

July 23, 2010

memorandum

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To

Berkeley Housing Authority Commissioners

From

Jennifer K. Bell

RE

**BRIEFING ON THE BROWN ACT – Ralph M. Brown Act, Government Code
Section 54950 et seq.**

**Public bodies shall take their actions openly and deliberations should be conducted
openly**

- Open meetings
- Dates and times of meetings must be noticed
- Agendas must describe all matters to be discussed or considered at the meeting
- Meaningful opportunity for public comments

What is a meeting? (Section 54952.2)¹

A "meeting" includes any congregation of a majority of the members of the Board at the same place and time to hear, discuss or deliberate on any matter which is within the subject matter jurisdiction of the Authority. If the serial communications were not used to develop a consensus on action to be taken, the serial communications do not constitute a meeting subject to Brown Act requirements.

- Workshop sessions are included, as are retreats
- Action need not be taken

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

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¹ All statutory references are to the Government Code, unless otherwise noted.

- Any use of direct communication, personal intermediaries, or technological devices through which a majority of the members develop a collective concurrence as to action to be taken on an item is prohibited.
 - Serial meetings
 - Daisy Chains
 - Hubs and Spokes
 - E-mail

A meeting is not (Section 54952.2(c)):

- Community meeting, conferences and social gatherings
 - Individual contacts or conversations between a Commissioner and any other person
 - Serial lobbying of all Commissioners by members of the public is not prohibited unless they are acting as agents of any of the Commissioners
 - Conferences or similar gatherings open to the public that involve a discussion of issues of general interest
 - Open and public meetings organized to address topics of local community concern by a person or organization other than the Authority
- Attendance by a majority at other open, noticed meetings
 - Another body of the Authority
 - Legislative body of another local agency
 - Standing committee of the Authority if the Commissioner attends only as an observer

Caveat: So long as no business is discussed among the members

Types of Meetings

- Regular meeting – set day and time
- Adjourned regular meetings – new agenda must be posted if subsequent meeting is more than five (5) days later

- Special meeting – any meeting not on the regular meeting schedule
 - 24 hours advance notice
 - Public comment only on agenda items
- Emergency meeting (Section 54956.5) – in the event of a work stoppage, crippling activity, or other activity that severely impairs public health and/or safety, or a crippling disaster, mass destruction, terrorist act, etc.

Committees

All Committees composed of a quorum of the Board are subject to the Brown Act

The "Less than a Quorum" exception (Government Code Section 54952(b))

An advisory body or ad hoc committee composed solely of members of the Board and less than a quorum of the members (i.e., 3 or fewer) is not subject to the Brown Act. Such a committee must have a specific, finite charge and be required to report back to the Board within a specific period of time. This exception does not apply to committees of less than a quorum that have been delegated authority to act by the Board.

Committees that include both Board and non-Board members are required to comply with the Brown Act.

Exceptions to the "Less than a Quorum" exception

Standing Committees – A standing committee has continuing subject matter jurisdiction or a meeting schedule set by formal action of the Board.

Authority Created Corporations – An Authority created corporation is subject to the Brown Act if a Commissioner in his/her official capacity is a member of the board and if the corporation receives funds from BHA.

All meetings must be held within Berkeley

- Exceptions applicable to the Authority:
 - To inspect real property
 - To participate in interagency meetings
 - To comply with a court order
 - To meet with federal or state officials

All meeting locations must be accessible to the disabled

No meetings may be held in a facility that discriminates

No meetings may be held in a location which requires payment by the public in order to be present

Conduct of Meetings (Section 54953)

All meetings to be open to the public

- Audio and video taping, photographing, or broadcasting by the public and the media must be allowed unless it cannot be done without noise, illumination, or obstruction of views that would constitute a persistent disruption of the proceedings
- No mandatory sign-in
- No secret ballots
- Teleconferencing

Public Comment (Section 54954.3)

- Public comment must be permitted before or during the Board's consideration of an item on the agenda
- Board may limit time allocated for public testimony on particular issues and for each individual speaker
- Cannot prohibit public criticism of the policies, procedures, programs, or services of the Authority
- Special meetings must include public comment, but only on the items on the special meeting agenda

Items not on Agenda

- Board cannot discuss or take action on any item not on the agenda (Section 54954.2(a)(2))

Except:

- May respond briefly to statements made or questions posed by members of the public under public comment

- May ask questions for clarification, provide a referral to staff, ask staff to report back or schedule an item for a subsequent meeting
- May make brief report on his or her activities

Agenda Requirements (Section 54954.2)

- Agenda must be posted at least 72 hours before a regular meeting, listing time and place of meeting
- Agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting. The "brief general description" of an item generally need not exceed 20 words
- Must contain information as to how and to whom a request for disability-related modifications or accommodations may be made

Adding Items to the Agenda (Section 54954.2(b)(2))

- Items can only be added to regular meeting agendas
- 2/3rds vote of the Board members present must vote to add an item (the vote must be unanimous if fewer than 2/3rds of the Commissioners are present)
- The Board must find that there is an immediate need to take action and the need to take action came to the attention of the Authority after the posting of the agenda

or

- Upon determination by a majority vote that an emergency situation exists

or

- The item was listed on a posted agenda for a prior meeting occurring not more than five (5) days before, and the item was continued from the prior meeting

Closed Sessions

- All items to be discussed in Closed Session must be disclosed on the agenda
- Permissible Closed Sessions (applicable to the Authority)
 - Conference with Real Property Negotiators to discuss price and terms of payment (Section 54956.8)
 - Conference with Legal Counsel re Litigation (Section 54956.9)

- Threat to Public Services or Facilities (Section 54957)
- Appointment, Employment, Evaluation of performance, Discipline, or Dismissal of a Public Employee (Section 54957)
- Conference with Labor Negotiators (Section 54957.6)
- Report at conclusion of Closed Session (Section 54957.1)
 - Action taken – if final
 - Votes
 - Other specifics
- Closed Session Minutes are confidential

Violations of the Brown Act

- Criminal (Section 54959)
 - Each Commissioner who attends a meeting where action is taken in violation of the Brown Act, with the wrongful intent to deprive the public of information to which it is entitled is guilty of a misdemeanor.
- Civil (Section 54960)
 - Any person can bring an action to enjoin a violation of the Brown Act, after first requesting a cure. The successful plaintiff can be awarded attorneys' fees and costs.