

THE BROWN ACT AND SHARED GOVERNANCE STRUCTURES

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**PASADENA CITY
COLLEGE**

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Loya, Ruud & Romo
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The "Rule"



- All **meetings** of the **legislative body** of a local agency shall be **open and public**, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.
 - Gov. Code, § 54953

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Legislative Bodies



- The governing board of a school or community college district, ROP or JPA, etc.
 - Gov. Code, § 54952(a)
- Commissions, committees, boards, or other **subsidiary bodies** of a local agency, whether permanent or temporary, decision-making or advisory, **created by resolution or some other formal action** of a legislative body.
 - Gov. Code, § 54952(b)
 - Community College Auxiliary Organizations are subject to the Brown Act. (Ed. Code, § 72670.)

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Legislative Bodies



- Academic and Classified Senates and certain other shared governance structures deriving their existence from the Board are subsidiary bodies of a local agency and therefore "Legislative Bodies" subject to the Brown Act.

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Not Legislative Bodies



- **Ad Hoc Advisory** committees composed **solely** of the members of the legislative body which are less than a quorum of the legislative body.
 - Gov. Code § 54952(b)
- Except: **Standing committees** of a legislative body, irrespective of their composition, which have a **continuing subject matter jurisdiction**, or a meeting schedule fixed by resolution or other formal action of a legislative body, **are legislative bodies** for purposes of the Brown Act.

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What is a Meeting



- "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.
 - Gov. Code, § 54952.2(a)
- "Deliberate" includes the collective acquisition and exchange of facts preliminary to an ultimate decision.

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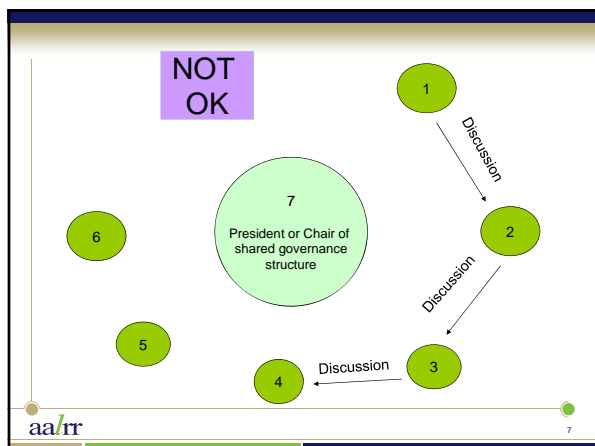
What is a "Serial Meeting"?

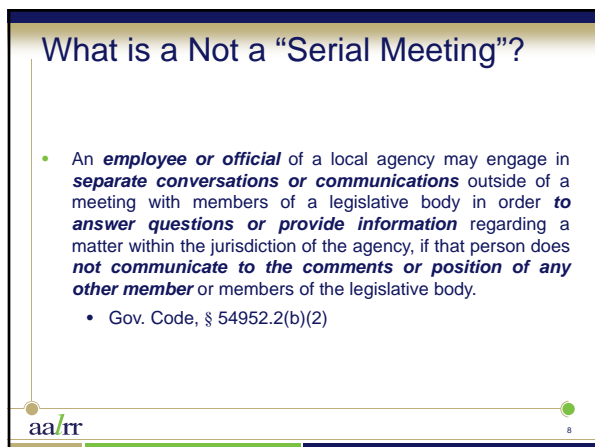


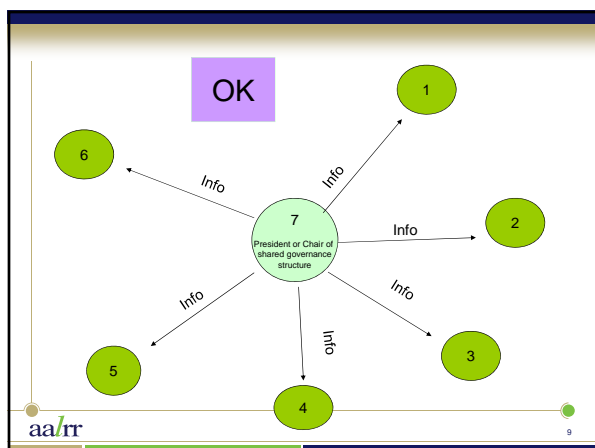
- A **series of communications**, each of which involves **less than a quorum** of the legislative body, but which taken as a whole **involves a majority** of the body's members.
- Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.
 - Gov. Code, § 54952.2(b)

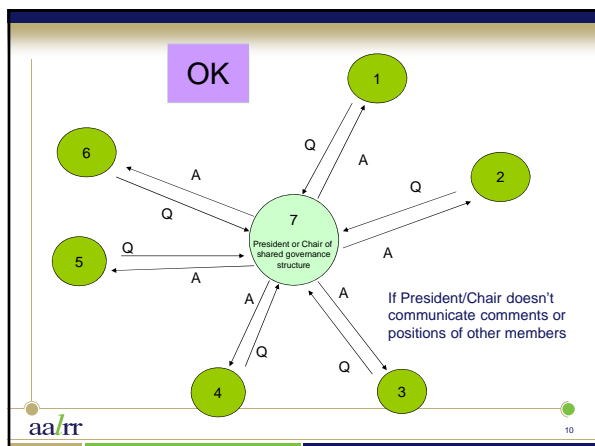
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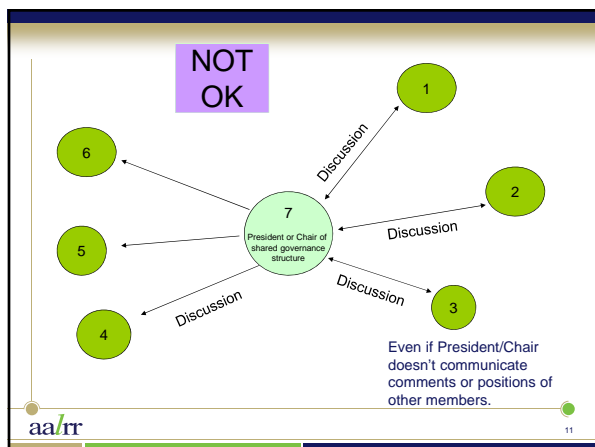
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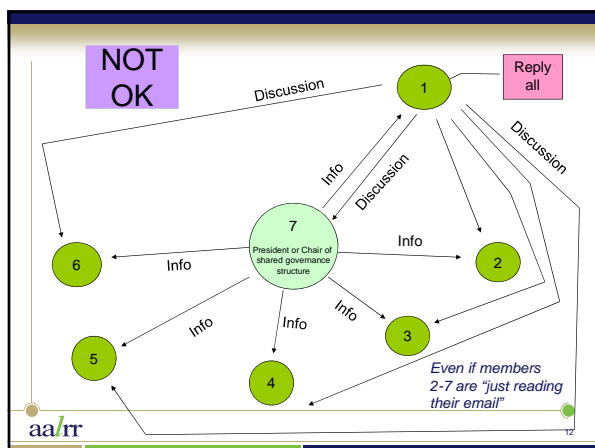












What is a Not a “Meeting”?

- **Individual contacts or conversations** between a member of a legislative body and any other person.
 - Gov. Code, § 54952.2(c)(1)
- **Attendance of a majority** of members at a **conference** or similar gathering **open to the public** discussing **issues of general concern** to the public or agencies, provided members **do not discuss** among themselves, **other than as part of the meeting, business** of a specific nature that is within the jurisdiction of the local agency.
 - Gov. Code, § 54952.2(c)(2)

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What Else is a Not a “Meeting”?

- **Attendance of a majority** of members at an **open and publicized** meeting to address a topic of local community concern by a **person or organization other than the agency**, provided members **do not discuss, other than as part of the meeting, business** of a specific nature within the jurisdiction of the legislative body.
 - Gov. Code, § 54952.2(c)(3)

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What Else is a Not a “Meeting”?

- **Attendance of a majority** at an **open and noticed** meeting of **another body** of the local agency, **or** at an open and noticed meeting of a **legislative body of another local agency**, provided members **do not discuss, other than as part of the meeting, business** of a specific nature that is within the jurisdiction of the legislative body.
 - Gov. Code, § 54952.2(c)(4).

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What Else is a Not a “Meeting”?

- **Attendance of a majority** at an **open and noticed** meeting of a **standing committee** of the body, provided the members, who are not on the standing subsidiary committee, attend **only as observers**.
 - Gov. Code, § 54952.2(c)(6).
- **Attendance of a majority** at a purely **social or ceremonial occasion** provided the members **do not discuss business** within the jurisdiction of the legislative body.
 - Gov. Code, § 54952.2(c)(5)

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Location of Meetings

- Community college district boards and their subsidiary bodies must hold their meetings within their own jurisdiction, except if certain, very limited exceptions apply.
 - Ed. Code, § 72000(d)(2)(A) and (B)

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Meeting Materials




- Any person may request that a copy of the agenda or agenda packet be mailed to that person.
 - Gov. Code, § 54954.1
- A public record that relates to an item for an open session of a regular meeting which is distributed less than 72 hours prior to the meeting must be made available for public inspection at the time the writing is distributed to a majority of the members. The location where such documents will be available must be listed on the agenda.
 - Gov. Code, § 54957.5(b)(1).

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Notice of Meetings



- Regular Meetings:
 - An agenda must be **conspicuously posted** at least **72 hours** prior to the time of regular meetings in a location **freely accessible** to members of the public.
 - Gov. Code, § 54954.2(a).
 - Agenda descriptions must reasonably inform the public of the matters to be considered in sufficient detail for members of the public to determine whether to participate at the meeting.

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Notice of Meetings

- A regular meeting agenda may **not** be **changed** within 72-hours preceding the meeting, **unless**:
 - Two-thirds of the board members present determine that there is a need for **immediate** action **and** the need to take action **came to the district's attention after** the posting of the agenda; **or**
 - The item was **previously posted** for a meeting occurring not more than **five days prior** and the **item was continued** to the next meeting.
 - Gov. Code, § 54954.2(b)

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Notice of Meetings

- Special Meetings:
 - A special meeting may be called by either the **president or by a majority** of the legislative body.
 - Notice of a special meeting must be **mailed or delivered** to the media **and posted** not less than **24 hours** in advance of the meeting.
 - Legislative body may **only** consider **business specified** in the notice.
 - No requirement to schedule "general public comment" not related to agenda items.
 - Legislative body **may meet in closed session** as part of a special meeting.
 - Gov. Code, § 54956

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Agenda Posting

New as of January 1, 2012:

When a regular or special meeting is called, the local agency must post the agenda on its Internet website, if it has one. This applies to 1) a legislative body of a local agency or any other local body created by state or federal statute, or **2) a commission, committee, board, or other subsidiary body of a local agency** as defined in Gov. Code, § 54952(b). (Gov. Code, § 54954.2(a)(1) and (d) and § 54956(c).)


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Responses to Public

- The Brown Act limits responses by members of a legislative body to public comments at any public meeting. Members may only:
 - Briefly respond to statements made or questions posed by persons making public comments;
 - Ask clarifying questions or make brief announcements;
 - Provide a reference to particular individuals or other resources for factual information; and/or
 - Request particular individuals to report back or place a matter on the agenda for a future meeting.
 - Gov. Code, § 54954.2(a)

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Public Participation



- Members of the public must be allowed to place matters directly related to shared governance business on the agenda.
 - Ed. Code, §§ 72121.5
- Members of the public including employees who are not members of the legislative body must be able to address the board regarding items on the agenda **before or during the legislative body's consideration** of the item.
 - Gov. Code, § 54954.3
- Community College Districts and their subsidiary bodies must allow speakers to be heard as agenda items are taken up.
 - Ed. Code, § 72121.5

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Public Participation



- Every regular meeting agenda shall provide an opportunity for members of the public to address the legislative body on any *item of interest* to the public, *within the jurisdiction* of the board.
- The legislative body may adopt **reasonable rules and regulations** in order to ensure the proper functioning of the meeting.
- "The legislative body . . . shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body."
 - Gov. Code, § 54954.3(c).

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Meeting Practices



- Minutes shall be taken recording all actions taken by the governing board. The minutes are public records.
- Ed. Code, §§ 35145(a), 72121(a)
- No action may be taken by secret ballot.
- Gov. Code, § 54953(c)(1)
- The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action. This applies to open as well as closed session votes. **[NEW]**
- Gov. Code, § 54953(c)(2).
- Any person attending a public meeting has the right to record the meeting by still or motion picture camera, or by video or audio tape, absent a finding of persistent disruption.
- Gov. Code, § 54953.5(a)

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Teleconferencing



- The Act permits "teleconferencing," for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body.
 - Gov. Code, § 54953(b)
- "Teleconferencing" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through audio or video, or both.

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Teleconferencing

- Teleconference meetings must comply with all requirements of the Act.
- All votes taken during a teleconference meeting must be by roll call.
- Agendas must be posted at each teleconference location, identify each teleconference location, and each location must be accessible to the public.
- During the teleconference, at least a quorum of the members of the legislative body must participate from locations within the jurisdiction of the local agency.
- The agenda must provide an opportunity for members of the public to address the legislative body directly from each teleconference location.

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Prior to Closed Session

- Prior to closed session, the legislative body must disclose **in an open meeting** the items to be discussed in closed session.
- The announcement can either repeat all of the information already stated on the agenda, or it may simply refer to the items as they are listed on the agenda by number or letter.
 - Gov. Code, § 54957.7

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Closed Sessions - Overview

- A shared governance structure would not generally have reason to meet in closed session. The six most common reasons a legislative body meets in closed session are; principal purposes:
 - Threats to public safety or security.
 - Gov. Code, § 54957(a)
 - Personnel.
 - Gov. Code, § 54957(b)
 - Confer with or receive advice of counsel.
 - Gov. Code, § 54956.9
 - Labor negotiations.
 - Gov. Code, § 54957.6
 - Real property transactions.
 - Gov. Code, § 54956.8
 - Student discipline.
 - Ed. Code, § 72122

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After Closed Session

- After closed session, the legislative body must reconvene in open session (prior to adjournment) and report any action taken in closed session, including the vote or abstention of every member present.
 - Gov. Code, § 54957.1
- The reports may be made either orally or in writing.
 - Gov. Code, § 54957.1(b).
- Any documents referred to in a report of final action must be made available on the next business day following the meeting or, in the case of substantial amendments, when any necessary rewriting is complete.
 - Gov. Code, § 54957.1(c)

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Enforcement

- Prior to commencing an action for violation of the meeting notice and agenda provisions, the interested party, or DA, must demand in writing that the board "cure or correct" the alleged violation.
 - Within 90 days of the action, or 30 days if the action was taken in open session in violation of the agenda requirements.
- Any civil action must be commenced within 15 days of the legislative body's refusal to cure, or expiration of 30-days after the demand, whichever is earlier.
- A successful plaintiff is entitled to recover attorney's fees.
 - Gov. Code, § 54960.5

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Enforcement

Past Violations

- The Brown Act allows the district attorney or any interested person to file an action to determine whether a past action violated the Act.
 - However, a "cease and desist" letter must first be submitted to the board within nine (9) months of the alleged violation.
 - The legislative body has 60 days to respond to the "cease and desist" letter.
 - Thereafter, and action can only be filed if the legislative body does not respond, or if the legislative body's response is not an unconditional commitment to "cease and desist" and not repeat the past action.
- Gov. Code, § 54960.2

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