

# Redistricting Advisory Committee

INTRODUCTION MEETING

# The Ralph M. Brown Act

Government Code Section 54950 et seq.

# History of the Brown Act

- ▶ Authored by Ralph M. Brown (1908-1966) a Central Valley assemblyman, the Legislature adopted the Brown Act in 1953 to safeguard the public's right to access and participate in local government meetings.
- ▶ **“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, except as otherwise provided in this chapter.”**
- ▶ Legislative bodies covered by the Brown Act should conduct their affairs as if within a “house of glass” (meaning, be entirely transparent)
- ▶ The Brown Act is found at California Government Code Sections 54950-54963.

Further reading: Open and Public V, p. 9 (Link on resource slide below.)

# What is the intent of the Brown Act?

- ▶ The Brown Act is also known as the “Open Meetings Law.”
- ▶ It is a set of rules designed to ensure open government and fairness.
- ▶ To ensure that deliberations and actions of legislative bodies are open and public.
- ▶ To ensure meaningful public access to local government decisions.
- ▶ Meetings must be open to the public, held on a regular schedule, follow a noticed agenda.
- ▶ No secret votes.

Further reading: Open and Public V, pp. 6, 8-9.

# Does the Brown Act Apply to the RAC?

- ▶ YES! The RAC is an advisory committee to the Board of Supervisors and so it is considered a “legislative body” under the Brown Act.

# Brown Act Communication Rule

- ▶ A majority of the RAC is prohibited from using “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action” on business within its subject matter jurisdiction outside of a meeting. Cal. Gov’t Code § 54952.2(b)(1)
- ▶ What does this mean? That the business of the RAC can only be done in a noticed, public meeting. Any other “meeting” of the RAC is prohibited (or more accurately, is a violation of the Brown Act.)

# Brown Act Meeting Rules

- ▶ A “meeting” is a congregation of a majority of the members of the RAC :
  - ▶ At the same time and place...
  - ▶ To hear, discuss, or deliberate...
  - ▶ On RAC business
- ▶ This can be in person or through technology (email, phone)
- ▶ If there is a meeting, then it requires a quorum to get started and to hear, discuss, deliberate or act.

Further reading: Open and Public V, p. 18.

# Is this a “meeting”?

- ▶ The following can be considered “meetings” of the RAC and participants would be in violation of the Brown Act:
  - ▶ Hub and Spoke “meetings” (i.e., a staff member briefs RAC members prior to a formal meeting and reveals information about the members’ respective views.)
  - ▶ Daisy Chain “meeting” (i.e., Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, sharing positions on RAC business along the way.)
  - ▶ Email—Beware of “reply all”!!! If a Reply All email is on RAC business then everyone on it is in the “meeting.”
  - ▶ Or using staff to facilitate a daisy chain or serial meeting.

Further reading: Open and Public V, pp. 21-25



# When does the Brown Act not apply?

- ▶ When RAC members are having individual contacts & conversations
- ▶ Or when RAC members attend:
  - ▶ Conferences open to the public (e.g., annual association conferences)
  - ▶ Open and publicized community meetings (e.g., local service club)
  - ▶ Other legislative bodies (e.g., members of city council attending meeting of planning commission)
  - ▶ Social/ceremonial events (e.g. football games, wedding, retirement party, etc.)
- ▶ **BUT.... DON'T DISCUSS RAC BUSINESS UNLESS IT IS PART OF AN AGENDIZED MEETING!**

Further reading: Open and Public V, pp. 18-21.

# Requirements for RAC Meetings

- ▶ Requirements For Meetings
  - ▶ Notice: Required for all meetings
  - ▶ Agenda: Required only for regular meetings
  - ▶ Open and public: All persons must be permitted to attend and actions cannot be secret (i.e. no secret voting)
  - ▶ No conditions on attendance: May not require to sign-in, cannot charge for attendance.

Further reading: Open and Public V, pp. 30-32, 34-37.

NOTE: Staff will ensure these requirements are met.

# Requirements for RAC Meetings Continued

- ▶ Accessible
  - ▶ Must provide reasonable accommodations, cannot allow some members of public to attend and others not, can't hold in facility that prohibits attendance on discriminatory bases, must be ADA accessible
- ▶ Video/audio recording
  - ▶ Must allow photos, audio/videotaping of the meeting (unless it is disruptive to the meeting)
- ▶ Voting (New in 2014)
  - ▶ Must report how each individual official votes on any action, and record the vote in the minutes.

Further reading: Open and Public V, pp. 30, 35-36.

# Requirements for RAC Meetings Continued

- ▶ The RAC can only discuss and take action on items on the Agenda.
- ▶ The RAC can NOT take action on items not on the Agenda UNLESS:
  - ▶ Majority decides there is an emergency situation; or
  - ▶ 2/3 of the members present (or all members if less than 2/3 are present) vote that immediate action is needed and the need came to board's attention after agenda was posted (regular meetings only); or
  - ▶ When an item appeared on the agenda of, and was continued from, a meeting held not more than 5 days earlier.

Further reading: Open and Public V, pp. 34-35.

# Requirements for RAC Meetings Continued

- ▶ RAC members can also address items NOT on the Agenda as follows:
  - ▶ During public comment:
    - ▶ Brief response to statements or questions during public comment is permitted
    - ▶ May refer to staff for response during meeting
    - ▶ May request staff to report back and/or place on a future agenda
    - ▶ May also briefly announce or report on member's own activities during RAC member comment period

Further reading: Open and Public V, pp. 34-35.

# Requirements for RAC Meetings Continued

- ▶ Rights of the Public at RAC meetings:
  - ▶ The public may address the RAC on:
    - ▶ Matters within the RAC jurisdiction during public comment
    - ▶ Matters on the agenda—before or during consideration of the report or action item once the Chair opens up public comment on the item or recognizes the public to speak
  - ▶ The RAC can NOT prohibit public criticism of the RAC, but CAN prohibit personal attacks
  - ▶ The RAC chair can put reasonable time limitations and regulations on attendees and speakers

Further reading: Open and Public V, pp. 34-35.

# What if I violate the Brown Act?

- ▶ Civil Action: The District Attorney or any interested party may ask the Court to:
  - ▶ Stop violations
  - ▶ Determine applicability/violation of Brown Act to certain actions
- ▶ Invalidation
  - ▶ Any person may seek to invalidate a RAC action that violates the Brown Act\*
  - ▶ NOTE: If a violation is discovered, the RAC has a chance to CURE the violation before anyone seeks invalidation by disclosure and, if possible, re-doing the action

Further reading: Open and Public V, pp. 56-57.

NOTE: Someone who successfully invalidates an action or enforces one of the Brown Act's civil remedies may seek court costs and attorneys' fees from the local Agency, not individual members.

# Want to become a Brown Act expert?

## ▶ Resources:

- ▶ “Open and Public V”—League of California Cities  
(<http://www.cacities.org/Resources-Documents/Resources-Section/OpenGovernment/Open-Public-2016.aspx>)
- ▶ “The Brown Act—Open Meetings for Local Legislative Bodies)—California Attorney General, 2003  
[http://ag.ca.gov/publications/2003\\_Intro\\_BrownAct.pdf](http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf) (NOTE: Good but dated!)
- ▶ The Brown Act, California Government Code § 54950-54963



# Ethical Obligations of RAC Members

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the slide, creating a modern, layered effect. The text is centered on the left side of the slide.

# Ethics and Conflicts of Interest

- ▶ As a RAC member, you are serving the public and doing the public's work.
- ▶ In your role you are a steward of public resources and holders of the public trust. Expected values for you in this role include trustworthiness, responsibility, respect, loyalty, compassion, and fairness.
- ▶ The public's trust and confidence in its leaders and institutions is vital to success in public service.
- ▶ Accordingly, California law requires that you act in an unbiased way and do not act when you have a conflict of interest.

# Ethics and Conflict of Interest

- ▶ Some of the basics:
  - ▶ Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
  - ▶ Must disclose your financial interests to the public (Form 700)
  - ▶ Must disqualify yourself from participating in decisions that may affect (positively or negatively) your financial interests
  - ▶ Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political supplies or purposes
  - ▶ Cannot send or be featured in mass mailings at public expense
  - ▶ Cannot make gifts of public resources or funds
  - ▶ Must disclose gifts you receive from each single source that has given gifts worth \$50 or more in a single calendar year and May not receive gifts worth a total of \$500 from a single source in a single calendar year.

# Ethics and Conflict of Interest

- ▶ When should you seek advice from legal counsel or the FPPC on a question of whether you have a conflict of interest?
  - ▶ When RAC business or contractor relates to or involves any source of income to you, your immediate family (spouse/domestic partner and dependent children).
  - ▶ When you have a direct or indirect interest in real property of \$2,000 or more or a business investment and the value of your interest/investment will be increased or decreased by RAC action.
  - ▶ You receive a gift worth a total of \$500 or more in the prior 12 months, including promised gifts, by someone related to RAC business.
  - ▶ You have personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on your ability to make a fair decision.
  - ▶ If you think a situation doesn't pass the "smell test."

# Resource

- ▶ [https://www.ca-ilg.org/sites/main/files/file-attachments/ethics\\_booklet\\_final\\_0.pdf?1569348583](https://www.ca-ilg.org/sites/main/files/file-attachments/ethics_booklet_final_0.pdf?1569348583)
- ▶ <https://www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes.html>