

# **LEGAL TRAINING FOR RAC21**

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# THIS EVENING'S TOPICS

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- Advisory and Independent Redistricting Commissions under the CA Elections Code
- The Brown Act under the CA Government Code

# ADVISORY REDISTRICTING COMMISSIONS

- **ELEC 23000(a)** – Advisory redistricting commission means a body that recommends to a legislative body placement of the district boundaries for that legislative body.
- **ELEC 23001** – Members of the Advisory redistricting commission must be residents of the local jurisdiction
- **ELEC 23002(c)** – Members of the Advisory redistricting commission must not be County elected officials, or a family member, staff member, or paid campaign staff of an elected official in the County.

# ADVISORY REDISTRICTING COMMISSIONS (continued)

- The Solano County Board of Supervisors created the Supervisorial Redistricting Advisory Committee (“Committee”) on March 9, 2021
- The Solano County Board of Supervisors appointed each of you to the Committee on May 11, 2021

# BROWN ACT HISTORY

- 1952 - SF Chronicle series: “Your Secret Government”
- 1953 - The Ralph M. Brown Act signed into law
- 2004 - Proposition 59: Cal. Const. Article 1 Section 3(b)(1) “The people have the right of access to information concerning the conduct of the people’s business and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

# PURPOSE AND INTENT OF THE BROWN ACT

- ❖ California's open meeting law, aka "Sunshine Law"
- ❖ Government Code Sections 54950-54963



# PURPOSE AND INTENT OF THE BROWN ACT (continued)

“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...”

Government Code Section 54953(a)

# MEETINGS

- ❖ Meeting:
  - ❖ Any congregation of a majority of the members of a legislative body at the same time and location
  - ❖ To hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body
- ❖ Redistricting Advisory Committee Meetings
- ❖ Community Outreach Meetings
- ❖ “Meeting” is not limited to gatherings at which action is taken but also includes deliberative/informational gatherings



# WHEN DOES THE BROWN ACT NOT APPLY?

- ❖ Individual contacts & conversations (so long as not serial)
- ❖ Conferences open to the public (e.g., annual association conferences)
- ❖ Open and publicized community meetings (e.g., local service club)

## WHEN DOES THE BROWN ACT NOT APPLY?(continued)

- ❖ Meetings of other legislative bodies (e.g., members of this committee attending a Board of Supervisors Meeting)
- ❖ Social/ceremonial events (e.g. football games, wedding, retirement party, etc.)
- ❖ **But.... Don't Discuss Committee Business!**

# OOPS! WAS THAT A MEETING?

## ❖ Serial

- Hub and Spoke (i.e., a superintendent briefs board members prior to a formal meeting and reveals information about the members' respective views.)
- Daisy Chain (i.e., Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on until collective consensus has been established.)
- Email (be careful of “reply-all”)

# OOPS! WAS THAT A MEETING?

## (continued)

- ❖ Collective Briefings
  - Members cannot meet together with staff in advance of a meeting for a collective briefing
- ❖ Retreats or Workshops
  - Brown Act will apply whether the focus is on long-term agency planning or team building and group dynamics
- ❖ Informal Gatherings
  - Beware of post meeting gatherings

# AB 992 – EFFECTIVE JANUARY 1, 2021

May engage in conversations or communications on internet-based social media platform limited to the following purposes:

- ❖ Answering questions/providing information;
- ❖ Soliciting information
- ❖ Focused on communication with public being OK

# AB 992 – EFFECTIVE JANUARY 1, 2021 (cont.)

May NOT:

- ❖ Majority of members of a legislative body using social media to **discuss agency business** of a specific nature among themselves
  - Made, posted, shared, comments, emoticons, “like”
- ❖ Respond directly to any communication from another member on social media regarding a matter within their subject matter jurisdiction

# REQUIREMENTS FOR MEETINGS

- ❖ Agenda
  - All of this committee's meetings must have an agenda posted in advance (special 5-day rule for Redistricting workshops)
- ❖ Open and public
  - All persons must be permitted to attend, no secret ballots
- ❖ **No conditions on attendance**
  - **May not require to sign-in, cannot charge for attendance**

# REQUIREMENTS FOR MEETINGS (continued)

- ❖ Accessible
  - Must provide reasonable accommodations
    - cannot allow some members of public to attend and not others
    - can't hold in facility that prohibits attendance on discriminatory basis (ADA)
- ❖ Video/audio & broadcasting
  - Must allow photos, audio/videotaping of the meeting (unless it is disruptive to the meeting)
- ❖ Translation
  - If a request for translation is made within 72 hours before a workshop, live translation services must be provided



# AGENDAS

- ❖ Must post in a location “freely accessible to members of the public” 24/7.
- ❖ Must state time and place of meeting and a “brief general description of each item of business to be transacted or discussed, including items to be discussed in closed session.”
- ❖ People should have enough information to decide whether they want to attend.
- ❖ The notice and agendas for each workshop must be preserved for 10 years on the County’s redistricting webpage

# RIGHTS OF THE PUBLIC

- ❖ May address the Committee:
  - Matters on the agenda
    - Before or during consideration of the item
  - Other matters within the subject matter jurisdiction
  - Brief response, but **NO ACTION!**
  - Cannot prohibit public criticism, but there is no immunity for defamatory statements
  - Reasonable time limitations and other regulations are permitted (be consistent)

# AB 1787

- ❖ In 2016, section 54954.3 was amended to say if a legislative body limits time for public comment, it must provide at least twice the allotted time to member of public who uses a translator. However, if a legislative body use simultaneous translation equipment system to hear translated public testimony, provision is inapplicable. This became effective January 2017.

# RECORDS & PUBLIC ACCESS

- ❖ General rule: agendas, minutes & writings distributed at board meetings are public records.
- ❖ SB 343 (*signed by Governor in 2007. Amends Gov't Code Section 54957.50, effective July 2008*)
  - Documents pertaining to an agenda item distributed to board members less than 72 hours prior to the meeting must be made available to the public at the same time.

# EXEMPT DOCUMENTS

- ❖ Preliminary drafts not regularly kept
- ❖ Records pertaining to pending litigation
- ❖ Records pertaining to personal privacy or privilege
- ❖ Special election documents
- ❖ Contents of real estate appraisals

# MEETING LOGISTICS

- ❖ If technology – web, phone, etc. is not working, the notice requirements do not apply. However, the agency **MUST** provide notice as soon as possible!

# LOCATION OF MEETINGS

- ❖ **Generally, all meetings must be held within the area over which the committee has jurisdiction**
- ❖ **Things have changed with COVID!**

# REGULAR TELECONFERENCING RULES

- ❖ Can be used to receive public comment, testimony, or deliberate
- ❖ Majority required in the jurisdiction
- ❖ Teleconference location must be available to the public
- ❖ Must identify teleconference location in meeting notice and agenda
- ❖ Agenda must be posted at each teleconference location
- ❖ Agenda must allow public to address the board at each teleconference location
- ❖ All votes must be by roll call



# March 12, 2020 Executive Order N-25-20

## WAIVED

- ❖ Each teleconferenced location must be identified in the notice and agenda of the meeting
- ❖ Each teleconferenced location must be open and accessible to the public
- ❖ Agenda must provide an opportunity for member of the public to address the legislative body directly at each teleconference location
- ❖ Agenda must be posted at all teleconference location
- ❖ Majority of participants must be in locations within the boundaries of the territory which the local agency exercises jurisdiction.

# Executive Order N-25-20 (continued)

## KEPT

- ❖ Agency must give advance notice of each meeting under the regular Brown Act time frames.
- ❖ Each meeting must have **at least 1 publicly accessible location** from which members of the public have the right to attend and observe the meeting; and offer public comment.
- ❖ All votes taken during a teleconferenced meeting must be by **roll call**.
- ❖ During a meeting of a health authority, if at least 50% of quorum are within boundaries and there is health authority and teleconference number and access code is provided
- ❖ Agency must conduct manner that protects statutory and constitutional rights.

# March 17, 2020 Executive Order N-29-20

Modifications from N-25-20

- ❖ ~~Each meeting must have at least 1 publicly accessible location from which members of the public have the right to attend and observe the meeting; and offer public comment.~~ **Satisfied if allows members of the public to observe and address by telephone or some other electronic means. Must give notice of means to observe and offer public comment when posting the agenda.**
- ❖ **Must have process to swiftly respond to reasonable accommodations in favor of access**

# HOW LONG DO THESE CHANGES LAST?

- ❖ While mandated or recommended social distancing measures are in effect.

# QUESTIONS

**Any questions? Remember the County  
Counsel is here to assist you!**

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