

County of San Mateo

North Fair Oaks Community Council – Brown Act Basics and SB 707

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COUNTY OF **SAN MATEO**





The Brown Act is a “sunshine” law

“The people of this State do not yield their sovereignty to the agencies which serve them. 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.”

California Government Code section
54950

Brown Act: Fundamental Rule

- All meetings of a legislative body of a local agency shall be open and public

*Exceptions are few & narrowly construed

“Legislative Body”



- Includes any commission, committee, or board, permanent ***or*** temporary, decision-making ***or*** advisory, created by a formal act of the local agency

Subcommittees

- A temporary advisory committee composed solely of less than a quorum of the legislative body that serves a limited or single purpose
 - Sometimes referred to as “ad hoc committees”
 - NOT a “legislative body”
- Contrast with “standing committees”, which are “legislative bodies” subject to Brown Act:
 - Continuing subject-matter jurisdiction; or
 - Meeting schedule fixed by formal action of body

“Meeting”

- 1) When a majority of the members;
- 2) Are present at the same time and place;
- 3) To “hear, discuss, deliberate, *or* take action”;
- 4) On any item within the subject-matter jurisdiction of the legislative body

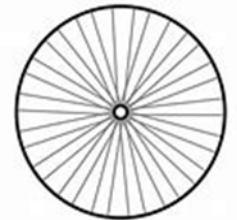
Serial “Meetings”

Individual communications can become invalid serial “meetings” in two ways:

1) CHAIN: Member A contacts Member B,
and Member B contacts Member C



2) INTERMEDIARY: An intermediary
contacts a majority of members sharing
information between members



NOT a “Meeting”

Attendance by a majority of members at:

- 1) An open and publicized conference;
- 2) An open and publicized community forum;
- 3) An open and noticed meeting of another legislative body; or
- 4) A purely social or ceremonial occasion ...

NOT a “Meeting”

...IF the members DO NOT discuss among themselves business that is within the subject-matter jurisdiction of their legislative body other than as part of the scheduled program/meeting

Regular Meetings

- For advisory committees, must be held at the time and place as designated in the noticed agenda
- Agenda publicly posted at least 72 hours in advance
- Each agenda item must be briefly described

Special Meetings

- May be called by presiding officer of legislative body (Chairperson) or a majority of the members
- Written notice to each member of body, local newspaper, and posted on agency website 24 hours before meeting

Non-Agenda Items

- “Briefly respond” to public comment
- Ask a question for clarification
- Make a brief report on own activities
- Provide reference for factual information
- Request that staff report back or that an item be placed on future agenda

Rights of the Public

- Right to attend meetings without registering name or providing other information
- Right to record proceedings with camera, audio or visual recorder, unless persistently disruptive
- Right to address the body on each item of business on the agenda and any other matter of public interest

Rights of the Public

- Right to criticize the County's policies, procedures, programs, or services, as well as employees and officers acting within the scope of their official capacity
- Right to inspect/obtain agendas and any other non-exempt writings made available to a majority of members at the meeting

Remedies

- Civil Action
 - Opportunity to cure
 - Stop future violation or invalidate past violation
 - Attorneys' fees and costs recoverable
- Criminal Charges
 - Misdemeanor
 - Requires intent to deprive public of information

Recent Changes to the Brown Act - SB 707



“Traditional” Teleconferencing Rules

Legislative bodies may meet by teleconference, through audio or video or both, for all purposes, IF:

- 1) All votes taken by roll call;
- 2) Each location identified in agenda and agenda posted at each location;
- 3) Rights of public protected at each location, including right to access and comment; and
- 4) At least a quorum of members participate from within the County

“Traditional” Teleconferencing Rules

- SB707: Watching or listening without speaking/discussing is not teleconferencing. (County already followed this rule.)

Teleconferencing as Reasonable Accommodation to Disability

Members with a disability may teleconference as a reasonable accommodation

- Must participate through audio and visual technology unless prevented by disability
- Must disclose any present adults and relationship to them
- Treated as “in-person” participation

Emergency Teleconferencing

- Teleconferencing allowed during proclaimed state of emergency or local emergency
- Legislative body must make and renew findings every 45 days that in-person meeting would present imminent risks to the health or safety of attendees
- Rollcall votes required



“Just Cause” Teleconferencing

- Allows members to teleconference for “just cause” two times* per year without complying with “traditional” rules
- Member must notify body at earliest opportunity possible, including at start of the meeting
- Quorum must participate from one, public physical location clearly identified in the agenda

“Just Cause” Teleconferencing

- Members must disclose any present adults and relationship to them
- Agenda must provide notice and opportunity for public to participate remotely
- Pause meeting if remote public participation is disrupted
- Rollcall votes required
- Meeting minutes must identify the specific “just cause” rationale, but no need to disclose diagnosis or disability



“Just Cause” Teleconferencing

- 1) Childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner
- 2) Contagious illness
- 3) A need related to a physical or mental condition that is not otherwise covered as an ADA accommodation
- 4) Travel while on official business of the legislative body or another state or local agency
- 5) Have an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner
- 6) A physical or family medical emergency
- 7) Military service obligations



“Eligible Subsidiary Body” Teleconferencing

- BOS has authorized NFOCC members to meet entirely via teleconference
- Requires approval by majority vote of the NFOCC
- If approved, public may participate either:
 - Via two-way audiovisual platform (e.g., Zoom); or
 - At a physical meeting location designated by NFOCC, with staff member present
- Members participating remotely must appear on camera (unless prevented by a disability)

“Eligible Subsidiary Body” Teleconferencing

- Members must disclose any present adults and relationship to them
- Rollcall votes required
- Elected officials serving in their official capacities may not rely on this provision

Meeting Disruptions

- Prior Law: The Council Chair could remove a member of the public who actually disrupts, disturbs, impedes or renders infeasible the orderly conduct of the meeting.
- Now: Clarifies that this rule applies also to teleconferencing/remote meetings

Public Right to Record

- Confirms that members of the public may record meetings by any non-disruptive means

Social Media Use

- SB707 makes permanent existing social media use rules
- Councilmembers can communicate with their own constituents using social media platforms, and can comment upon, like, or repost social media content *generated by constituents or their own agencies* so long as a majority of members do not “discuss among themselves” business of a specific nature either via comments or reaction emojis on such content

Social Media Use

- Councilmembers are altogether forbidden from commenting upon, liking, or reposting the social media content generated *by other members of the Council* on topics within the Council's purview

Receipt of Brown Act

- Agencies must provide a copy of the Brown Act to Councilmembers

Questions?

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