



KINGSLEYBOGARD

ATTORNEYS

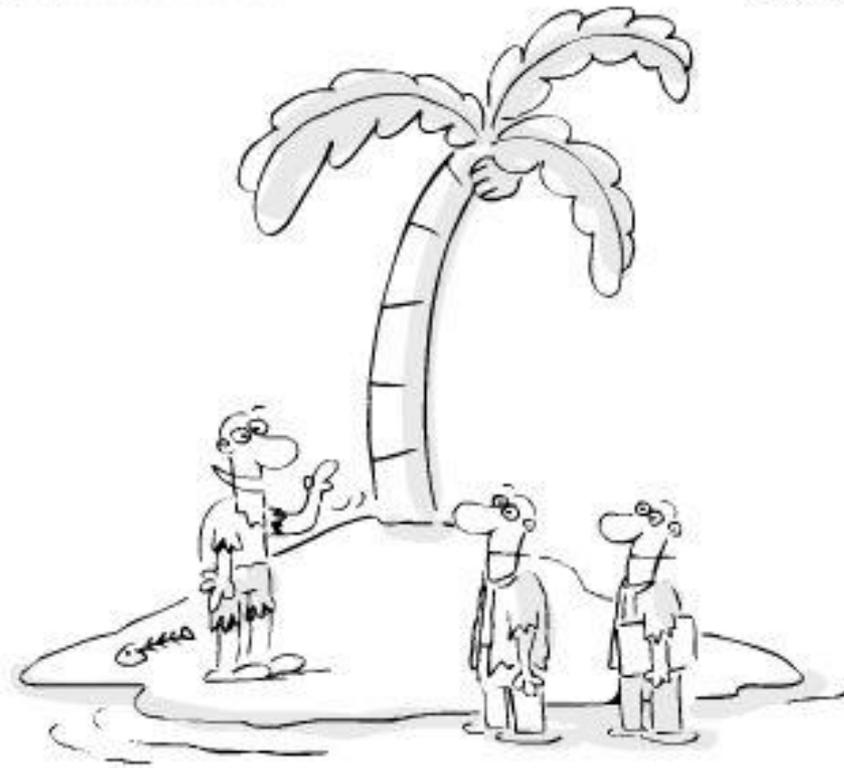
PUBLIC MEETING REQUIREMENTS UNDER THE RALPH M. BROWN ACT

PRESENTED BY
PAUL R. GANT



<http://www.evlad.com>

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"...I declare this meeting open!"

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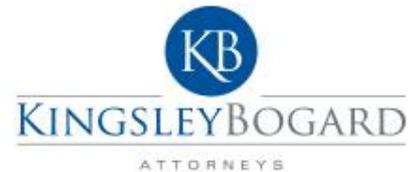
Purpose of this Presentation

- Provide a clear understanding of the requirements of the Brown Act.
- Provide the tools needed to assess whether the Board is in compliance with the Brown Act.
- Provide updates on new and upcoming issues and laws that implicate the Brown Act.



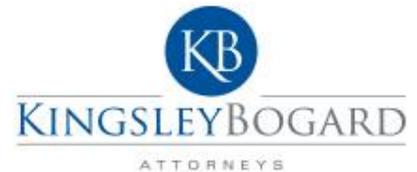
Purpose of the Brown Act

To ensure an open decision-making process through public meetings of legislative bodies of local agencies.



Legislative Bodies Subject to the Brown Act

- “Legislative body”
 - Governing body of a local agency; or
 - Subsidiary board, commission, committee, etc.



Exceptions

- When no “formal action” takes place;
- Non-standing committees comprised of less than a quorum; and
- Meetings of site councils or site advisory committees.



Newly Elected Board Members

Newly elected members are subject to the Brown Act even before assuming office.



What Constitutes a Meeting?

- Gathering of a majority of the members;
- Same time and location (teleconference is okay);
- To hear, discuss, deliberate, or take action.



“The Bones”



“This meeting was called in order to discuss the meat. It has been pointed out that there is no more meat. A motion has been made to fight over the bones.”



Examples

- Scheduled meetings;
- Informal meetings;
- Workshops; and
- Retreats



Exceptions

- Conferences;
- Meetings called by another person/agency;
- Social/ceremonial occasions; and
- Meetings of standing committees.



“Serial Meetings”

- A series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole, involves a majority of the body’s members.
- Subject to the Brown Act.



The Chain

Member A

Member B

Member C



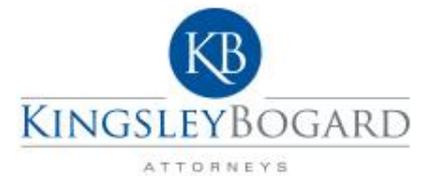
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The Spokes

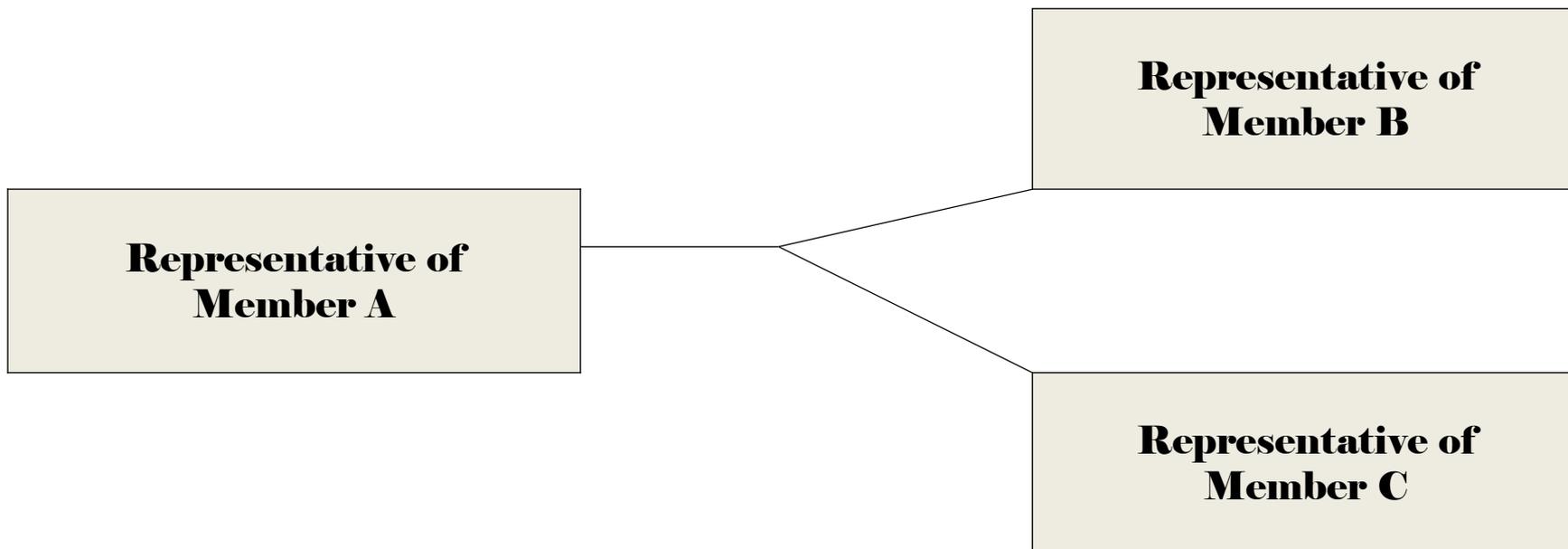
Member B

Member C

Member A



Intermediaries





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MEETING REQUIREMENTS



Agenda/Notice for Regular Meetings

- Agenda must be posted at least 72 hours before the regular meeting.
- **New Law (AB 1344)**
 - The agendas must be posted on the local agency's **website** at least 72 hours in advance of the meeting.
- Agenda contents:
 - Time and place; and a
 - Brief description of items to be discussed in open and closed session.



Agenda/Notice for Special Meetings

- Notice must be posted at least 24 hours in advance of the meeting.
- Notice contents:
 - Time and place; and a
 - Brief description of items to be discussed in open and closed session.
- ***New Law*** (AB 1344)
 - The agendas must be posted on the local agency's **website** at least 24 hours in advance of the meeting.



Requests for Mailed Notice/Agendas

- Legislative body must mail notice or agenda/agenda packet for any regular meeting.
- Request is good for the calendar year in which it was filed.
- Must be mailed on the date notice is posted.
- May charge fee for mailing.
- Must be ADA compliant.



Non-Agendized Matters

- General Rule: No action or discussion shall be undertaken on any item unless it is properly agendized.
- Exceptions:
 - Emergency situations
 - Need to act
 - A continued agenda item
 - Limited discussion and comment.



Meeting Location

- **General Rule:** Meetings must be held within the boundaries of the territory over which the legislative body exercises jurisdiction.
- **Exceptions.**



Meetings Held by Teleconference

Teleconference: A meeting of a legislative body, the members of which are in different locations, connected by electronic means, either audio or video or both.



Meeting Held by Teleconference

- Requirements
 - Quorum must participate within district boundaries.
 - Each teleconference location must be open to the public and accessible to the disabled.
 - Agenda/notice requirements.



Public Participation in Open Meetings

- Public must be allowed to speak on anything on the agenda (closed or open session) or within the legislative body's jurisdiction.
- Exception: Special Meetings.



Public Participation in Open Meetings

- Reasonable Regulations

- Legislative body may adopt reasonable time, place, and manner regulations.

- View-point neutrality.
- Specific time, place, and manner regulations.

- Impermissible restrictions.



Public Permitted to Record a Meeting

- The public may record (audio, video, movie/still camera) the meeting unless:
 - The legislative body makes “a reasonable finding” that the recording cannot continue without noise, illumination, or obstruction of view; and
 - That to do so constitutes a persistent disruption of the proceedings.



No Preconditions on Attendance

- No member of the public shall be required, as a condition of attendance at a meeting of the legislative body of a local agency:
 - To register his/her name;
 - To provide other information;
 - To complete a questionnaire; or
 - Otherwise fulfill any condition precedent to his/her attendance.



An Orderly Meeting

- If any individual, **or group of persons disrupts the meeting** to the extent that an orderly meeting cannot be conducted, those disruptive individuals may be removed.
- If order cannot be restored: meeting room may be cleared and the body can continue in session.



Emergency Meeting Requirements

- Very narrow in scope
 - Work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body; and/or
 - A crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one hour notice before holding an emergency meeting may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.



Emergency Meeting: Special Rules

- Newspapers of general circulation and radio and television stations who have requested notice, must be notified (by telephone at least one (1) hour before meeting).
- Body may meet in closed session for matters permitted to be discussed in closed session.
- Minutes, list of persons notified (or attempted), copy of any roll call vote, and any actions taken must be publicly posted for at least ten (10) days.



Public Right to Receive/Inspect Materials

- Public Records Act
- Brown Act
 - Audio/Video Recording
 - Mailed Notice
 - Closed Session Documents
 - Agendas/Other Writings
 - Fee for Copies of Records





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WHEN MAY A MEETING BE CLOSED?



Conference with Real Property Negotiator

- Meeting with local agency negotiators to grant authority regarding price and terms of payment for the purchase, sale, exchange, or lease of real property.
- 2011 AG opinion: scope is limited.
- Open session notice requirements:
 - Legislative body must identify its negotiators;
 - The properties involved; and
 - The parties with whom negotiators may negotiate.



Conference with Legal Counsel

- Meetings with legal counsel regarding either anticipated or existing litigation when open session discussion “would prejudice the position of the local agency in litigation.”
- Must note the case name if existing litigation and must note the number of pending litigation cases to be discussed.



Liability Claims

Meeting of a joint powers agency (“JPA”), or a JPA member, to discuss claims for the payment of tort, public, or Workers’ Compensation liabilities.



Threat to Security, Public Services, or Facilities

Meetings with the Attorney General, district attorney, agency counsel, sheriff or chief of police (etc.) on matters posing a threat to the security of public buildings; security of essential public services; or to the public's right of access to public services or facilities.



The “Personnel” Exception

- Only applies to public employees.
- Limited to meetings to consider:
 - Appointment, employment, evaluation of performance, discipline or dismissal of a public employee; or
 - Specific complaints or charges brought against an employee by another person or employee.



Salaries/Fringe Benefits/Mandatory Subjects

- Meetings with designated agency representative to discuss salaries and/or compensation in the form of fringe benefits for represented or unrepresented employees.
- And, for represented employees, any other item within the scope of representation.



Multijurisdictional Drug Enforcement

Meetings with a “multijurisdictional drug law enforcement agency” or to discuss ongoing investigations with the same.



AB 1344 Prohibitions

- Effective January 1, 2012:
 - The use of a special meeting for the purpose of considering, discussing, or acting upon the salary, salary schedule, or other form of compensation for any “local agency executive.”
 - Does not prohibit a special meeting to discuss executive salary in the context of the local agency’s budget discussion.



Who May Attend Closed Session Meetings?

- General rule: only membership of the governing body plus other persons or staff who have an *official or essential role* to play in the closed session meeting.
- Permitting others to attend the meeting, may eliminate the closed session exemption and create an unlawful “semi-closed” meeting.



Minutes and Reporting of Closed Session Items

- Minute book (optional).
- Report of action taken in closed session.
 - Special rules for:
 - Conference with real property negotiator;
 - Conference with legal counsel regarding pending litigation;
 - Liability claims;
 - Employee/employment matters; and
 - Conference with labor negotiator.



When Has Action Occurred?

- Does not require an actual vote.
- Includes: collective decision; commitment; promise; or an actual vote.
- Potential misdemeanor criminal prosecution for violation.



Voting: Majority Vote

- General rule: A majority vote of the total membership of the legislative body is required
- Exceptions:
 - County Boards of Education;
 - City Councils



Voting: Abstention

- Refrain from participation in the final decision.
- Abstention is appropriate in the following circumstances:
 - Remote financial interest in contract;
 - Personnel matters that uniquely affect a relative “within the 3rd degree;” or
 - Personal choice.



Voting: Recusal

- Withdrawal from the entire proceeding.
- Appropriate in the following circumstances:
 - Financial interest under the Political Reform Act;
 - Financial interest in contract; or
 - Non-economic/common law conflict of interest.



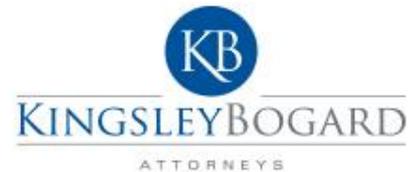
Effect of Abstention or Recusal

- Financial interest in contract: absolute bar for the Board to enter into the contract.
- Remote financial interest in contract: vote not counted.
- Political Reform Act conflict of interest: vote not counted.
 - Exceptions
- Common law: vote not counted.
- Personal choice:
 - If votes case are unequal...
 - If tie vote...



Voting: Secret Ballot

- No legislative body shall take action by secret ballot, whether preliminary or final.





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ENFORCEMENT OF THE BROWN ACT



Enforcement of the Brown Act: Criminal

- It is a misdemeanor for a member of a legislative body to attend a meeting of that body where:
 - Action is taken in violation of any provision of the Brown Act; and
 - The member intends to deprive the public of information to which he/she knows the public is entitled to.
- Fines up to \$1,000 and jail terms up to six (6) months.



Enforcement of the Brown Act: Civil

- Writ of mandamus;
- Injunction; and
- Declaratory relief.
- The district attorney may also commence an action.



Enforcement of the Brown Act: Prerequisites to a Civil Suit

- Demand
- Opportunity to correct
 - Within 30 days of receipt of demand, the legislative body shall either:
 - Cure or correct the action and inform the demanding party, in writing, of its actions; or
 - Inform the demanding party in writing of its decision not to correct
- Filing the civil action



Disclosure of Confidential Information Acquired During a Closed Session

- Injunctive relief to prevent disclosure;
- Referring to the grand jury members; and
- Disciplinary action against employee who willfully disclosed information.
- Non violations
 - Confidential inquiries or complaints;
 - Opinions;
 - Information that is not confidential;
 - Whistleblowers



Effect of a Violation

- Most actions are legally null and void if they violate the Brown Act.
- Exceptions:
 - Action taken that was in substantial compliance with the Brown Act;
 - Action taken in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement therefore;
 - Action taken that was taken in connection with the collection of any tax; or
 - Action taken where the complaining parties had good and sufficient notice even though legislative body failed to comply with notice requirements.

Effect of Acting to Cure

- The fact that a legislative body takes action to cure or correct a possible Brown Act violations shall not be construed as, or admissible as, evidence of a violation of the Brown Act.



Costs and Attorney Fees

- To a plaintiff
 - If awarded to a plaintiff, they are to be paid by the local agency and are not a personal liability of the public officer/employee.
- To defendant
 - Such an award will only occur where the defendant prevails and the court also finds that the action was clearly frivolous and totally lacking in merit.



Constitutional Rights to Access Government Information

- In 2004, public access to government information became a constitutional right (in California).
- Courts are required to interpret the existing access laws more favorably while invoking privacy protection in a more limited fashion.





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QUESTIONS/DISCUSSION

