



Brown Act – Open Meetings Law

Marin Municipal Water District
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Purpose of the Brown Act

To guarantee the public's right to attend and participate in meetings of local legislative bodies.



Purpose of the Brown Act

“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 may retain control over the instruments they have created.”

(Cal. Gov. Sec 54950)



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CA Constitution Art. 1, sec. 3(b)(1)

The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(approved by the voters Nov. 3, 2004)



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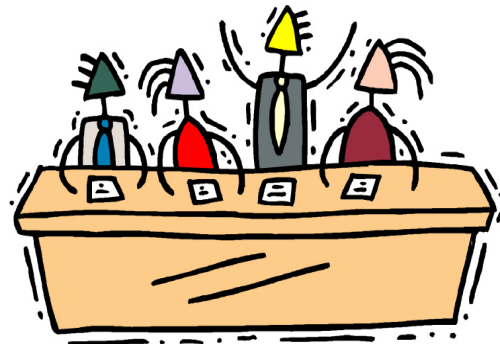
Goal of the Brown Act

- Promote transparency and public trust through:
 - Public Access to Meetings
 - Public Attendance and Participation in Meetings
 - Open Deliberations and Action



Brown Act: Basic Prohibition

- Legislative body members may not hold a meeting when a majority of them, at the same time and place “hear, discuss, deliberate or take action on” an item within their subject matter jurisdiction unless it is properly noticed and held
- Includes technological devices and means – calls, texts, e-mail




“All Meetings of...”

"Meeting" includes any gathering of a *majority* of the *members* of a legislative body at the *same time and location* to *hear, discuss, deliberate, or take action* upon any item which is within its *subject matter jurisdiction*.

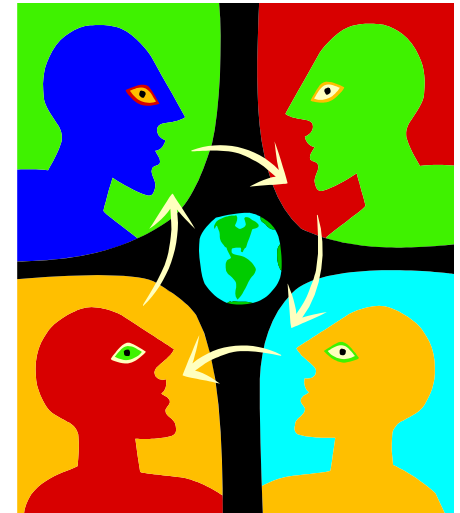
§ 54952.2(a)



What is a Meeting?

 **Key Point:** A “meeting” is hearing, discussing, deliberating, **OR** taking action

Action does not have to be taken!



Brown Act: What Is Permitted

- Individual contacts/conversations between a member and another person.
Gov't Code 54952.2(c)(1)
- Individual expression of an idea
- One-way informational communication to members of legislative body



Committees

An ***advisory committee*** composed solely of board members but less than a quorum of the board is ***not*** subject to the Brown Act, **unless:**

- It is a ***standing committee*** that has continuing subject matter jurisdiction;
or
- It has a ***meeting schedule fixed*** by formal action of the council or board.

§ 54952(b)



Committees

- Ad Hoc Committees are not Standing Committees
 - Do not have a continuing subject matter jurisdiction
 - Do not have a fixed meeting schedule
 - Can meet privately – are not required to comply with the Brown Act
 - Limited in scope
 - Advisory in nature
 - Report back to the Legislative Board



Standing Committees

- Attendance by Other Board Members
May Attend “only as observers”
54952.2(c)(6)



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Committees of the Whole

- Not addressed expressly in the Act
- If more than a quorum is present it is a meeting of the Board
- Special subject matter discussion
- Useful when the board wishes to focus on specific matters at specific meetings



Dual Noticing – Joint Meetings

- Board Meetings with other Legislative Bodies – Notice Both meetings
 - Must comply with all Act requirements
 - Can be done on one or on separate agendas
 - Must be held within one of the entities
- Board “Committees of the Whole”
 - Special meeting v. regular meeting
 - Scope of meeting



Teleconferencing

- Agenda notice
 - Must list and then must post notice at all teleconferencing locations
- Accessibility to the Public
- Location of members – at least a quorum must be within the Agency's Jurisdiction
- All votes must be by Roll Call



Serial Meetings Prohibited

- **Daisy Chain**

- Member A contacts Member B, and Member B contacts Member C, and so on, until a quorum has been involved.




- **Hub and Spoke**

- An intermediary -- such as a member of a student organization-- contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the legislative body.



Serial Meetings

-  **Key Point:** Serial meetings are prohibited
- “A majority of the members of a legislative body shall not...*use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.*”

§ 54952.2(b)(1)



Technology-Based Meetings

Use of e-mail or other technology/media by a majority of a legislative body to discuss, deliberate, or take action on items within the body's jurisdiction violates the Brown Act.



Brown Act: Technological Devices

- During a Board meeting, 3 of 5 members frequently look down into their laps. A local blogger later asks if they violated the Brown Act by sending texts or e-mails to each other about agency business.
- Was the Brown Act violated?
- Yes, if concerned public business



Meeting Documents

- The public has the right to review agendas and other writings distributed to a majority of the Council (except for privileged documents).

§§ 54957.5(a), (b), (d)

- Writings distributed during a meeting must be made available for inspection:
 - at the meeting, if prepared by the agency or a member of the Council, or
 - after the meeting, if prepared by some other person.

§ 54957.5(c)



Public Agencies Are Connecting

- Public agencies are increasingly trying to use social media
- Easy, efficient, and low-cost way to communicate with residents
- Wide range of uses
- May reach residents where other forms of media do not or cannot

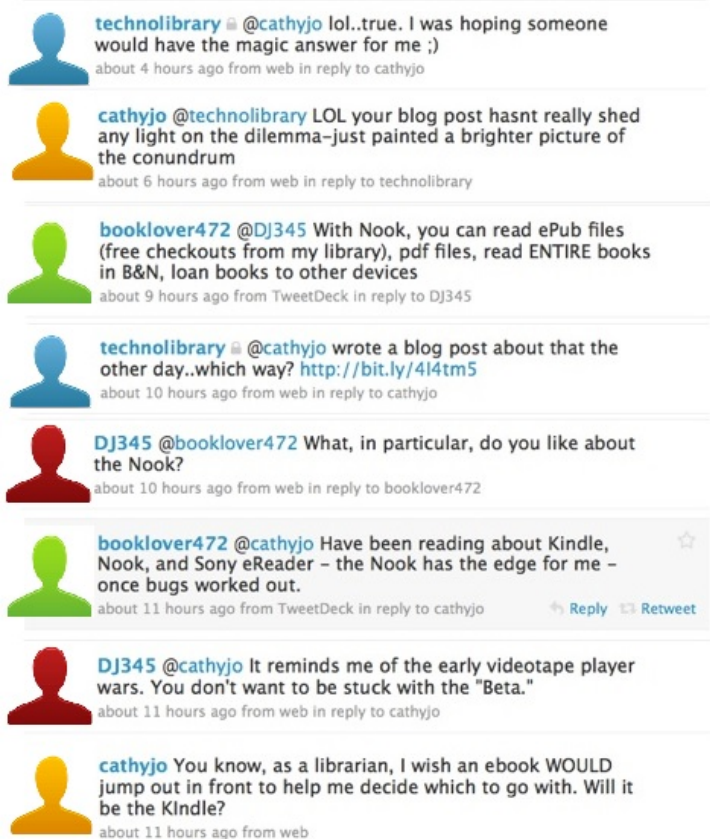


Why Use Social Media?

- Increase transparency in government
- Publicize events and projects
- Quickly distribute information
- Reduce costs; increase efficiency
- Solicit policy feedback
- Encourage civic engagement
- Improve relationships with community
- Foster information sharing



Brown Act: Improper Twitter “Meetings”?



Four different users “retweeting” and responding to one other user, in a series of comments and opinions:

- Brown Act violation?
- Individual Contacts?
- Daisy Chain Meeting?

A series of seemingly innocent “retweets,” read in conjunction with one another, may reflect an improper majority discussion on an issue.



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Brown Act in Cyberspace

- Serial meetings in cyberspace are “open and public”
 - Blog/Newspaper/Facebook/NextDoor comments
 - Has the Brown Act been satisfied?
 - Race to be first to comment?
 - Is “openness” the critical factor?



Brown Act in Cyberspace

**NOW
HIRING**

- Blog post: Agency seeking new GM
- Comment #1 (board member): We need someone with great communication skills.
- Comment #2 (board member): And with a high degree of technical knowledge
- Comment #3 (board member): Anyone will be better than the last guy
- Comment #4 (resident): Has the Brown Act just been violated?



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Brown Act: Best Practices

- Do not hit “reply all,” especially to messages sent to the entire board
- Do not send message to the entire board
- Do not comment on online posts, especially if another member of the legislative body already has



QUESTIONS?



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