



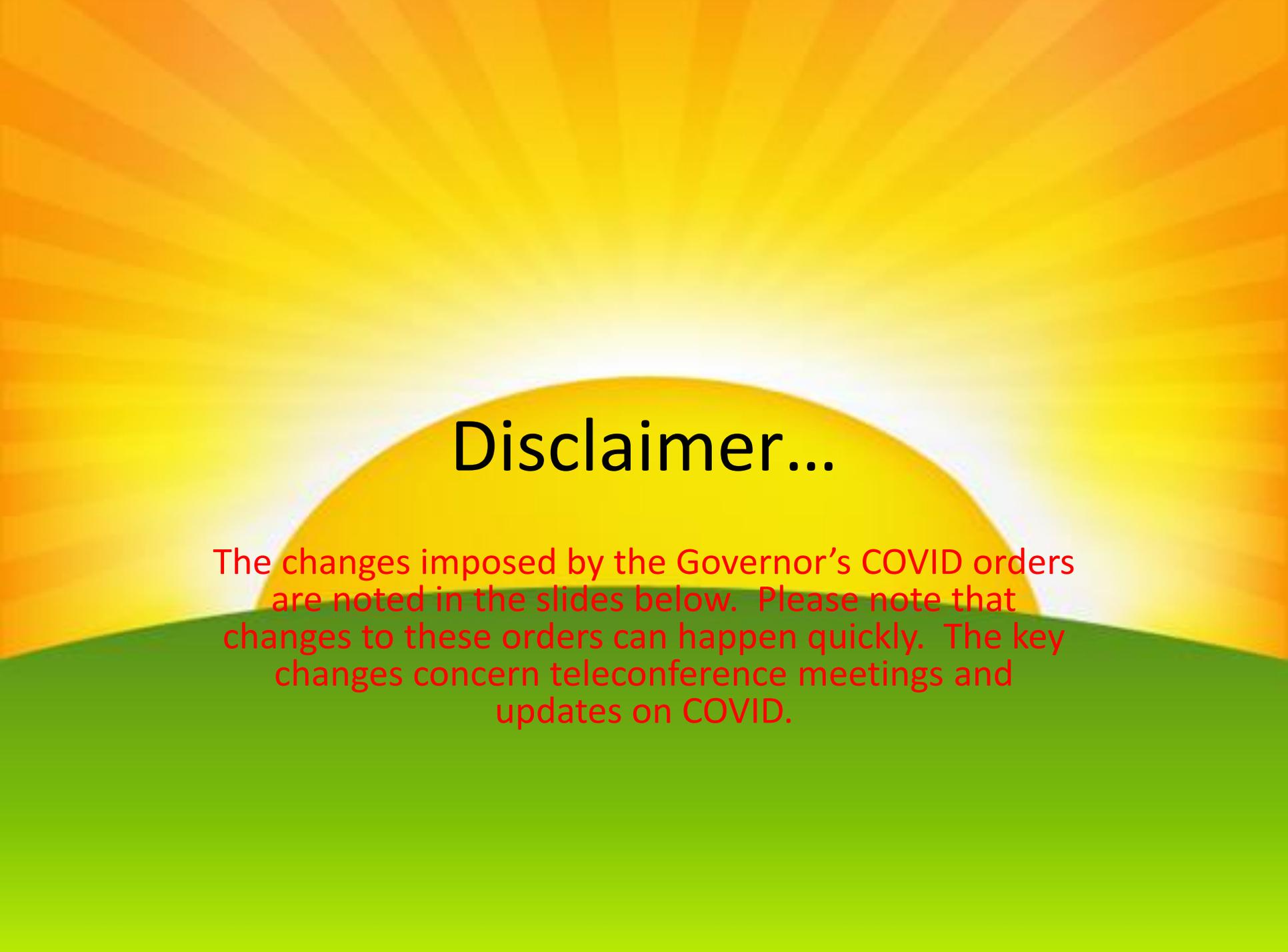
California's Sunshine Law: The Ralph M. Brown Act In the Age of COVID

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SB823 SUBCOMMITTEE MEETING



Disclaimer...

The changes imposed by the Governor's COVID orders are noted in the slides below. Please note that changes to these orders can happen quickly. The key changes concern teleconference meetings and updates on COVID.

The Brown Act

The Brown Act was enacted in 1953 after a 10-part exposé in the *San Francisco Chronicle* on the lack of transparency in local government, entitled “Your Secret Government”

San Francisco Chronicle
NORTHERN CALIFORNIA'S LARGEST NEWSPAPER

The Guiding Principle

The Public's business must be conducted in *public*, with ample opportunity for public participation



Who is Subject to the Brown Act?

- Any board, commission, committee or other body created by a charter, ordinance, resolution or other formal action of the Board of Supervisors + standing committees
 - *E.g.*, Established June 19, 1979 by resolution number 183410
- Exception: ad hoc committees made up of less than a quorum of the body

Ad Hoc Committees:

- Purely advisory
- comprised solely of members
- < quorum (of body or standing committee)
- limited term
- No meeting schedule fixed by formal action
- charged with accomplishing a specific task
 - No continuing subject matter jurisdiction
- in a short period of time
 - dissolved when their specific task is completed

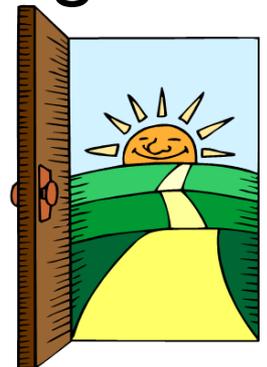
Ad Hoc Examples:

- Meetings by 2/5 city council members to review Coastal Commission's new draft land use plan regarding city
- Ad hoc advisory committee created to advise Board of Education regarding candidates' qualifications for vacant board position.

The Open Meeting Rule

THE RULE is that meetings are OPEN to the public; exceptions to the rule are narrowly construed:

“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.”



What is a “Meeting?”

A meeting occurs whenever a majority of the members of the Board or of a committee come together at the same time or place



Meetings May Be:

- Formal or informal
- Involve only discussion or action, or both
- In person, or through technology



Meetings Can Include:

- Retreats
- Site visits
- Social gatherings or “networking” before or after a noticed meeting



Unlawful Meetings

- “Pre-meetings” and “Post-meetings” held without notice to the public
- Serial meetings
- **COVID EXCEPTION:** a body may receive updates regarding COVID from federal, state, or local officials (such as impacts and gov’t response). Members may ask questions of the officials, but must NOT ask questions among themselves or take action. (Order N-35-20).

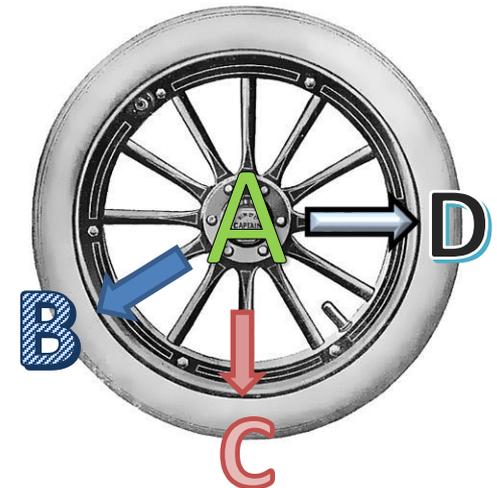


Types of Serial Meetings

- “Chain” meetings: Member A talks to member B, who talks to Member C...



- “Hub-and-Spoke” meetings: A talks to B, then C, then D...



How Serial Meetings Occur

- Through technology:
 - Text
 - Email
 - Phones, etc.



- Through staff



Discussions With Staff

Staff *answer questions* or *provide information* to individual Board members *so long as* any views or positions expressed by the member are *not communicated* to other members of the Board



What ISN'T a Meeting?

- Attendance of majority at
 - regional/state/national conference
 - local meeting open to the public
 - social, recreational, ceremonial event not sponsored by or for the body
- Are OK *PROVIDED* no collective discussion of Commission business

Meetings: Locations and Time

- Meetings must be held within Alameda County.
- **COVID EXCEPTION:** During the emergency, a quorum need NOT attend within the jurisdiction covered by the Body.
- Meetings must occur at a time and location set by ordinance, resolution, or bylaws
- Meetings include teleconferences



“Teleconference” =

- “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”
- “Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.”

Teleconference Rules

1. Each teleconference location must be identified in the notice and agenda
2. Agenda must be posted at each location
3. Each location must have public access
4. Public must have opportunity to speak at each location
5. A quorum must be inside the County
6. All votes must be taken by rollcall

COVID EXCEPTIONS: Item Nos. 1, 2, 3, 4, and 5 are not applicable during the COVID declared emergency. (Governor Order N-29-20.) The public must have an opportunity to speak, but that can be set up telephonically. The Order waived the requirement to provide a physical space for the public to speak.

If the body holds a teleconference meeting, it must implement a procedure for receiving and resolving requests for reasonable accommodations consistent with Americans with Disabilities Act. It must also advertise the procedure that is used so that the public may observe the meeting and offer public comment. (Id.)

Teleconference cont.

- The body must “conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency”



Notice & Agenda Requirements

- Regular meeting agendas must be posted 72 hours in advance of the meeting
- Special meeting agendas require only 24 hours advance notice
- Agendas must describe each item to be considered in enough detail that a person of ordinary intelligence could determine whether the item is of interest



Why Does It Matter?

A body subject to the Brown Act *may not discuss* and *may not act* on items not on the agenda or that are beyond the reasonable scope of the agenda description



Very Limited Exceptions

- Public health/safety emergency
 - Immediate need to avoid serious injury to public interest



- An item continued from previous agenda *and* that last meeting was within the last 5 days

These Don't Need to be On the Agenda

- Commendations
- Announcements
- Request to agendize future items
- Limited follow-up to general public comment, to provide information or direction to staff



Rights of the Public

ACCESS TO MEETINGS

- To have meetings open and public with limited exceptions
- To have access to all agendas of public meetings and documents distributed to the Legislative Body members
- To audio/video record the meetings and to inspect any recordings of the meetings made by the agency.
- To attend without any condition precedent (e.g., cannot mandate that attendees register) **COVID EXCEPTION:**
May attend by teleconference if procedures are established.



Rights of the Public

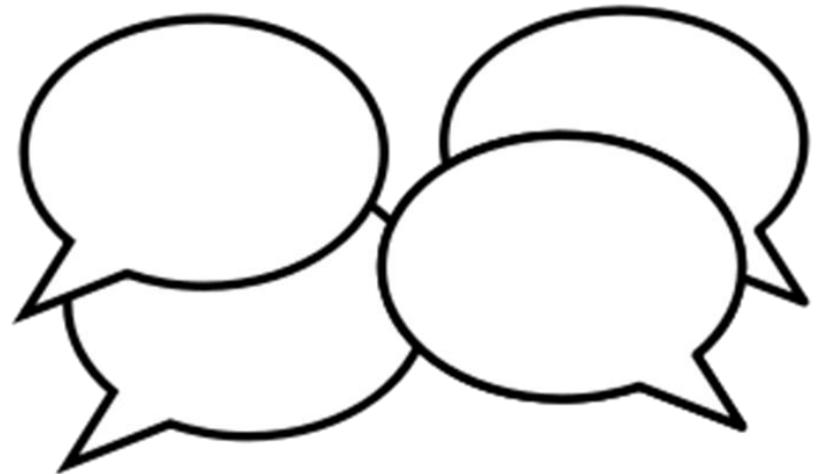
PARTICIPATION IN MEETINGS

The public has the right to address the Board at any regular or special meeting on any item on the agenda, ***before conclusion of the discussion or the Board takes action***



Types of Public Comment

- Specific: Concerning an item on the agenda, at the time of consideration
- General: Any item within the Board's subject-jurisdiction



Specific Public Comment

- Any agenda item – discussion or action
- Must occur before
 - conclusion of consideration of item (discussion item); or
 - action taken (action item)

1. =

2. =



General Public Comment

- May occur at any time in the meeting, at the discretion of the Chair/Board majority
- Is limited to matters within scope of Board's jurisdiction, even if not on the agenda
- Members may not discuss or respond substantively
- Not required at special meetings

Rights of the Speaker

- Right to equal time
- Right to criticize policy body, its members, and its staff



Limits on Public Comment

- “Up to” three minutes on an item
- Reasonable limit on total public comment time on an item
- No right to a response from policy body or its members



Controlling Unruly Speakers

- Board Chair can impose reasonable time, place, and manner restrictions on public participation
- Unruly speakers may be excluded from the forum if necessary to allow business to continue



Closed Session

Meetings must be open to the public *unless* the Brown Act specifically authorizes the Board to meet in “closed session”

It may not be likely that the Commission will have any closed session matters; any plans to hold a closed session can be discussed with office of the county counsel prior to being placed on an agenda.

Example Topics:

- Personnel
- Litigation
- Labor Negotiations
- Real Estate Negotiations



Closed Sessions



- Closed sessions are limited to a few specified circumstances and fact specific
- Standard is NOT whether the subject matter is sensitive, embarrassing, controversial or 'private'
- Only Board members and necessary support staff can be present in closed session

Criminal Penalties

- Willful violation of Brown Act
 - Action taken in violation of Brown Act
 - Member intends to deprive the public of information to which the public is entitled
- Misdemeanor
 - punishable by imprisonment in the county jail not exceeding six months, or
 - by fine not exceeding one thousand dollars (\$1,000), or
 - by both



Other Potential Penalties

- Invalidation of action taken in violation of Brown Act
- Injunction or declaratory relief to stop or prevent violations
- Disciplinary action
- Prevailing plaintiff may get attorneys' fees and/or costs
- Referral to grand jury for disclosing closed session discussion



ROBERT'S RULES

- As always, it is the role and discretion of the chair to provide helpful guidance to individuals that may digress from the appropriate form and substance related to the conduct of meetings and the presentation of motions and other highlighted procedural matters set forth below.

THE BASICS

- **Motions.** These are made in a basic two-step process. First, the person seeking to make the motion is recognized by the chair, unless the chair is making the motion, which the chair is allowed to do. Second, the member, or chair, makes a motion beginning with “I move . . .” and followed by the substance of the motion.
Once made, the motion may be seconded by another member of the body. After being seconded, the chair restates the motion and indicates that it is open for debate.
 - **Amending a Motion.** A member may amend an original motion. A member can add, subtract, or substitute or change the original motion in some fashion. This requires the same two-step process.
 - **Voting.** Once debate is complete and there are no motions to amend, the chair calls for a vote. Usually, this is done by voice vote in small bodies. However, a counted or roll call vote can be ordered by the chair or by a majority of the members.
 - **Point of Order.** The most common of these is the point of order. If a member feels that the rules of the assembly are not being observed (e.g., a member is speaking about a matter unrelated to the motion before the body), the member may “Raise a Point of Order.” This requires the chair to make a ruling as to whether the point is “well taken” or “not well taken.”
 - **Point of Information.** If a member wants to get information (to ask a question), the member raises a point of information. The chair then directs the appropriate person to answer the question.
 - **Question of Privilege.** If a member feels that the comfort of the assembly or anything else is interfering with the decision-making process, the member can raise a point of privilege and ask the chair to correct the situation (e.g., too hot, can’t hear, belligerent member).
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- In sum, if local officials are able to make a motion, amend a motion, vote, and know the key procedures for protecting members’ rights, they will be well on their way to understanding the basic process for conducting local government business. More importantly, the business may be handled in a manner that is orderly and efficient, respects minority interests, and enforces the will of the majority.

QUESTIONS?

