GUIDELINES TO PREVENT SERIAL MEETINGS

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The purpose of these guidelines is to provide members of "legislative bodies"[1] some practical suggestions to prevent serial meetings in violation of the Ralph M. Brown Act.[2]

The Brown Act is meant to promote transparency and public participation in local government: "All meetings of the legislative body of a local agency shall be open and public. . . ."[3] The Brown Act's definition of a "meeting" is broad:

> "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.[4]

To hold a meeting, the Brown Act requires public notice to be posted that includes the items of business to be discussed at the meeting.[5] Unless there is a properly noticed meeting, a majority of the Brown Act body members may not take action, deliberate, discuss—or even "hear"—items within the subject matter of their council, board, commission, committee, or standing subcommittee. It is easy to know when a majority of Brown Act body members have congregated in the same place: Just count them. And when they do so congregate (other than at a noticed public meeting), they cannot discuss their Brown Act body's business.

NO SERIAL MEETINGS

Even when they have *not* congregated in one place, the Brown Act still prohibits communications among a majority of members about their Brown Act body's business.[6] That means that, outside of a meeting, a majority of members must not communicate *indirectly* —through intermediaries or technology— about business:

> (b)(1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.[7]

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No one and nothing may be used to facilitate relevant communications among a majority of Brown Act body members outside of a meeting: not a staff person, not a member of the public, not an email forward, not a Facebook page, etc. These types of communication among a majority of Brown Act body members (made through intermediaries or technology and not while congregated in one place) are called "serial meetings."

Serial meetings pose a special danger because they can occur *unintentionally*. Avoiding illegal serial meetings requires Brown Act body members to know the dangers and take affirmative steps to avoid them. These guidelines will help.

OLD SCHOOL PROBLEMS

A. Contacts with staff

The goal of the Brown Act is to have local government bodies deliberate and make decisions in an open and public meeting. If a staff member met individually with each Brown Act body member and served as an intermediary to forge consensus among the members, the public would be deprived of the opportunity to observe and participate in the decisionmaking process. On the flip side, if Brown Act body members showed up to conduct business without the benefit of a staff report or an opportunity to have new concepts or history explained, the meeting may become inefficient and the members would be unprepared to conduct the People's business. Neither of these two scenarios serves the public well.

The Brown Act recognizes the value of staff briefings, but imposes limits to protect its goal.[8] It allows staff members to answer questions and provide information to Brown Act body members, but prohibits staff from communicating the positions of the Brown Act body members to other members of that same body:

> [The Brown Act provides that the prohibition on serial meetings] shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.[9]

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Staff can inadvertently (or intentionally) become a conduit among a majority of the Brown Act body members in the course of providing briefs on local agency business items. Multiple members of the Brown Act body could separately give staff direction thereby shaping the ultimate recommendation to the Brown Act body as staff attempts to reconcile the differing views or direction. Members of Brown Act bodies should be careful not to cross this line.

To avoid discussing, deliberating, or taking action[10] by way of staff briefing, please consider the following guidelines:

1. Limit your interactions during individual staff briefings to asking questions and acquiring information.

2. Avoid providing staff with your views and positions during individual staff briefings (unless it is absolutely clear that the staff member is not discussing the matter with other Brown Act body members).

3. Do not ask staff to describe or speculate about the views of other Brown Act body members.

B. Contacts with constituents, developers, and lobbyists

A constituent, developer, or lobbyist can also become an intermediary among a majority of a Brown Act body causing a violation of the Brown Act. Remember, this can happen even if the Brown Act body member did not intend to participate in a violation of the Brown Act. If members share their positions with third parties, they create a potential intermediary to cause a violation of the Brown Act. And also remember, only members of the body are liable for compliance with the Brown Act.

Many constituents' unfamiliarity with the requirements of the Brown Act aggravate this potential problem because they may believe that a Brown Act body member should, in the ordinary course of performing his or her public duty, commit to a position in a private conversation in advance of a meeting.

To avoid discussing, deliberating, or taking action by way of constituent conversation, please consider the following guidelines:

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1. In private meetings, state the ground rules up front. Make it clear that the constituent should not disclose the views of other members during the conversation.

2. Engage in more listening and asking questions rather than expressing views or opinions.

3. Explain to the constituent that you will not make a final decision on a matter prior to the meeting on the subject matter.

4. At the end of the conversation, if you have disclosed your thoughts about a matter, counsel the constituent not to share your thoughts with other members of the Brown Act body.

C. Contacts with fellow Brown Act body members

Direct contact concerning local agency business with fellow members of the same Brown Act body is the most obvious means by which an illegal serial meeting can occur. This contact can occur through face-to-face or telephone conversations or text or email messages.

This is not to say that a Brown Act body member is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a *majority* of the body, no meeting has occurred.

But, there is always the risk that one participant in the communication will disclose the views of the other participant to another member, thereby creating a serial meeting in violation of the Brown Act.

If you are a member of a five-member Brown Act body, you could designate a "Brown Act body buddy" with whom you discuss local agency business. (If you are on a seven-member body, you can designate two Brown Act buddies.) Be explicit in the arrangement so that you can speak freely without concern that your views will be shared with other members of the body.

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Technology has increased the opportunity for communication outside of a noticed meeting and consequently has also increased the potential for violating the Brown Act. Social media creates the potential for an illegal serial meeting since members of the Brown Act body can learn other members' views—outside of a meeting—from the privacy of the home, car, or office. These types of communication impede the Brown Act's goal of promoting transparency and public participation in local government. Special care is warranted.

A. Emails and text messages

To avoid discussing, deliberating, or taking action by way of emails and text messages, please consider the following guidelines:

1. Do not send emails or text messages to the whole Brown Act body.

2. Use "bcc" in email communications when sending informational items to other Brown Act body members. This will help avoid the unintentional group message in the event a member hits "reply all."

3. Remind Brown Act body members to refrain from clicking "reply all" in response to your email communication.

4. Ask the city clerk or city manager to forward the informational items to other Brown Act body members.

B. Social media

Social media platforms, such as Twitter, Facebook, Instagram, etc., allow members of Brown Act bodies to share information, which may include information relating to the Brown Act body's business. If a majority of Brown Act body members are all friends on Facebook or follow each other on Twitter, those platforms could host an illegal serial meeting if the Brown Act body's business is the topic of the social media post.

To avoid discussing, deliberating, or taking action by way of social media, please consider the following guidelines:

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1. Keep information about upcoming matters before your Brown Act body *general* on social media – encouraging participation in noticed meetings is a good use of social media, but using social media as an alternative to noticed public meetings runs afoul of the goal of the Brown Act.

2. Do not enter a group page or chat for the members of your Brown Act body.

3. Do not contribute content that expresses your position regarding upcoming Brown Act body business on the City's social media page. This is more of a concern for administrative or "quasi-judicial" actions (like planning or business license applications).

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These suggested rules of conduct may seem restrictive and may make it more difficult to gather information. But following the guidelines will help assure that your conduct comports with the Brown Act's goal of achieving open government and affording the public a meaningful opportunity to participate in local government.

If you have questions about compliance with the Brown Act in any given situation, you should ask your city attorney for further guidance and advice.

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[1] Under Gov't Code § 54952, a "legislative body" includes much more than just the governing body (the city council, board of supervisors, or district board). For the purposes of the Brown Act, a legislative body includes all boards, commissions, committees, and standing subcommittees created by the governing body or by one of its subordinate bodies. This is true whether the body is advisory or decisionmaking. In this summary, we refer to "Brown Act bodies" which are the same thing as "legislative bodies" under the Brown Act.

[2] Gov't Code § 54950, et seq., which is also sometimes known as the Open Meeting Law or the Government in Sunshine Act.

[3] Gov't Code § 54953.

[4] Gov't Code § 54952.2(a).

[5] Gov't Code § 54954.2.

[6] Gov't Code § 54952.2(b)(1).

[7] Gov't Code § 54952.2(b)(1).

[8] Gov't Code § 54952.2(b)(2).

[9] Gov't Code § 54952.2(b)(2).

[10] "Action taken" means a collective decision, commitment, or promise to make a decision or an actual vote made by a majority of the members of a Brown Act body. (Gov't Code § 54952.6.)

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