



# Wild Wings Brown Act Training

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*Presented By:*

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# Intent of the Brown Act

- To ensure that **deliberations and actions** of legislative bodies are **open and public**.
- To ensure **meaningful public access** to local government decisions.
- Meetings must be open to the public, held on a regular schedule, follow a noticed agenda.
- No secret votes.
- Not just the law, but a **good business practice** as well!



# Legislative Bodies – Who Must Comply?

- The Act applies to the meetings of “**legislative bodies**” of local agencies.
  - Governing bodies
  - Subsidiary bodies
    - Any board, commission, committee, or other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body is itself a legislative body.
    - **Exception:** Ad hoc advisory committees.



# Meetings – When does the Brown Act apply?

## Meetings

- Congregation of a **majority** of members of a legislative body that meets **three elements**:
  - Same time and place
  - To hear, discuss or deliberate
  - Matter(s) of agency business
- Can include use of **technology** (email, phone) by a majority of board members to discuss an issue
- **Serial meetings** (majority conversation in a piecemeal fashion, often asynchronous)
- Meeting requires **quorum** (simple majority) to get started and stay in business



# Meetings – When does the Brown Act Not Apply to Majority Discussion?

- Conferences open to the public (e.g., annual association conferences)
- Open and publicized community meetings (e.g., local service club)
- Other legislative bodies (e.g., members of city council attending meeting of planning commission)
- Social/ceremonial events (e.g. football games, wedding, retirement party, etc.)
- BUT.... DON'T DISCUSS AGENCY BUSINESS UNLESS PART OF AGENDA OR PROGRAM!



# Meetings – Types of Meetings

- **Regular Meetings:**
  - Agenda posted in publicly accessible location 72 hours before meeting.
- **Special Meetings:**
  - Called by chair or majority of board members.
  - 24 hours before meeting: Post notice. Notify board members in writing. Notice to requesting newspapers.
- **Emergency Meetings:**
  - For health and safety emergencies.
  - Same notice requirements as for special meetings, but only one hour notice required

# Notice/Agenda and Public Participation Requirements

## Requirements For Meetings

- **Notice**
- **Agenda**
- **Open and public:** All persons must be permitted to attend, no secret voting
- **No conditions on attendance:** May not require to sign-in, cannot charge for attendance.





# Notice/Agenda and Public Participation Requirements

## Requirements For Meetings (*continued*)

- **Accessible**
  - Must provide reasonable accommodations, cannot allow some members of public to attend and others not, can't hold in facility that prohibits attendance on discriminatory bases
- **Video/audio recording**
  - Must allow photos, audio/videotaping of the meeting (unless it is disruptive to the meeting)
- **Voting (New in 2014)**
  - Must report how each individual official votes on any action, and record the vote in the minutes.



# Notice/Agenda and Public Participation Requirements

## Agendas

- Must post in a location “freely accessible to members of the public” 24/7.
- Must state time and place of meeting and a “brief general description” of each item of business to be transacted or discussed, including items to be discussed in closed session.
- People should have enough information to decide whether they want to attend.
- Notices must be posted on agency’s website, if it has one



# Notice/Agenda and Public Participation Requirements

## Items NOT on the Agenda

- No action can be taken... except when:
  - Majority decides there is an **emergency** situation; **or**
  - 2/3 of the members present (or all members if less than 2/3 are present) vote that immediate action is needed **and** the need came to board's attention after agenda was posted (regular meetings only); **or**
  - When an item appeared on the agenda of, and was continued from, a meeting held not more than 5 days earlier.



# Notice/Agenda and Public Participation Requirements

## Items NOT on the Agenda (*continued*)

- During general public comment:
  - Brief response to statements or questions during public comment is permitted
  - May refer to staff for response during meeting
  - May request staff to report back and/or place on a future agenda
- May also briefly announce or report on member's own activities



# Notice/Agenda and Public Participation Requirements

## Rights of the Public

- May address Board:
  - Matters on the agenda—before or during consideration of the item
  - Other matters within jurisdiction—regular meetings only unless Board allows otherwise
  - Brief response and/or referral to staff, but NO ACTION!
- Cannot prohibit public criticism of agency and governing body, but personal attacks need not be permitted
- **Reasonable time limitations and other regulations are permitted**



# Notice/Agenda and Public Participation Requirements

## Records & Public Access

- General rule: agendas, minutes (if any) and handouts distributed at board meetings are public records.
- Documents pertaining to an agenda item must be made available to the public (**website posting only is ok**). This includes staff handouts distributed to board members less than 72 hours prior to the meeting.
- **Handouts provided by staff during a meeting must be made available to public at same time; handouts from public must be made available after meeting.**



# Closed Sessions

- If situation meets one of the specific exceptions to the open meeting rules, may hold in closed session
- Not enough that it is sensitive, embarrassing or controversial
- Meeting is either open or closed. Cannot invite selected members of public
- **Generally used to avoid revealing confidential information that would prejudice legal or negotiating position of the body or compromise privacy interest of employee**



# Remedies For Noncompliance – Enforcement, Penalties & Remedies

## Civil Action

- District Attorney or any interested person may ask court to:
  - Stop violations
  - Determine applicability of Brown Act to certain actions
  - Compel Board to tape record closed session

## Invalidation

- Any person may seek to invalidate an action that violates the Brown Act through a civil action
- Board first has a chance to cure—best opportunity to address an issue!



# Remedies For Noncompliance – Enforcement, Penalties & Remedies

## Costs and Attorneys' Fees

- Someone who successfully invalidates an action or enforces one of the Act's civil remedies may seek court costs and attorneys' fees
- Award is only against the local agency, not individual members

## Criminal Complaints

- Within District Attorney's discretion to file
- A violation done with improper intent is a misdemeanor
- Requirements:
  - Overt act. Board must have taken action. Not just deliberation or a vote, but a collective decision.
  - Intent. Must have intended to deprive public of information to which the Board knew or should have known public is entitled.

# Governor's Executive Order N-29-20 (March 17, 2020)

- **Existing teleconferencing rules:**
  - Agendas posted at each teleconference location
  - Each teleconference location accessible to the public
  - At least a quorum participating from within the boundaries of the agency
  - Public can address body at each teleconference location



# Governor's Executive Order N-29-20 (March 17, 2020)

- **Executive Order's Rules:**
  - Waives all provisions requiring physical presence of members, staff, or the public as a condition of participation in a public meeting.
  - Give notice of the means by which members of the public can observe and offer public comment.
  - Must allow members of the public to observe and address the meeting.



Questions?