

# THE RALPH M. BROWN ACT

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PRESENTED BY:

THE OFFICE OF COUNTY COUNSEL

# THE HEART OF THE BROWN ACT

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“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, except as otherwise provided in this chapter.”

# APPLIES TO:

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## Local Legislative Bodies:

- Boards of Supervisors
- City Councils
- School Boards

## Groups Created by the Board:

- Commissions
- Committees
- Task Forces

## APPLIES WHEN:

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There is a gathering of a **majority (or quorum)** of the members of the legislative body to:

**1. HEAR**

Listening to staff reports or watching a movie.

**2. DISCUSS**

Does not require any action be taken.

**3. DELIBERATE**

Making decisions, taking action.

on any item of business that is within the subject matter jurisdiction of the body.

# EXCEPTIONS

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- The Brown Act does not apply to meetings of public agency employees (i.e. staff meetings).
- The passive distribution of a document to body members such as a memorandum from staff, or an opinion from legal counsel, does not constitute a meeting.
- Conferences and similar gatherings which are open to the public and deal with issues of general public concern.

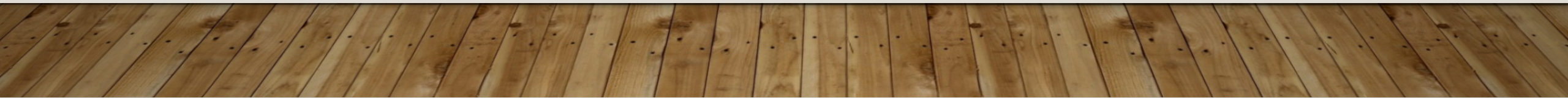


# EXCEPTIONS

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- Open and public meetings held by another person or organization.
- Open and noticed meetings of another legislative body.
- Purely social or ceremonial occasions.

**PROVIDED THAT A MAJORITY OF MEMBERS DO NOT  
DISCUSS BUSINESS AMONG THEMSELVES.**



# SUBSIDIARY BODIES

## Standing Committee

- Less than a quorum of members
- Includes other individuals not on the legislative body
- Advisory or Decision-making
- Continuing jurisdiction over a particular subject matter
- Fixed meeting schedule

BROWN ACT APPLIES

## Ad-Hoc Committee

- Less than a quorum of members
- Comprised solely of less than a quorum of the members
- Advisory only
- Short-term
- No fixed meeting schedule

BROWN ACT DOES NOT APPLY

# MEETINGS

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- Regular Meetings

Agenda must be posted **72 hours** in advance.

- Special Meetings

Agenda must be posted **24 hours** in advance.



# THE AGENDA

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- Agenda items must have enough detail to give the public a reasonable idea of what will be discussed and/or acted upon—*no guessing*.
- If it's not on the agenda, it cannot be discussed!

# ADDING AN ITEM TO THE AGENDA

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- After the agenda is posted, an item may be added:
  - Newly arising items - there is a need for immediate action and the need came to the attention of the body after the posting of the agenda.

# THE PUBLIC'S RIGHTS

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**Brown Act gives members of the public the right to:**

- Not give their name as a condition precedent to attend.
- Record the meeting.
- Comment and Criticize.

**Members of the public must be allowed to comment on:**

- Any agenda item, before or during the consideration of the item; and
- On any matter within the Board's jurisdiction.

# PUBLIC COMMENT

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- Fair and reasonable rules may be adopted to assist the body in processing comments from the public.
  - Regulating time is OK if reasonable.
  - Regulating content is not OK.
  - At least twice the allotted time should be provided to a member of the public who utilizes a translator, unless simultaneous translation is utilized.
- Public comment is not a debate. Avoid back and forth.

# CLOSED SESSIONS

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- Meeting in closed session is allowed only for specific matters as expressly authorized by statute.
- Closed session items must be described on the agenda.
- Special announcements must be made before and after the body meets in closed session.



# CLOSED SESSION TOPICS

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- **Personnel matters**

Must have legal authority to appoint/terminate.

- **Litigation:** Anticipated, pending, or initiation

Must have legal authority to direct the course of the litigation.

- **Labor negotiations**

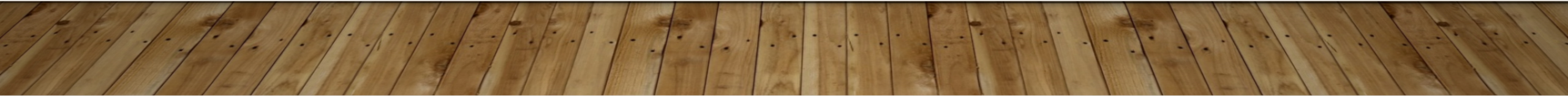
Must have legal authority to negotiate

- **Real property negotiations**

Must have legal authority to negotiate.

# SERIAL MEETINGS

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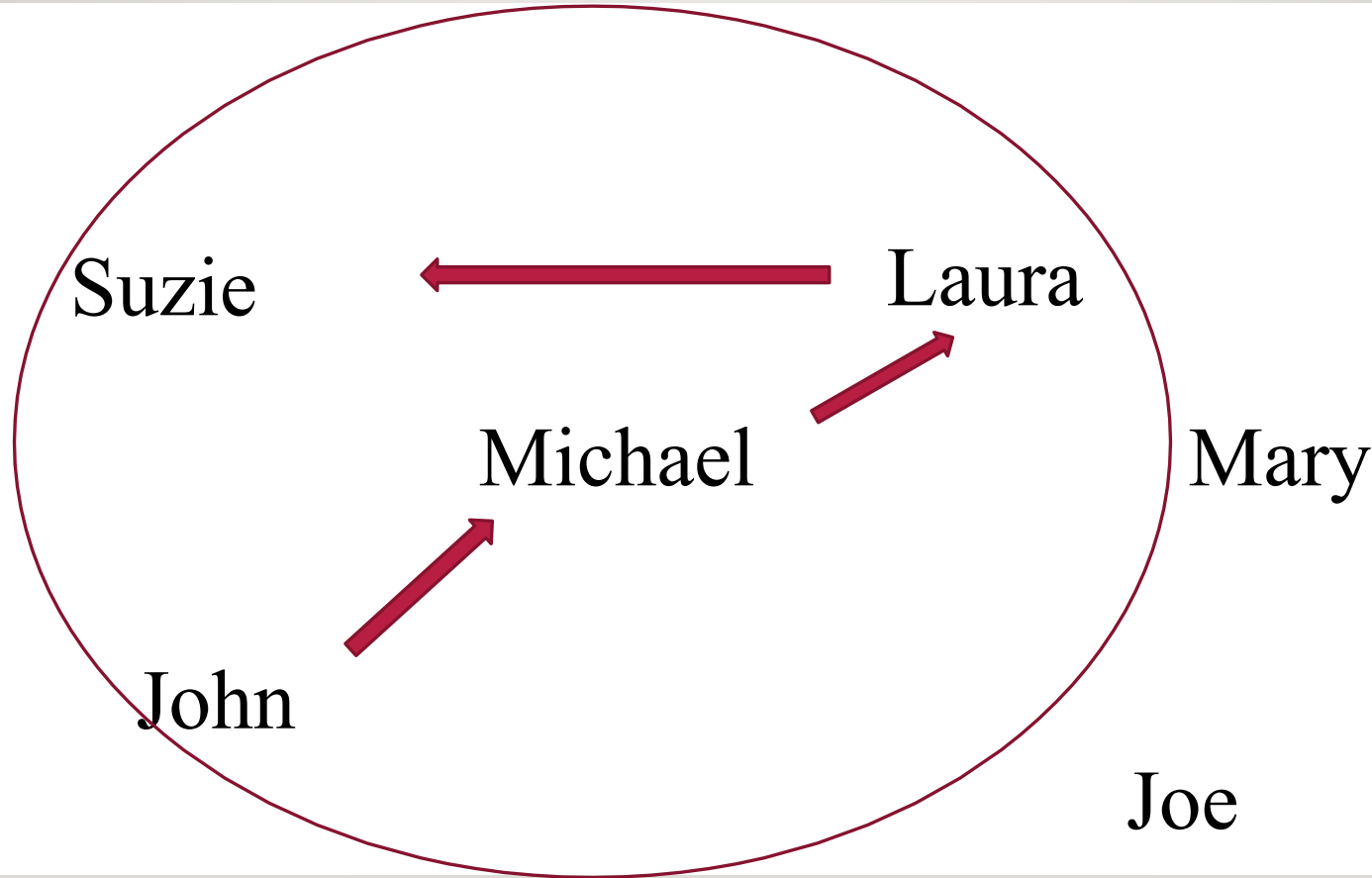
# SERIAL MEETINGS

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A serial meeting is typically a series of communications (face-to-face/ telephone/e-mail/text/social media), each of which involves less than a quorum of the body, but which taken as a whole, involves a majority of the body's members.

**General Rule:** A Majority may not use a series of communications, directly or through intermediaries, to discuss agency business.

**EXAMPLE: 6-MEMBER COMMITTEE, 4 MEMBERS (QUORUM) INDIRECTLY COMMUNICATE ON MATTERS RELATED TO THE BODY'S BUSINESS.**



# AB 992

## SOCIAL MEDIA

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- ❖ Provides a stricter rule regarding communications on social media platforms because AB 992 **prohibits communications even between two members of a legislative body.**
- ❖ Applies to internet-based social media platforms that are "open and accessible to the public." Includes (without limitation): Facebook, Twitter, Instagram, Snapchat, etc.
- ❖ **BRIGHT LINE RULE:** A member cannot respond directly to any communication on an internet-based social media platform regarding a matter within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member.



# PERMITTED CONDUCT UNDER AB 992

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- A *member* of a legislative body may engage in “separate” communications with the public using an internet-based social media platform that is open and accessible to the public regarding a matter that is within the subject matter jurisdiction of that body, **provided that a "majority" do not discuss among themselves business of a "specific nature."**
- A *member* of a legislative body may use social media to discuss **personal** matters with another member of a legislative body.

# PROHIBITED CONDUCT UNDER AB 992

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- A *majority* may not use an internet-based social media platform to discuss agency business.
- A *member* may not “**respond directly**” to any communication posted or shared by another member regarding agency business on an internet-based social media platform.

Includes: NO likes, thumbs up, emojis, or other symbols

# SIGNIFICANCE

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- AB 992 provides a stricter rule regarding communications on social media platforms because it prohibits communications even between two members of a legislative body. This is a change because under general circumstances, a single contact between one public official and another would not constitute a prohibited meeting.

# TELECONFERENCE MEETINGS AND REMOTE ATTENDANCE

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- Traditional Rule
- Just Cause & Emergency Circumstances

# TELECONFERENCE MEETINGS: TRADITIONAL RULE

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- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction.
- An agenda must be posted at each location.
- The address of each location must be listed in the notice and agenda, including a room number, if applicable.
- Each location must be fully accessible to the public.
- Each location must be ADA-compliant.
- The public's right to testify at each location must be ensured.
- All votes taken must be conducted by roll call.



# AB 2449: JUST CAUSE AND EMERGENCY CIRCUMSTANCES

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- Effective January 1, 2023, AB 2449 permits a member of a legislative body to participate in a meeting via teleconferencing without disclosing and making open to the public the teleconferencing location, under certain circumstances.
- A quorum of members must attend the meeting in person at a singular location.
- The teleconferencing member(s) must have **“just cause”** or **“emergency circumstances”** justifying their remote appearance.

## AB 2449: “JUST CAUSE”

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- **“Just cause”** may be any of the following:
  - Childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely;
  - A contagious illness that prevents a member from attending in person;
  - A need related to a physical or mental disability; or
  - Travel while on business of the legislative body or another state or local agency.

## **AB 2449: “JUST CAUSE”**

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- A member seeking to appear remotely for “just cause” must notify the legislative body at the earliest opportunity and provide a general description of the circumstances necessitating their remote appearance.
- A “just cause” remote appearance can only be made for 2 meetings per calendar year.

# AB 2449: “EMERGENCY CIRCUMSTANCES”

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- “**Emergency circumstances**” means a physical or family medical emergency that prevents a member from attending in person.
- A member must request that the legislative body allow them to appear remotely due to emergency circumstances and the legislative body must take action to approve the request.
- The description generally does not need to exceed 20 words and a member is not required to disclose a medical diagnosis or disability.



# AB 2449: ADDITIONAL REQUIREMENTS

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- Should the body decide to permit teleconferencing for the public's and/or body's benefit, and the body has a quorum at a singular physical location, then the legislative body must provide access via:
  1. a two-way audio-vision platform; or
  2. a two-way telephonic service with live webcasting  
so that the public may remotely observe the meeting and address the body.
- The meeting's agenda must notify the public of the ways to access the meeting and offer public comment via a call-in or internet-based service option, and in person.



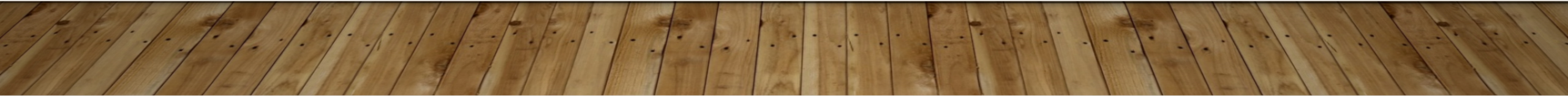
# AB 2449: ADDITIONAL REQUIREMENTS

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- A member appearing remotely must disclose if any person over the age of 18 is present.
- A member appearing remotely must participate using both audio and visual technology.
- AB 2449's teleconference procedures may not be used by a member of the legislative body to teleconference for a period of more than three consecutive months or 20% of the regular meetings within a calendar year, or more than two meetings if the legislative body meets fewer than 10 times per calendar year.

# **VIOLATING THE BROWN ACT**

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# PENALTIES AND REMEDIES

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- Criminal Penalties
  - Knowing violations are a misdemeanor.
- Civil Remedies
  - Any interested person may bring a lawsuit for declaratory and injunctive relief.
  - Body has chance to cure and correct.
  - Certain illegal action may be voided.
  - Costs and attorney fees awarded.