

Bicycle Advisory Committee JPB

Brown Act Presentation

March 21, 2013

Lance Alarcon

(415) 995-5833 aalarcon@hansonbridgett.com

Julie Sherman

(415) 995-5185 jsherman@hansonbridgett.com



HansonBridgett
Inspired

HANSONBRIDGETT.COM ¹

Government Ethics Laws

- Minimum standard
- Not always common sense
- Appearances matter
 - Media/Public Opinion



HansonBridgett
Inspired

HANSONBRIDGETT.COM

2

The Brown Act

The Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Government Code Section 54950



HansonBridgett
Inspired

HANSONBRIDGETT.COM

3

Who Is Subject To the Brown Act?

- Legislative Body
- Any Committee created by Board of Directors
- Any Committee Created by Committee
- Applies to BAC



HansonBridgett
Inspired

HANSONBRIDGETT.COM

4

What Does the Brown Act Require?

- Local legislative bodies' meetings
- Open and public
- Agenda
- Public comment



HansonBridgett
Inspired

HANSONBRIDGETT.COM

5

What's a "Meeting"?

- Majority of members of legislative body
- Same place and time
- Hear, discuss, deliberate or take action
- Within subject matter jurisdiction of legislative body



HansonBridgett
Inspired

HANSONBRIDGETT.COM

6

What is not a “Meeting”?

- Contact between Member and a Non-Member
- Conference open to public
 - but no caucusing or discussion among members about business within the body’s subject matter jurisdiction



Closed Session Exception

- Limited topics, usually just for JPB Board
- *Very unlikely to apply to BAC*
- Specified format, notice, requirements
- *Ask counsel first!*
- Duty of confidentiality



Rights of the Public

- Public has right to speak on items to be considered
- Speakers can remain anonymous
 - Any attendance list must say “voluntary”
- Meeting facility must be accessible to the disabled
- Reasonable regulations OK (time limits)



Responding to the Public

- Cannot discuss items not on agenda, BUT
- May “briefly respond”
 - Direct staff to place the item on a future agenda
 - Provide a reference for factual information
 - Asked for clarifying information
 - Report on your own individual activities



When the Public Misbehaves

- May expel disrupters who prevent orderly meeting
- If expelling disrupters is insufficient, may expel all members of the public
- Press must be allowed to remain, except those who are themselves disrupting the meeting



Penalties/Enforcement

- Opportunity to cure
- Civil action
- Criminal action
- Public opinion



Serial Communications: Quorums outside of noticed meetings

§ 54952.2 (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.

- Daisy chain
- Hub and spoke



HansonBridgett
Inspired

HANSONBRIDGETT.COM

13

Electronic Perils

Attorney General:

Majority...may not e-mail each other [to discuss agency business]...even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board.



HansonBridgett
Inspired

HANSONBRIDGETT.COM

14

Teleconferencing

- At least a quorum must participate from locations within agency jurisdiction
- All teleconference locations must be included on the agenda and be OPEN TO THE PUBLIC
- Public must be able to address the body from any of the teleconference locations



Avoiding serial meetings

- Before you engage in business talk...
 - ASK with whom else they have discussed it
 - TELL with whom else you have discussed it
- Beware of intermediaries
- Beware of e-mail. Minimally:
 - Avoid “reply all”
 - Check who has already been copied
 - Beware of copying others



Budget Act of 2012

- Temporarily suspended a few provisions
- Virtually irrelevant
 - Few provisions affected
 - CA League of Cities and CA Special Districts Association urges continued full compliance
 - California Newspaper Publishers Association warns of political consequences



Frequently Asked Questions & Special Points

- Can I call in?
- I know it's not on the agenda, but...
- Can we go back to that item from last time?
- Can I respond to that?
- What if there is less than a quorum?

