

# THE BROWN ACT

Public Safety Advisory Board

City of Mountain View

May 27, 2021

# PURPOSE AND INTENT

- Enacted in 1953
- Purpose is to safeguard the public's right to access and participate in government meetings within the State
- Intent of the Brown Act
  - Ensure deliberations and actions of local legislative bodies are open and public
  - Ensure meaningful public access to local agency decisions
  - Meetings must be open to the public, held on a regular schedule, and follow a noticed agenda

## **“OPEN AND PUBLIC”**

- “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.” Govt Code Section 54953(a)

# **“LEGISLATIVE BODY”**

- Governing body of a local agency
- Any commission, committee, board, or other body created by formal act of a local agency
- Examples
  - City Council
  - Boards and Commissions
  - Standing Committees with continuing subject matter jurisdiction or a meeting schedule fixed by formal action
- Does not apply to ad-hoc subcommittees composed solely of less than a quorum of the legislative body
- New members: applies once appointed/elected

# “MEETINGS”

- Congregation of a majority of the legislative body
- Same time and place (including teleconference location)
- To *hear*, discuss or deliberate
- Items in subject matter jurisdiction

## **AVOID “SERIAL” MEETINGS**

- Series of communications
- Used by a majority of the legislative body
- To discuss, deliberate, or take action
- On an issue within that body’s subject matter jurisdiction

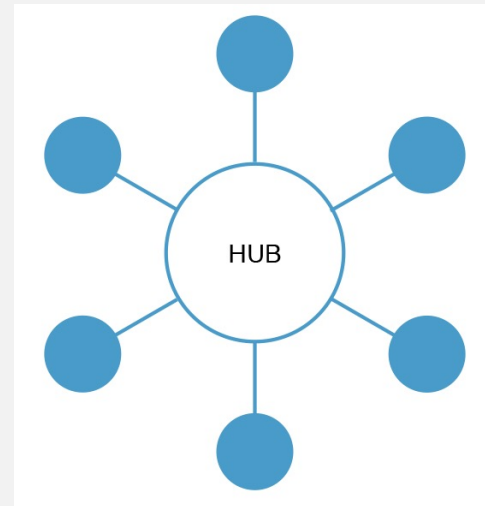
# TYPES OF “SERIAL” MEETINGS

- Daisy Chains
  - Member A contacts Member B, Member B contacts Member C, Member C contacts member D and so on, until a quorum has discussed, deliberated or taken action as to some local agency business outside of a public meeting.



# TYPES OF “SERIAL” MEETINGS

- Hub and Spoke
  - This involves, for example, an individual (the hub) communicating with members of a legislative body (the spokes) one-by-one prior to a formal meeting, and reveals the views of respective members.
- Most common: EMAIL





## **TIPS TO AVOID SERIAL MEETINGS**

- Send communications to staff liaison
- Use caution when forwarding or replying all to emails and using social media

# USE OF SOCIAL MEDIA

- AB 992 (2020) amended Brown Act to provide clarification on what communications are prohibited on social media
- May communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction
- May **not** respond directly to a communication of another member of the same body on social media on a matter within the legislative body's subject matter jurisdiction
- Applies to use of Internet-based social media platforms that are **open and accessible to the public**

# MEETING EXCEPTIONS

- When is a meeting not a “meeting”?
  - Individual contact exception
  - Conference and seminar exception
  - Community meeting exception
  - Social or ceremonial event exception
  - Another legislative body exception
  - Standing committee meeting exception

# **TYPES OF MEETINGS**

- Regular
- Special
- Adjourned

## **REGULAR MEETINGS**

- Agenda must be posted 72 hours in advance
- Agenda must contain brief description of items of business
- Agenda must be freely accessible to public
- Must have a general comment period for the public

## **SPECIAL MEETINGS**

- Called by Chair or majority of the body
- Agenda posted 24 hours in advance
- Must notify each member & press
- No general public comment period required

# **ADJOURNED MEETING**

- Continuation of a previous meeting
- If held within 5 days, no need for a new notice
- Less than a quorum may adjourn

# **PUBLIC COMMENT PERIOD**

- Any item within the body's subject matter jurisdiction
- Before or during consideration of an item
- Rules of decorum permitted
- Time limits are OK
- Speakers should address the Chair
- Comments must be germane
- Disruptive speakers can be ejected



# **CONDUCT OF MEETINGS**

- Quorum required to conduct meeting (Brown Act)
- City Charter 904 requires an affirmative vote of a majority of the entire membership to take any action
- City Council Rules of Procedure
  - Council Policy A-13

# **NON-AGENDIZED DISCUSSIONS**

- No discussion of items not posted on the agenda
- Very limited exceptions:
  - Items added to the agenda
    - Came to the City's attention after agenda was posted
    - Need to take action before next meeting
    - Two-thirds vote required
  - Brief response to comments/questions
  - Clarifications/reference to staff
  - Brief announcements/report on activities
  - Requests to place items on future agendas

# **ENFORCEMENT & CONSEQUENCES**

- Notice and opportunity to cure
- Civil action for invalidation of actions
- Attorney's fees and costs
- Criminal prosecution
  - Action taken at a meeting
  - In violation of the Act
  - Intent to deprive public of information

QUESTIONS?

# RESOURCES

Council Advisory Bodies Handbook

<https://www.mountainview.gov/council/bcc/default.asp>

League of California Cities (now Cal Cities)

<https://www.cacities.org/>