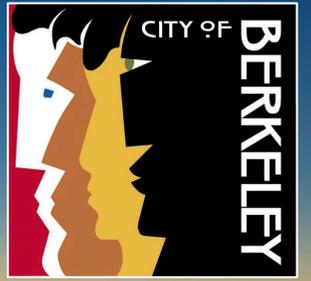


CITY OF BERKELEY

The Brown Act



OFFICE OF THE CITY ATTORNEY

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- To ensure the Public's business is done in public.
- All meetings of legislative bodies:
 - Open to the public
 - Adequately noticed
 - Stick to agenda
 - Allow the public to speak on agenda items and on any non-agenda matter within the Council's jurisdiction.

Basics of the Brown Act

All “legislative bodies” of the City are covered by the Brown Act:

- City Council
- Council Committees
- Commissions and boards
- A body created by “charter, ordinance, resolution, or formal action of a legislative body”

**Who is
Covered by the
Brown Act?**

- An “ad hoc” committee is not a “legislative body” covered by the Brown Act
- This is a narrow exception:
 - Less than a quorum of legislative body
 - No formally fixed meeting schedule
 - No continuing purpose – not a “standing committee”
 - Advisory to parent body (e.g. Council)

“Ad Hoc” Committee Exception

- Agendas must be posted 72 hours before a regular meeting or 24 hours before a special meeting
 - Berkeley City Council regular meeting agendas are posted eleven (11) days before the meeting
- Must notice the time and place of the meeting
- Provide a “brief general description” of each item of business – sufficient to provide the public notice of what will be discussed and what action may be taken
- Legislative body must not take action or discuss any items that are not on posted agenda

Agenda Requirements

- Limited exceptions to discussing items not on agenda:
 - Brief response to statements made by public
 - Brief announcement or report
 - Directing staff to put issue on future agenda
- Need for immediate action, which came to City's attention after the agenda was posted. (two-thirds vote)
- Emergency situations – severe threats to public health or safety

Agenda Requirements

- A meeting occurs whenever **a majority** of a legislative body gather to discuss **business within their subject matter jurisdiction.**
- Any gathering of a majority of the legislative body can become a “meeting”
 - Social gatherings
 - Meetings of other legislative bodies
 - Retreats, forums, workshops
- A “meeting” can happen via writing, phone calls, email etc.

What is a Meeting?

Several exceptions to the definition of “meeting”

- Attending a conference or “open and public” meeting hosted by a private person, organization or another public body.
 - Must not talk about City business outside of the scheduled program.
- Social or ceremonial gathering as long as a majority does not discuss matters within their jurisdiction.
- Individual contacts with another member of the legislative body.
 - But be careful of serial meetings

What IS NOT a Meeting

- When a majority of a legislative body uses a series of communications, either directly or through intermediaries, to “discuss, deliberate, or take action on any item within the subject matter jurisdiction of the legislative body.”

Serial Meetings

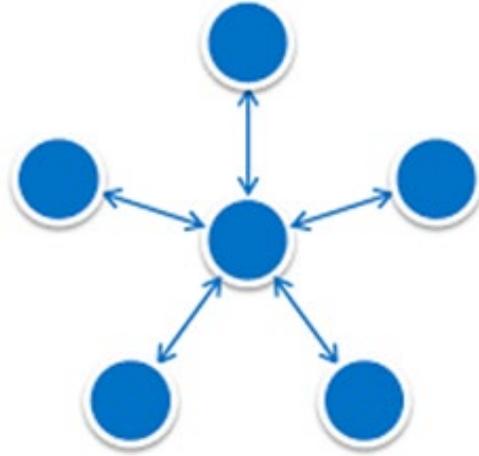
Daisy Chain Meeting



- Example: Councilmember A calls Councilmember B to talk about a City issue. Councilmember B then calls Councilmember C who calls Councilmember D etc., until a quorum of Council has discussed, deliberated or taken action on the issue.

Types of Serial Meetings

Hub and Spoke Meeting



- Example 1: Councilmember A calls B and discusses a City issue. Councilmember A then separately calls Councilmembers B, then C, etc., telling each what the other has said. Eventually a quorum of the Council has discussed, deliberated or taken action on the issue.
- Note: Another City employee or officer, or even a member of the public can serve as the “hub”

Types of Serial Meetings

- Serial meetings can occur in person, writing, phone, email, text etc.
- “Reply All” button should be used thoughtfully. Staff should use Bcc when emailing a majority of a legislative body.

Serial Meetings

Brown Act “circles” or “chains”

- Councilmembers coordinating with each other on a matter should confirm who is in their “circle” or “chain” to ensure less than a majority of the Council are involved
- Ex. Three councilmembers are drafting an item. If two of the members confer with another member on the matter, a serial meeting of a majority of the Council could be created
- Cannot switch out members of your Brown Act circle or chain if total members would be a majority

Serial Meetings

Council item authors and co-sponsors

- Council agenda items are limited to a maximum of four authors and co-sponsors
- Authors/co-sponsors are a Brown Act circle/chain for that item

Serial Meetings

- Council policy committee procedures guard against serial meetings:
 - Two committee members cannot discuss an item referred to their committee outside a public meeting
 - If two committee members are authors/sponsors of an item, one must recuse
 - All three committee members cannot author/sponsor an item that will come before their committee
 - Only one author/sponsor who is not a member of the committee may attend a committee meeting to discuss the item
 - An item can only go to one committee before it goes to full Council

Serial Meetings

- Councilmembers can communicate with the public via social media:
 - Answering questions
 - Providing information
 - Solicit information from public
- Councilmembers may not use social media to discuss official business “among themselves” or respond directly to other councilmembers
 - Includes comments, posts, reposting or “liking”
- Even a single contact between two members via social media is prohibited

Social Media

- Teleconferencing for Councilmembers is permitted only when:
 - Each remote location is listed in agenda
 - Each remote location is open to the public
 - Agendas posted at all remote locations
 - At least a quorum of the legislative body is physically present in Berkeley
- The public may attend in person or via teleconference.

Meeting By Teleconference

- Members may appear remotely without disclosing address or making remote location public if:
 - Member notifies body of need to participate remotely for “just cause” or “emergency circumstances”
 - Quorum physically present in person
 - Technology allows public to participate remotely
- “Just cause”: Contagious illness, childcare or family care need, immunocompromised family member, need relating to disability, travel on official business
- “Emergency circumstances”: Physical or family emergency that prevents in-person attendance.
 - Legislative body must vote to approve
- Time Limitations:
 - “Just Cause” = 2 meetings per year; “Emergency Circumstances” = Up to 7 meetings per year

Exception: Illness or Family Care

- Under City's new policy, Councilmembers and commissioners with disabilities can submit a request for an accommodation to participate in meetings remotely.
- May request City waive requirements to post address and make publicly accessible
- Accommodation is individualized; no limit on meetings attended remotely
- Contact ADA Coordinator for more information

**Exception:
Teleconferencing due to
Disability**

- In the wake of the COVID-19 pandemic, the State Legislature created exceptions to the general teleconferencing rules.
- When Governor has proclaimed a state of emergency:
 - Legislative body may decide to meet remotely by majority vote
 - Public must be able to participate via remote technology
 - Legislative body must recertify need to conduct meetings remotely every 45 days

Exception: Emergencies

- Two types of public comment:
 - (1) General matters within jurisdiction of body;
 - (2) Specific agenda items (before action is taken on the item)
- General public comment is not required for special meetings
- Legislative body may :
 - Regulate total and per-speaker time limit
 - Create rules of decorum
 - Prohibit disruptive behavior
- Legislative body may not prohibit speech based on viewpoint (e.g., prohibiting criticism of City government).

Public Participation

- Legislative bodies can meet in closed session for certain matters:
 - Litigation
 - Personnel matters or labor negotiations
 - Real estate negotiations
 - Security threats
- Agenda must briefly describe item and identify the applicable exemption
- Public comment must be taken before convening in closed session
- Certain closed session actions must be reported out to the public (e.g., approval of agreements and settlements)

Closed Session

- Lawsuits to invalidate City actions taken in violation of the Act
- Lawsuits to prevent or stop a legislative body from violating the Act
- Complaints to Open Government Commission, which can make recommendations to Council
- Brown Act contains criminal provisions where a member acts with intent to deprive the public of information

Enforcement

- Under the Brown Act, meetings must be noticed and open to the public.
- This allows the public to observe and participate in the Council's conduct of public business.
- A meeting is defined as a gathering of a majority of the Council to consider a matter within the Council's jurisdiction.

Reminder on Meetings

- The form and formality of the gathering does not matter.
- The members need NOT reach a decision or consensus for the gathering to be a meeting.
- A meeting need NOT be at the same time or location because the Brown Act prohibits “serial meetings” too.
- A serial meeting occurs when a majority of the Council uses a series of communications, either directly or indirectly or through intermediaries, to discuss, deliberate or act on any matter within the Council’s jurisdiction.

Misconceptions About Meetings

- A private informational tour for Councilmembers of water facilities owned and operated by the water district that provides water services to the city.
- A birthday party where a majority of the members discuss specific public business.
- A text chain among a majority of the members about an agenda item during the meeting at which the item was considered.
- An email from one member, sent to all other members, that shares thoughts about an item being considered at a meeting the member cannot attend.
- A member, who sits on a committee, shares with her fellow committee members the opinions she has gathered from the members who do not sit on the committee.

Real Life Examples

- Err on the side of caution. The Brown Act must be interpreted liberally in favor of public access.
- Be on high alert whenever a majority of the Councilmembers or staff come together or whenever members are sharing the views of other members.

Takeaways

Please contact the City Attorney with your Brown Act questions.

Questions?