

Wild Wings Brown Act Training

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 <u>UNLESS</u> PART OF AGENDA OR PROGRAM!



Meetings – Types of Meetings

Regular Meetings:

Agenda posted in publicly accessible location 72 hours before meeting.

Special Meetings:

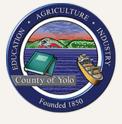
- Called by chair or majority of board members.
- 24 hours before meeting: Post notice. Notify board members in writing. Notice to requesting newspapers.

Emergency Meetings:

- For health and safety emergencies.
- Same notice requirements as for special meetings, but only one hour notice required

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.



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.

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



Items **NOT** on the Agenda

- No action can be taken... <u>except when</u>:
 - 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 <u>immediate action</u> is needed **and** the need came to board's attention <u>after agenda was posted</u> (regular meetings only); **or**
 - When an item appeared on the agenda of, and was <u>continued</u> from, a meeting held not more than 5 days earlier.

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

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



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!
- <u>Cannot</u> prohibit public criticism of agency and governing body, but personal attacks need not be permitted
- Reasonable time limitations and other regulations are permitted



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 <u>at</u> <u>same time</u>; 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 <u>any interested</u> <u>person</u> 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?