



Redwood
Public Law



Planning Commission Brown Act Training & Conflicts of Interest

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Brown Act

Open Meeting Requirements

- Meetings...
- Of Legislative Bodies...
- *Shall be open and public*



Brown Act Key Elements

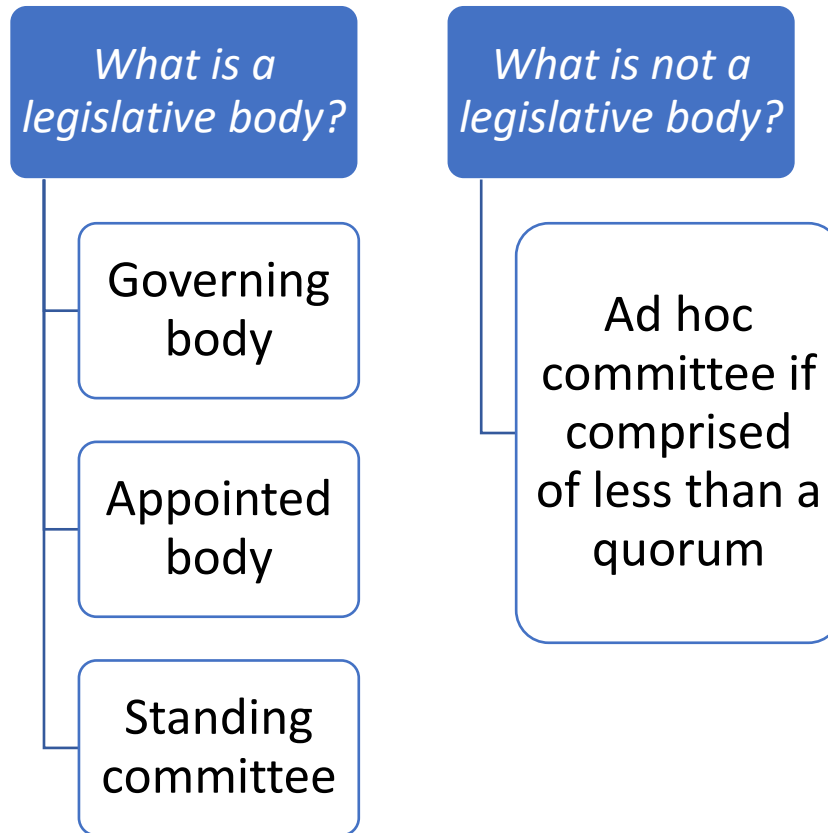


- “All meetings of the legislative body of a local agency shall be open and public.”
- “All persons shall be permitted to attend any meeting of the legislative body of a local agency.”

Default: All Commission meetings must be open and public, unless an exception is permitted.

Brown Act

Legislative Bodies



Brown Act

Definition of “Meetings”

- A congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on an item of business within the agency’s subject matter jurisdiction
- Does not need to be an item actively pending before the body



Brown Act

Exceptions

- Conferences
- Community Meetings (open to the public)
- Individual contacts
- Meetings of other legislative bodies
- Standing Committees (but can't participate)
- Social or ceremonial events

BUT a majority must not congregate to discuss anything within its subjective matter jurisdiction.



Brown Act

Avoiding “Serial Meetings”

- A majority may not, outside a meeting, use a series of communications to discuss, deliberate, or take action on any item of business
 - Does not prevent employees and officials from engaging in separate conversations outside of a meeting provided that the comments or positions of other members are not communicated



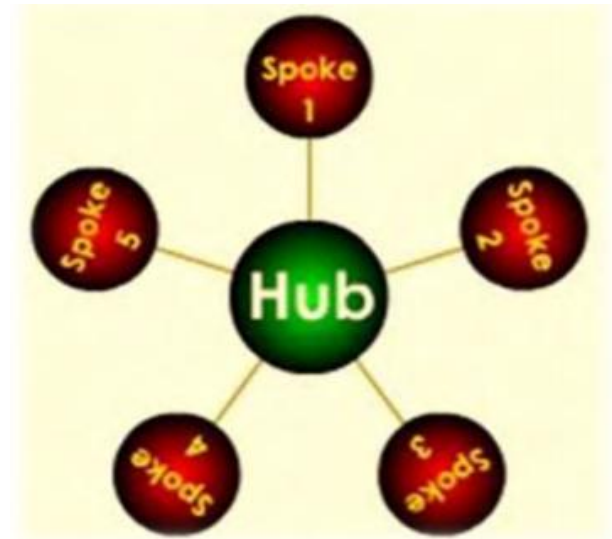
Brown Act

Avoiding “Serial Meetings”

Examples

Hub and spoke

A staff member (the hub) communicates with members of a legislative body (the spokes) one-by-one for input on a proposed action and in the process reveals members’ positions to other members in advance of the meeting.



Brown Act

Avoiding “Serial Meetings”

Examples



Daisy Chain

Member A contacts Member B,
Member B contacts Member C,
Member C contacts Member D
and so on, until a quorum has discussed,
deliberated or taken action on an item within the
legislative body’s subject matter jurisdiction.



Brown Act

Avoiding “Serial Meetings”

Examples

Emails

Informal nature of email communication is ripe for inadvertent Brown Act violations



Brown Act

Avoiding “Serial Meetings”

- Prohibition applies on a topic-by-topic basis
- Whether conversation is about the same topic should be construed broadly
- There is a temporal element to whether two conversations are about the same topic, but no bright line rule



Brown Act

Social Media



- Government Code section 54952.2
 - Members of a legislative body may not respond directly to any communications posted on the internet by other members of the same legislative body regarding a matter within the jurisdiction of the legislative body.
 - This includes comments and digital icons (emojis)
- Applies to all generally accessible social media platforms



Brown Act

Closed Sessions

- Closed session discussions are confidential
- Required to publicly report certain actions taken in closed session

Examples of Permissible Closed Session Topics:

- Real estate negotiations
- Threatened or existing litigation
- Initiation of litigation
- Personnel
- Labor negotiations
- Public security



Brown Act

Posted Agendas



- Posting requirements:
 - ***Regular meetings*** must be posted **72** hours before meeting
 - ***Special meetings*** must be posted **24** hours before meeting
- ***Exceptions***
 - Emergency
 - Urgency → need for immediate action came to agency's attention after posting the agenda



Posted Agendas Continued

JURISDICTION



- Only items that are within the commission or committee's jurisdiction can be agenized
- The scope of the commission or committee's review is limited to what has been assigned to it by a legislative body, e.g. City Council



Hypothetical

- During “Oral Communications” for items not listed on the agenda, a speaker requested that the commission review a development agreement of a nearby project, and specifically the number of parking spaces proposed and the traffic lights that the developer is going to construct.
- The commission voted to review the project and development agreement.



***Is this a
Brown Act
violation?***



Hypothetical Continued

- **Yes;** the commission has taken action on an item that was not noticed on the agenda. If the item is not agendized, it cannot be discussed or acted upon.
- In addition, it is likely that the scope of the request is outside of the commission(s)' scope of duties, and thus probably does not qualify to be placed on the agenda(s). Any discussions must be limited to such scope of duties.



*Is this a
Brown Act
violation?*



Brown Act

Public Participation Rights

- Regular meetings must provide an opportunity for the public to speak regarding any matter within the body's jurisdiction
 - Legislative body may briefly discuss these items and refer matters to staff, ***but cannot take action***
- Public can address the legislative body on matters on the agenda before or during consideration of the item



Brown Act

Public Participation Rights

- May ask, but may not require members of public to identify themselves or state address
- No secret ballots
- Can't limit negative comments
- Allocated time doubled if translator required



Brown Act

Public Participation Rights

- Individuals may be removed if engaged in disruptive conduct
- Behavior must actually disrupt, disturb, impede, or render infeasible the orderly conduct of the meeting
- Must warn individual that their behavior is disrupting meeting and they may be removed if they don't stop



Brown Act

Public Participation Rights



Ex Parte Communications

- Ex parte communication = communication outside of the quasi-judicial process
- Creates potential injustice because it is one sided
- Direct member of the public to the public hearing for consideration by entire planning commission
- The comments can be included as part of the record
- Additionally, check in with CAO about potentially resolving the problem by disclosing the contact and the substance of the communication at the hearing to get evidence on the record
- Never take a position on a pending project or you may have to recuse yourself



Brown Act

Teleconference- Traditional Rules

- Agenda posted at all locations, with teleconference locations specifically identified
- All locations open to the public with public participation possible at each location
- At least quorum of legislative body member must participate from locations within city boundaries
- Roll call votes only



Brown Act

Teleconference- Traditional Rules

- No limit on number of meetings it can be used
- No requirement to provide similar option for public
- Can participate by phone or video



Brown Act

New Option

- Provides alternative teleconference procedures
- At least a quorum of the legislative body must participate in person from a singular physical location identified on the agenda, which location will be open to the public and within the boundaries of the local agency;
- A member may only teleconference for publicly disclosed "just cause"; and
- A member may only teleconference for a limited number of meetings.



Brown Act



New Option

- Qualifying Circumstances:
 - "Just cause" means: (1) childcare or caregiving need; (2) contagious illness; (3) physical or mental disability needs; (4) immunocompromised family member; (5) physical or family medical emergency; or (6) military service (7) public official business travel;
 - "Emergency circumstances" means a physical or family medical emergency.
- Allowed for 5 meetings per year



Brown Act

New Option

- Member must make request to participate remotely as soon as possible
 - Must provide general description of reason
 - Identify any adult in the room with the member
 - Member must participate through both audio and visual technology
- Must provide public the option of participating in the meeting through similar audio/visual technology



Brown Act

Consequences of Violating the Brown Act

- Nullification of a decision made in violation of the Brown Act's requirements;
- Requirement to Cure & Correct and/or court injunction
- Criminal penalties
- Award of attorneys' fees
- Loss of public confidence.



Conflicts of Interest

Political Reform Act

Basic Rule

- Public officials* have a disqualifying conflict of interest under the Political Reform Act of 1974 when a decision has a:
 - Reasonably foreseeable material financial effect on an official's economic interest
 - Different from the effect on the public generally

* For purposes of this rule, a "Public Official" is every member, officer, or employee and certain consultant of a state or local government agency



Conflicts of Interest

What is an “Economic Interest” under the PRA?

- \$ Business investments of \$2,000 or more
- \$ Business management positions or employment in for-profit entities
- \$ Real property Interests of \$2,000 or more
- \$ Sources of income of \$500 or more (within previous 12 months)
- \$ Sources of gifts of \$590 or more (within previous 12 months)
- \$ Personal financial effects or finances



Conflicts of Interest

How do you determine if the “Economic Interest” qualifies as a Conflict of Interest under the PRA?

Four-Part Test

4: Is the official “making, participating in the making, or using their position to influence” the governmental decision from which the financial effects result?

3: Is the effect on the official the same as on the “public generally”?

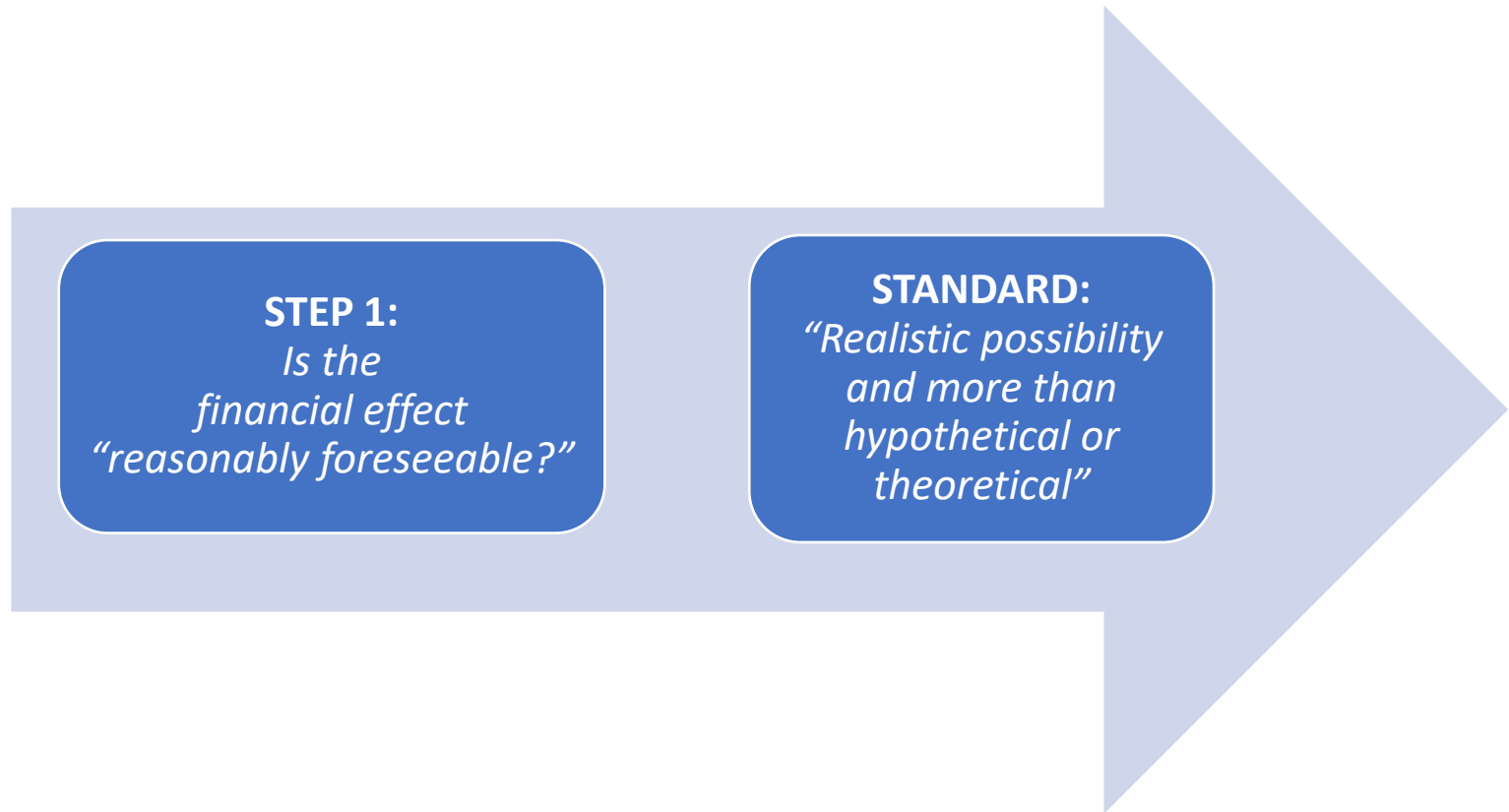
2: Is it material?

1: Is the financial effect
“reasonably foreseeable”?



Conflicts of Interest

Conflicts of Interest under PRA



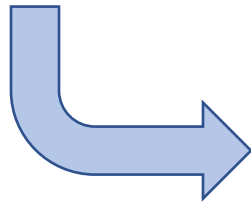
Conflicts of Interest

Conflicts of Interest under PRA

STEP
2

Q: Is it material?

A: Determine correct “materiality standard”



- Materiality is a measure of “how important” it is.
- Rules vary by type of interest.
- In general, materiality is presumed when the public official's financial interest is a party to, or the subject of, the governmental decision.



Conflicts of Interest

Examples of Materiality

- **Business Investments/Positions**
 - Increases assets of business or liability
- **Real Property Interests**
 - Owned Property close to proposed development
 - 500 Foot Rule: An official whose property is located within 500 feet of other property that is the subject of a governmental decision is presumed to have a disqualifying “material” financial interest
- **Gifts, Income, Personal Finances**
 - Indirect impact on sources of income
 - Financial benefit on family member



Conflicts of Interest

Conflicts of Interest under PRA



Is the effect on the official the same as on the “public generally”?

Effect on official is indistinguishable from its effect on the public generally if:

- Significant segment of public is affected (i.e., 25% of all businesses, real property or individuals); and
- Effect on their interest is not unique compared to the effect on a significant segment (e.g., Decision would have a disproportionate effect on development potential of official’s real property or on an official’s business due to its proximity to project that is subject of the decision).



Conflicts of Interest

Conflicts of Interest under PRA



Is the official “making, participating in the making, or using their position to influence” the governmental decision from which the financial effects result?

Determine if the official is:

- Making a decision
- Participating in a decision
- Using official position to attempt to influence a decision

Official may still participate if an exemption applies



Conflicts of Interest

A. Conflicts of Interest under PRA: Recusal

- Public official with a disqualifying interest must:
 - Publicly identify interest in sufficient detail
 - Recuse self from discussions or acting on matter
 - Leave room, unless matter on consent agenda

Exception

May speak during public comment on certain personal interests.



Questions?

