Brown Act Guidelines

Introduction

The Brown Act is a state law that governs open meetings of local government bodies. It seeks to ensure that actions and deliberations of local boards, commissions and committees—all of which are subject to the Brown Act—occur openly and with public access and input. These Guidelines provide a summary of the key requirements of the Brown Act to help members of local boards, commissions and committees comply in carrying out their official duties.

These Guidelines were developed by the Citizens' Advisory Committee Procedures Subcommittee during a series of meetings in mid-2009. While the County of Yolo has adopted these Guidelines, they are merely a summary of the law and are not a substitute for the Brown Act itself. They address only the situations that local board, commission and committee members are likely to encounter. You are encouraged to contact the Office of the County Counsel at (530) 666-8172 if a situation arises where you believe that additional guidance is necessary or appropriate.

Guidelines

1. The Brown Act applies to all "meetings." Any occasion where a majority of the members of a legislative body meet at the same time and place to *hear, discuss or deliberate* on any matter within your subject matter jurisdiction is a ***meeting*** subject to the Brown Act.

This means that:

- The Brown Act applies whenever a majority of your board, commission or committee meets to discuss, deliberate or acquire information that is within your subject matter jurisdiction—i.e., the specific area(s) of responsibility assigned for consideration by your board, commission or committee.

- This includes even informal gatherings, retreats and any other occasion on which a majority of your board, commission or committee are present in the same location.

- It also includes telephone calls, e-mail exchanges and other means by which information within your subject matter jurisdiction is exchanged between a majority of your members—often referred to as "serial meetings," discussed further below.

However:

- The Brown Act does not prohibit or restrict a member of a legislative body (or more than one member, provided no quorum is present) from meeting at any time with interested citizens. The Brown Act protects the constitutional rights of members of the public to contact their government representatives regarding issues of interest.

- Purely social occasions, or other occasions where no official business is discussed, are *not* meetings.

- *Open and public* meetings, conferences or similar gatherings of other legislative bodies (e.g., the Planning Commission or Board of Supervisors) or other public or private groups (e.g., the Sierra Club) are *not* a "meeting" of your board, council or commission, even if a majority of your members attend, *so long as* your members discuss matters within your jurisdiction *only as part of the scheduled program*.

2. Subcommittees. As noted in the Introduction, all local government bodies—including advisory boards, commissions and committees—are subject to the Brown Act. The same is often true for any subcommittees, task forces and similar subgroups created by a local government body. Like the government body that created them, subcommittees are subject to all of the requirements of the Brown Act.

There is a limited exception for an advisory committee which *is comprised solely of less than a quorum of the government body that created it*, but only so long as it is *charged with accomplishing a specific task in a limited period of time*. Such committees are referred to as "ad hoc advisory committees." Please note that if the committee includes members of the general public or another government body it is not an "ad hoc advisory committee" within the meaning of this exemption.

3. Notice and agenda requirements. Any "meeting" of a local board, commission or committee must be held in accord with certain notice and agenda requirements that appear in the Brown Act. Often, a single "notice and agenda" of a meeting will be posted, rather than two separate documents.

How much notice of items to be considered is required?

- At least 72 hours prior to a regular meeting (i.e., meetings held at regular intervals set by your bylaws or other adopted rules).

- At least 24 hours before a special meeting (any meeting other than a regular meeting).

- All agendas must be placed in a location accessible 24 hours a day.

What are the required contents of a notice (agenda)?

- "A brief, general description" of each item to be discussed.

Are there any exceptions to the notice and agenda requirement?

- Brief responses to public comment on items not appearing on the agenda are permitted, as are questions asked for clarification and direction to staff in response to such comments.

- Brief announcements or reports on activities.

- Requests to staff.

4. Rights of the public. Subject to only limited exceptions (that are unlikely to apply to advisory boards, commissions or committees), members of the public have the right to receive all reports and other documents provided to members of a local government body in connection with an agenda item. Such documents should be made available to the public at the same time they are provided to members of the local government body, though copies of documents provided by members of the public during a meeting may be provided to the public generally after the meeting. Also, during a public meeting, members of the public can address a local board, commission or committee on any topic—including but not limited to an agenda item—provided:

- The topic is within the jurisdiction of the legislative body.

- They follow established, *non-content based* regulations (meaning, among other things, that you can cut someone off if they go on too long, but you cannot cut someone off if they are critical of a project or position that your board, committee or commission may support).

- They are not unduly disruptive.

- Commentors and attendees can remain anonymous if they so desire.

5. Closed sessions. It is very unlikely that a local board, committee or commission will have any basis for holding a closed session meeting. Closed sessions are allowed in limited situations to discuss matters that may require confidentiality. Such situations include the purchase/sale of real property; pending or threatened litigation; personnel matters; and labor negotiations. ***Do not hold a closed session without first consulting with the Office of the County Counsel.***

6. Inadvertent violations of the Brown Act. There are some common situations that you need to be particularly alert to, such as informal gatherings and serial meetings, including serial meetings that may be conducted through the use of e-mail.

Be careful in the following situations:

Informal gatherings of a majority of the members of your board, commission or committee are likely to occur from time to time. This can include attendance at picnics, school events, fundraisers and other community events. These gatherings, *by themselves*, do not constitute a "meeting" under the Brown Act. However, as noted earlier, a majority of your board, commission or council must guard against discussing matters that are within your subject matter jurisdiction. The only exception arises for open and public gatherings where such matters are part of a scheduled program of discussion (for example, a political debate).

Serial meetings occur when a series of communications are transmitted—electronically or otherwise—between a majority of a board, commission or committee outside of a public meeting. Inappropriate e-mail communication (discussed briefly in the next bullet point, below) is a common scenario for serial meetings, but a serial meeting can also occur through an intermediary. Thus, you cannot use a member of the public or county staff to poll a majority of your members on an issue or to otherwise transmit information to a majority or your membership.

E-mail exchanges that include substantive comments on issues of public interest are particularly likely to result in an accidental violation of the Brown Act. An e-mail distribution and response list can create a "virtual meeting," even though it may not involve any simultaneous or real-time interaction among the participants. For this reason, all members of an advisory board, commission or committee should be very careful about participating in e-mail exchanges with other members on matters within the jurisdiction of the body. Such exchanges could easily develop into serial meetings, and they are discouraged for this reason.

7. Consequences of Brown Act violations. Violations of the Brown Act may result in a misdemeanor if a member attends a meeting where action is taken in violation of the Act. However, such a penalty only applies if a member intends to deprive the public of information it is entitled to under the Brown Act. All other Brown Act violations may still result in civil remedies, such as a lawsuit seeking to undo an action taken in violation of the act, to prevent future violations, or both.

Interested in learning more?

For more information about the Brown Act, please review resources available on the "open government" page of the League of California Cities website: (http://www.cacities.org/Resources/Open-Government). Also, the Attorney General has a good pamphlet that discusses the Act. It is available at http://caag.state.ca.us, by clicking on "open government," under the Programs A-Z menu; clicking on "open meetings" under Government Resources list on right side; and then selecting "The Brown Act, Open Meetings for Local Legislative Bodies" link. Please be aware that the pamphlet was prepared in 2003 and there have been some changes—particularly to strengthen rules against serial meetings—in the past few years. You can also call the Office of the County Counsel at (530) 666-8172 as specific questions arise.