

BROWN ACT
(Open Meeting Law)

For
ADVISORY BOARDS

Warren R. Jensen
Assistant County Counsel
July 14, 2008

Does the Brown Act Apply to Adv. Bds.?

- Beyond doubt, the DAAB is required to comply with the Brown Act.
- Requirements (generally)
 - All meetings must be noticed, with an agenda
 - Meetings limited to the agenda
 - Public participation must be allowed
 - No secret meetings
 - Closed Session Probably Not Permissible

Brown Act Reqs Apply to “Meetings”

- “Meeting” is any congregation of a quorum to hear, discuss, or deliberate on an item within its jurisdiction
 - Legal if Brown Act Reqs met
 - Notice of meeting
 - Agenda published
 - Agenda followed
 - Public input allowed
 - Illegal if any Brown Act Reqs not observed

Some Pitfalls to Avoid

- A private “Pre-meeting” by a quorum would be an illegal meeting
 - not noticed, no published agenda, not open to public, etc.
- “Seriatum” meetings, one-by-one, are an illegal meeting, if quorum participates
 - not noticed, no published agenda, not open to public, etc.

Permitted Activities

Outside Noticed Meetings

- Individual contacts with constituents, advocates, consultants, news reporters, staff, or colleagues. *But* cannot use to develop collective consensus.
- Attending conferences
- Attending community meetings
- Attending public meetings
 - County legislative body
 - Legislative body of another agency
- Social or ceremonial occasions

- When doing activities on prior slide, members must refrain from discussing items within their jurisdiction
- Good idea to avoid private social gatherings of a quorum unless others present
 - Problematic: Birthday party for member of DAAB, where only DAAB members attend, and a quorum is present
 - OK: A quorum happen to be present at a wedding, where many others are also present

All meetings must be noticed, with a published agenda

- Generally, posting required at least 72 hours ahead of time
- Agenda must list the items to be considered in general language
- Are different provisions for “special” or “emergency” meetings, but they would rarely apply to the DAAB

Meetings Limited to the Agenda

- Items off agenda may not be discussed and no action may be taken on such items.
- However, in response to public comment on a non-agenda item,
 - Brief Qs may be asked
 - Staff can be requested to respond
 - The item can be placed on a future agenda
- And, Board members may report on their activities

Public Participation Must Be Allowed

- Public comment on each and every agenda item must be allowed.
- Length of any person's public comment may be limited by rule (to 3 minutes, for example).
- General comment on matters within the DAAB's purview must be allowed.

Limits on general public comment?

- Look to action that created the DAAB, and the scope of matters entrusted to the DAAB
- If you have bylaws, those might also define the scope of the DAAB's authority
- Members of public who want to address matters beyond purview of agency can be cut off, especially if they are consuming large amounts of time

No Decisions, Except at Meetings

- Cannot go from member to member, outside meeting, to develop plan of action (seriatum meeting)
- Cannot delegate decision-making to a less-than-a-quorum subcommittee

Closed Sessions

Extremely Unlikely

- Must be statutory basis for a closed session
- Extremely unlikely that an advisory board would ever have a basis for closed session

Reference Materials

- California Govt. Code sections 54950 et seq.
- Open & Public IV: A Guide to the Ralph M. Brown Act, League of Calif. Cities (2007)
www.cacities.org/store
(purchase price = \$20.00)
- The Brown Act, free online guide published by the Calif. Attorney General in 2003
 - ag.ca.gov/publications/2003_Intro_BrownAct.pdf