COUNTY LEGISLATIVE PROGRAM WORK?



**ALL LEGISLATIVE AFFAIRS  
MUST BE COORDINATED  
THROUGH THE IGPA**

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# COUNTY LEGISLATIVE COORDINATION AND ADVOCACY POLICY

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- Requires formal board action by Board of Supervisors to set forth its position on a legislative issue
- County employees, including elected officials and appointed department heads, **may not** take any action that would imply the County's support or opposition to any pending legislation in the absence of, or inconsistent with, adopted Board positions.
- Letters of support or opposition to legislation will be prepared and coordinated with departments by the Legislative Officer or County staff in accordance with Board-adopted positions

# COUNTY LEGISLATIVE COORDINATION AND ADVOCACY POLICY (CONTINUED)

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- In coordination with the Legislative Officer, written correspondence on behalf of the County to elected officials at the federal, state, or local level shall be transmitted over the signature of the Board President, the County Executive, or County advocates (IGPA)
- No department/agency shall take any action that would imply the County's support or opposition to any pending legislation or regulation in the absence of or inconsistent with an adopted Board position
- Purpose: so County speaks with one voice, and different arms of County don't take inconsistent positions with each other

# COUNTY LEGISLATIVE COORDINATION AND ADVOCACY POLICY RE: BOARDS AND COMMISSIONS

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- If an advisory board or commission wish for the Board of Supervisors to take a position on a measure, the chair of the board or commission must work through their department staff liaison to bring the issue to the attention of the County's Legislative Officer (the County Executive's Office) for review and action.
- The County Legislative Officer will determine if there is a standing Board policy to take action or if the measure needs to be brought to the Board of Supervisors for action.



# UPDATES TO BROWN ACT AND MEETING REQUIREMENTS

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# WHAT IS THE BROWN ACT?

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- Enacted in 1953
- Law's intent is that the actions of California's public Boards, Commissions, and Councils should be taken openly and their deliberations should be public
- Law attempts to balance public's right to access most proceedings and the need to conduct some proceedings with confidential candor



Ralph M. Brown

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- Presumption is in favor of public access
  - Privacy (“closed session”) for specified topic areas only
  - Exceptions to public access are construed narrowly
  - The Brown Act can be found at California Government Code §§ 54950 et seq.

# THREE MAIN RULES

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1. Notice to the public before any meeting describing when, where, and what for;
2. Opportunity for public participation during the meeting;
3. Exceptions to the public access/participation rules.

# WHAT DO THEY MEAN BY A “MEETING”?

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- Noticed, agendized public meetings
- Any gathering of a majority of the members in a place to hear, discuss or deliberate on a matter within the subject matter jurisdiction of the body
- Any use of a technological artifice to develop a collective concurrence as to a matter within the subject matter jurisdiction of the body (e.g., e-mail; social media)

# “A MEETING”

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- Includes regular meetings, special meetings, study sessions, board retreats, workshops . . .
- Includes lunches and social gatherings
- Includes telephone calls and e-mail chains
- Includes social media threads and bulletin boards
- Includes using intermediaries or representatives
- Includes circumstances where no action is taken!

# “A MEETING” IS NOT:

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- Individual discussions with stakeholders
- Attending a conference (without discussing substantive matters together)
- Attending a meeting of another public entity
- Attending a purely social or ceremonial gathering
- Giving testimony to a grand jury
- Attending a meeting of a standing committee (as long as the members creating a quorum *observe only*)

# A “QUORUM”

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- Number required to be present to transact business legally, usually a majority
- What about when a quorum is necessary to have a meeting, but merely a majority of those present and voting is sufficient to carry a motion?



YOUR MAGIC  
NUMBER IS:

3

(INCLUDING YOU)

# WHAT ABOUT SUBCOMMITTEES?

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- Subcommittees created by formal action of the body must also comply with the Brown Act
- A special type of subcommittee, “advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body”, may meet without posting agendas or otherwise complying
  - Basically, to research a distinct complicated issue and report back in open session with a recommendation
- Consult with staff and counsel on the appropriate measures to effectuate your intent

# WHAT IS THE PUBLIC ENTITLED TO?

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- To adequate advance notice the time, place, and topics of meetings
- To geographically proximate meetings (within the jurisdiction)
- To accessible meeting locations and assistive devices
- To record the meeting
- To bring new issues to the Board's attention (public comment)
- To timely receive access to the materials in the Board Packet
- To comment on each item before the Board deliberates (public hearing)
- To hear the deliberation, to know the (final) actions, and to know who voted how

# WHAT IS THE PUBLIC ENTITLED TO?

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- The right to orderly comment is subject to reasonable rules and regulations
  - Per-speaker time limits
  - Per-item time limits
  - Not content-based (i.e., no rule against public criticism)

# ADDRESSING A SPEAKER

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- The public is allowed to comment on items not on the agenda
- Meanwhile, the Board is forbidden to “hear, discuss or deliberate” on items not appearing on the agenda
- The Board members may “briefly respond” to public comment
  - Give information or correct misinformation
  - Refer to staff for followup
  - Ask that matter be agendized for a future meeting

# CAN I JUST CALL IN TO THE MEETING?

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- The teleconference provisions of the Brown Act were written at a time when “teleconference meeting” was thought to be two public conference rooms, miles apart
- To be a legal meeting, the teleconference provisions of the Act must be strictly followed
- Both (or all) locations must be accessible to the public and have a posted agenda
- Once you find out you can’t just call in to the meeting from your car on I-80 on the way to Tahoe, just missing the meeting looks attractive by comparison

# SUSPENSION OF TELECONFERENCE LIMITATIONS

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- During shelter-in-place and until October 2021, the Governor suspended (by Executive Order) the most limiting restrictions on teleconferencing in the Brown Act
- Allowed meetings to take place:
  - Without provision of a physical place for the public to gather
  - Without requiring that teleconference locations be accessible to the public
  - Utilizing online meeting platforms that met certain parameters for public participation

# AB 361

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- Effective October 1, 2021, a public body may meet using an online meeting platform and without complying with the strict limitations for teleconference under the Brown Act if certain things were true
- Emergency proclamation will expire on February 28, 2023



# AB 2449

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- Allows individual members to participate remotely BUT
  - Only on specified grounds
    - Just cause (as defined)
    - Emergency circumstances (as defined) (basically medical emergencies only)
  - Number of times this is allowed is numerically limited
  - A quorum of members must be physically present
  - Full online access must be provided to the public in order for this even to be an option
- “Fully online” and “hybrid” meetings will in practice be a thing of the past

# WHAT DOES AB 2449 MEAN FOR COUNTY ADVISORY BOARDS AND COMMISSIONS?

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- After carefully reviewing the County's current technical and staffing support capacity, County Executive's Office has determined that it cannot currently meet all the procedural and substantive requirements of AB 2449 for County Boards and Commissions to avail themselves of AB 2449's remote attendance options.
- Therefore, all County Boards and Commissions must return to in-person meetings on March 1, 2023.
- CEO will continue to work closely with statewide associations to advocate for changes to the Brown Act that would provide greater flexibility for Boards and Commissions to meet in an all-virtual format, given its many benefits for increased public engagement across the County

# SOCIAL MEDIA

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- Previously, the status of “public” posts on social media was questionable
- AB 992 authorized posting on “open and accessible” platforms (as defined)
- Members cannot “discuss among themselves” the posting
- Commenting, sharing, retweeting, and “liking” or “disliking” other members’ posts is prohibited
- Recent case: If you use your profile in your official capacity, you cannot block members of the public from commenting, or delete their comments or posts

# WHAT IF THERE'S A VIOLATION?

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- Call your staff liaison and ask to consult our office
- May result in reversal of the decision made using an improper process
- Requires that a demand be made, giving you the opportunity to correct your process
- Serious violations involving intentional conduct may result in criminal prosecutions

QUESTIONS?

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