

**Brown Act Training
for the
Bike and Pedestrian
Advisory Committee**

July 14, 2016

Office of the County Counsel

**Ethical Value to Government
Transparency Laws**

1. *Trustworthiness:*
The public trusts a process that it can observe.

2. *Respect:*
All perspectives have a right to be heard and considered in the public decision making process.

7/25/2016 2

**The Heart of Government
Transparency Laws**

The conduct of the public business IS the public's business

7/25/2016 3

- "School trustees call themselves into question with reprimand"
- County Broke Law on Hospital; Supervisors' secret talks on closing King/Drew trauma unit were illegal, Dist. Atty. Cooley says
- "Student Senate violates law with secret ballots
 - Anonymous votes used by members, candidates suffer"

7/25/2016 4

Brown Act- Legislative Intent (cont'd)

"The people of this State **do not yield their sovereignty** to the agencies which serve them. The people, in delegating authority, **do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.** The people **insist on remaining informed** so that they retain control over the instruments they have created."

7/25/2016 5

Brown Act-Six Categories:

1. To Whom Does it Apply?
2. What is a Meeting?
3. The Agenda Requirements
4. The Public's Rights
5. Closed Sessions
6. Consequences for Violations

7/25/2016 6

1. To Whom Does it Apply?

- Applies to “legislative bodies”
- “Legislative body” means:
 - (a) governing board of local agency
 - (b) governing board committees created by formal action of the governing board
- Does not include individual decision makers e.g. department heads

7/25/2016

7

Committees NOT subject to Brown Act

- Ad hoc advisory committees made up solely of governing board members and constituting less than a quorum
 - No continuing subject matter jurisdiction
 - Limited term
- Committees not formed by act of legislative body

7/25/2016

8

2. What is a meeting?

- Any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss or deliberate on any matters within its jurisdiction.

What this means: A majority may not consult outside an agency-convened meeting.

7/25/2016

9

Brown Act Illegal Meetings

A majority of members may not “develop a concurrence as to action” on business through serial meetings, intermediaries, communication, or other means of subterfuge.

7/25/2016 10

Illegal Meetings (cont'd)

Basic “Serial” Meeting (5 members)

```
graph TD; A --> B; B --> C; C --> D; D --> E;
```

7/25/2016 11

Illegal Meetings (cont'd)

Intermediary or “hub” meetings (5-members)

```
graph TD; B --> A; C --> A; D --> A; E --> A;
```

7/25/2016 12

What is NOT a meeting?

- Individual contacts between board members and another person
- Majority of board at conference open to public
- Majority of board at social or ceremonial occasions (as long as majority does not discuss board business)
- Majority of board at public meeting on topic of local community concern

7/25/2016

13

3. Agenda Requirement

- Regular meeting- Agenda posted 72 hours in advance
- Special meeting- Agenda posted 24 hours in advance
- Limited exceptions where business not on the agenda may be transacted
- Must contain a brief description of every item to be discussed
- Closed session items must be listed
- Must include time for public comment

7/25/2016

14

No Consideration of Matters Not Properly Agendized Unless

- Majority vote determines emergency exists
- Two-thirds vote determines need to take immediate action if the matter came to agency's attention after agenda posted

7/25/2016

15

4. Rights of Public

- Right to be notified of items on agenda
- Right to attend without identifying oneself
- Right to record the meeting
- Right to speak before or during consideration of an item
- Right to see Board materials
- Right to say anything, even if unrelated to agency business

7/25/2016

16

Limited Circumstances Where Boards and Commissions May Speak To Items NOT On The Agenda

- Brief response to statements or questions
- Brief announcement or report on own activities
- Ask questions for clarification
- Refer to staff for information
- Request staff to report back
- Direct staff to place matter on future agenda

7/25/2016

17

5. Closed Session

- **Allowed:** Litigation, personnel, real property, labor negotiations
- Must report out in open session "action taken"

7/25/2016

18

Announcing The Votes

- New requirement began in 2014

7/25/2016

19

6. Consequences of Brown Act Violations

- Lawsuit brought by the DA or any interested persons
- Violations may be stopped by civil lawsuit
- Some actions, if not "cured", may be declared void
- Criminal sanctions for intentional violations (up to 6 months in jail/\$1,000 fine)
- Attorney's fees

7/25/2016

20
