

# SAN MATEO COUNTY VETERANS COMMISSION – THE BROWN ACT AND PARLIAMENTARY PROCEDURE

California's Open Meeting Law and Some  
Thoughts on Parliamentary Process

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California  
State  
Assembly  
1943–1961  
30<sup>th</sup> District  
– from  
Modesto  
Speaker of  
the  
Assembly  
1959–1961  
Appointed  
to Fifth  
Appellate  
District  
Court 1961  
Best known  
for enacting  
the Brown  
Act

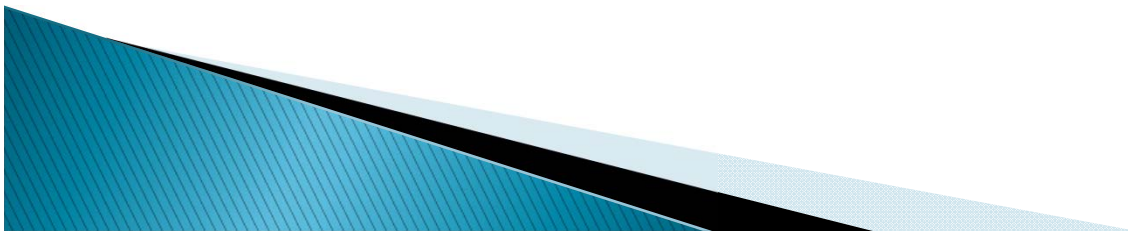


Ralph M. Brown

- ▶ Brown Act enacted in 1953
- ▶ The Brown Act can be found at California Government Code §54950, *et seq.*
- ▶ Law's intent is that the deliberations and actions of California's public agency boards, *commissions*, and councils will be taken openly and their deliberations should be public.
- ▶ Balances public's right to access most proceedings and the need to conduct some proceedings with confidential candor.

# INTENT

- ▶ Presumption is in favor of public access.
- ▶ Confidentiality only where there is a demonstrated need; presumption against secrecy.
- ▶ Exceptions to public access are construed narrowly.



# Statute Language

- ▶ “[T]he Legislature finds and declares that the public commissions, boards and councils . . . 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 . . . . The people insist on remaining informed so that they may retain control over the instruments they have created.”



# Main Rules

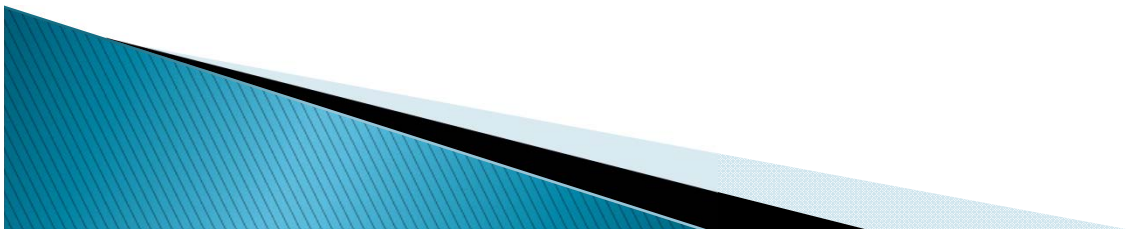
## Four main rules:

- ▶ 1. Notice (published agenda) to the public before a meeting containing when, where, and what for;
- ▶ 2. Legislative body acts at meetings;
- ▶ 3. Opportunity for public participation during the meeting;
- ▶ 4. Exceptions to the public access / participation rules.



# Common Questions

- ▶ Most common questions about the Brown Act:
  - ▶ 1. Who is covered by the Brown Act?
  - ▶ 2. What constitutes a meeting?
  - ▶ 3. What are the notice and agenda requirements?
  - ▶ 4. What are the public's rights under the Brown Act?
  - ▶ 5. When are confidential closed sessions permissible?
  - ▶ 6. What are the consequences of violating the Brown Act?



# Which bodies are covered by the Brown Act? §§54951–54952

- ▶ ***Legislative bodies*** of counties, cities, city & county, towns, school districts, political subdivisions, boards, ***commissions***, agency, councils, committees, special districts, municipal corporations and subsidiary bodies created by ordinance, charter, resolution or other formal action.
  - Per County standing rules, all County commissions are subject to the Brown Act.
- ▶ Private corporations that exercise delegated authority or receive funds and with a member of the local body appointed to its governing body.
- ▶ ***Not*** individual decision-makers; state agencies or “non-standing” advisory committees





# What qualifies as a “non-standing advisory committee”?

- ▶ Usually internal ad-hoc committees of the legislative body limited to less than a quorum and of limited duration with no continuing duration.
- ▶ For example:
  - ❖ A committee of less than a quorum formed to plan an event
  - ❖ A committee of less than a quorum formed to research a distinct issue and report back in open session

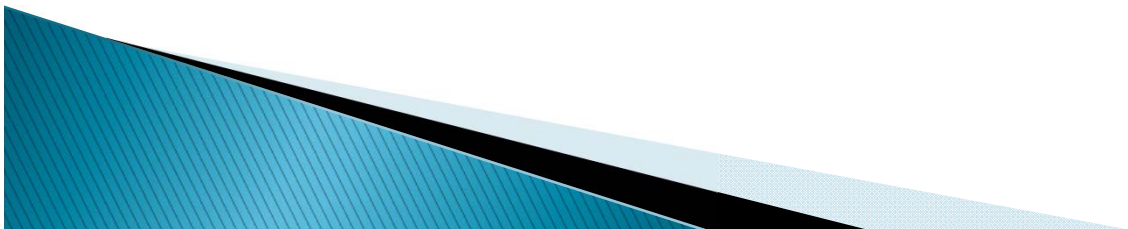


# What is a quorum?

Quorum is not a term defined in the Brown Act.

According to Dictionary.com, a quorum is

- ▶ 1. the number of members of a group or organization required to be present to transact business legally, usually a majority.
- ▶ While the Veterans Commission has yet to adopt its bylaws, the quorum for a County commission is typically a majority of its members.



# What constitutes a meeting?

## §54952.2

- ▶ A meeting is any *congregation of a majority* of the members of a legislative body at the same time and location to *hear, discuss, deliberate, or take action* on any item that is within the subject matter jurisdiction of the legislative body.
- ▶ This includes meetings that take place by teleconference pursuant to the requirements of §54953.
- ▶ This includes lunches, social gatherings, retreats . . .



# Definition of a Meeting (con't)

- ▶ The definition of meeting includes **serial meetings** – a series of communications that do not involve a physical gathering of a majority of members but accomplishes the same purpose:
  - ❖ Meetings of board members' intermediaries or representatives (hub/spoke)
  - ❖ Chain communications such as each member e-mailing or calling another member until a quorum has been contacted



# Serial Meetings (con't)

- ❖ Hub communications, such as one member contacting each member individually to reach agreement on a substantive matter likely to be on the agenda.
- ▶ **Note:** Particular risks of Brown Act violations for e-mail communications between members or from third parties including members, and chat rooms/bulletin boards. It's advisable that board members simply not participate/respond to avoid a serial meeting. Save responses /opinions /deliberations for public meeting.



# No action needed

- ▶ A board does not have to take *action* for a gathering of its members to constitute a meeting.
- ▶ “It is now well settled that the term “meeting,” as used in the Brown Act . . . is not limited to gatherings at which action is taken by the relevant legislative body; “deliberative gatherings” are included as well. *Sacramento Newspaper Guild*, supra, 263 Cal.App.2d at p.48. Deliberation includes “the collective acquisition and exchange of facts preliminary to the ultimate decision.” *Id.*, at pp. 47–48; *Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234 . . . . .” *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4<sup>th</sup> 781, 795.



# A meeting is not . . . . .

- ▶ Individual board member discussions with constituents
- ▶ 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 public meeting of a standing committee as long as the members creating the forum *observe only*



# Notice & Agenda Requirements

## §§54954–54954.2

- ▶ Regular meeting must be specified in ordinance, resolution, bylaws, or other rule governing conduct of business.
- ▶ Agenda for regular meeting must be *posted at least 72 hours* prior to meeting.
- ▶ Agenda must have *brief general description of all items* to be addressed, including closed session items (approximately 20 words).
- ▶ Agenda must specify procedure to request accommodations for disabled to participate.






# Agenda Requirements (con't)

- ▶ Agenda must be made available in alternative format for disabled person upon request.
- ▶ Agenda must include *opportunity for public comment*. Items commented on but not agendized may not be discussed but for further research or for future agenda.
- ▶ Materials distributed to majority of members on agenda topic must be available to the public. Items distributed less than 72 hours prior, must be made available at public office or on web with location routinely disclosed on the agenda.



# Exceptions to Regular Meeting Notice & Agenda Requirements §54956

- ▶ *Special meeting noticed within 24 hours* only to consider specific topic. May be closed session if permitted by law. Comment only permitted as to topic of special meeting.
  - ▶ Emergency meeting can be called on one hour's notice with majority vote. No closed session permitted.
  - ▶ Need for immediate action that arose only after agenda posted. Requires 2/3 vote or 100% of remaining body if less than 2/3.
  - ▶ Matter previously noticed and carried over no more than 5 days.
- 

# Closed session requirements

- ▶ Closed session requires 3 types of notice: agenda, pre-closed session announcement, and post-closed session report of action taken. Special statutory requirements re: exposure to potential litigation.
- ▶ Must report out in public session orally or in writing. Must report any vote taken, including how each member voted.



# Public's Rights

- ▶ Access: right to be notified of where, when, what.
- ▶ Records: opportunity to obtain non-confidential records available to board re: items to be considered.
- ▶ Right to record meeting.
- ▶ Right to be free from discrimination in accessing information and attending/participating in meeting.
- ▶ Location: right to attend meeting within district over which board has jurisdiction (with some limited exceptions).



# Public's Rights (con't)

- ▶ Right to have votes taken or reported in open session – secret ballots expressly prohibited
- ▶ Right to know how each individual Board member voted – in open and closed session
- ▶ Right to orderly comment – with some reasonable limitations (president may remove member of public for disorderly conduct).
- ▶ Right to publicly criticize the body.



# When are closed sessions allowed?

## §§54956, 54957, 54962

- ▶ Closed session permitted only as established by statute.
- ▶ Privacy issues: personnel matters, criminal records, Medi-cal HMO complaints, employee requests for hardship, matters designated in the Education Code.
- ▶ Fiscal matters: labor negotiations, pending litigation, real property negotiations, pension board investments, responses to final audit reports, trade secrets, certain insurance claims, various public hospital services, programs, facilities per Health & Safety Code.
- ▶ Public security: conferences with law enforcement.



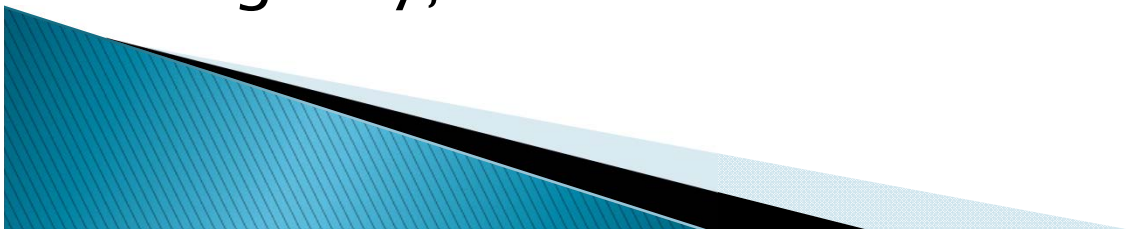
# Confidentiality of Closed Session

- ▶ Section 54963 provides that a person may not disclose confidential information acquired by having attended a proper closed session unless the disclosure is authorized by the legislative body. Legal remedies for violation:
  - Injunctive relief
  - Disciplinary action against an employee
  - Referral to the grand jury
- ▶ Exception for disclosure of illegal actions, whistleblower statutes in Labor and Govt Code, expressing an opinion concerning the propriety or legality of actions taken in closed session



# What are the consequences of a violation? §§54959–54960

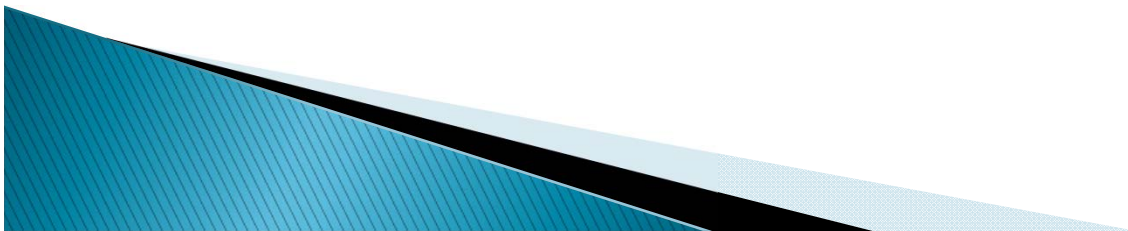
- ▶ Criminal penalties – any member at a meeting where violation occurs and member intends to deprive the public of information they know the public is entitled to, is guilty of a misdemeanor.
- ▶ Civil remedies – any interested person can bring mandamus, injunction, or declaratory relief. Such action requires a demand for cure with 30 days to respond or correct.
- ▶ Lawsuit must be filed within 15 days of response.
- ▶ Court may determine action null & void.
- ▶ Attys' fees may be awarded against the public agency, not individual members.





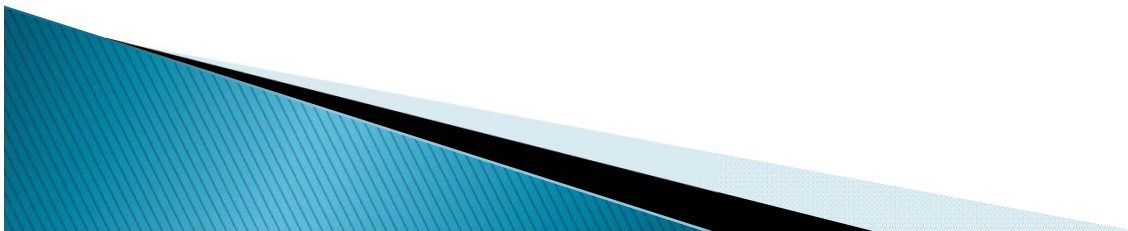
# Common Courtesies

- ▶ Begin on Time
- ▶ Maintain Atmosphere
- ▶ Let advocates present
- ▶ Stay awake
- ▶ Turn off cell phones
- ▶ Be even-handed
- ▶ Take notes
- ▶ Make explanations and decisions succinct and clear
- ▶ Rule promptly



# Facilitate Public Input

- ▶ Tell the public what the Board is doing
- ▶ Keep the public informed while the Board is acting
- ▶ Tell the public what the Board did



# Questions?

