

THE RALPH M. BROWN ACT

PRESENTED BY:

THE OFFICE OF COUNTY COUNSEL

THE HEART OF THE BROWN ACT

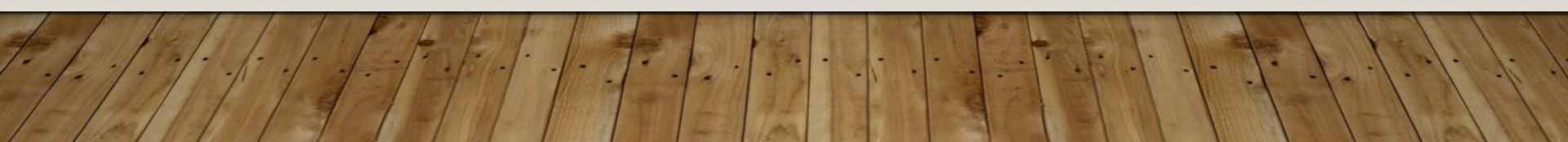
“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

APPLIES TO:

Local Legislative Bodies:

- Boards of Supervisors
- City Councils
- School Boards

Groups Created by the Board:

- Commissions
 - Committees
 - Councils
- 

APPLIES WHEN:

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

- 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 like 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

- Open and public meetings held by another person or organization
- Open and noticed meetings of another legislative body (i.e. BOS attend L.A. City Council meeting).
- Purely social or ceremonial occasions.

**PROVIDED THAT MAJORITY 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

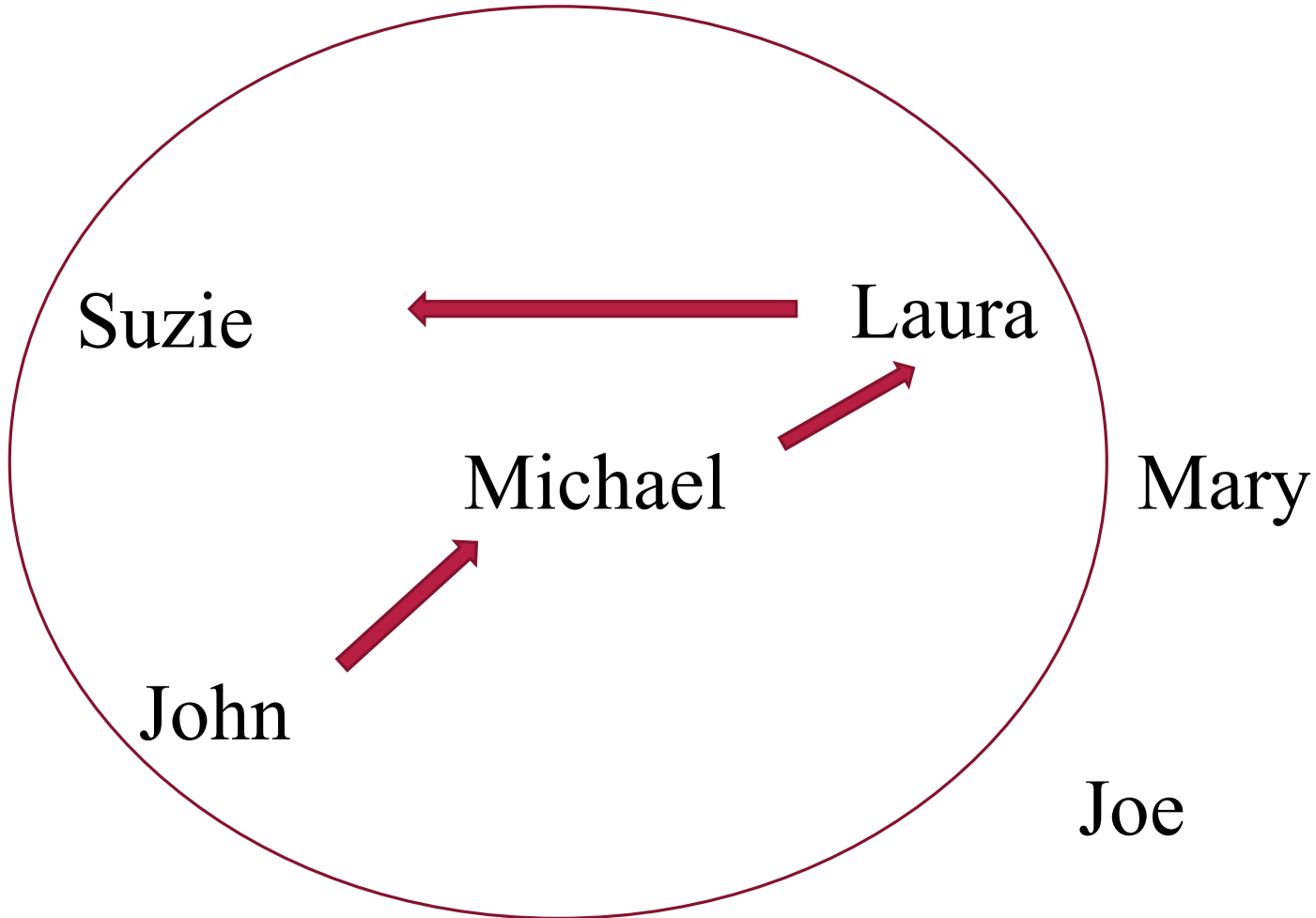
BROWN ACT DOES NOT APPLY

SERIAL MEETINGS

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.



NEW LAW – AB 992 – SOCIAL MEDIA

- Effective January 1, 2021 - Addresses communications via social media.
- Sunsets January 1, 2026

APPLICATION

- AB 992 applies to Internet-based social media platforms that are “open and accessible to the public.”
- *“Open and accessible to the public” means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.*
- Includes (without limitation): Facebook, Twitter, Instagram, Snapchat, etc.

PERMITTED CONDUCT UNDER AB 992

- 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

- 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

- 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 MEETING

- ❖ 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 361: TELECONFERENCING DURING A STATE OF EMERGENCY

- ❖ During the COVID-19 State of Emergency, the Governor issued several Executive Orders suspending provisions of the Brown Act, which allowed local agencies, including the Board and County commissions, to conduct their meetings by teleconference without having to meet certain requirements.
- ❖ The Executive Orders expired on September 30, 2021, however, a new law—Assembly Bill (AB) 361—passed this year that allows local agencies, commissions, and boards to teleconference during a proclaimed state of emergency when certain conditions are present.
- ❖ AB 361 was signed into law on September 16, 2021, and is currently in effect as of October 1, 2021.

AB 361: TELECONFERENCING DURING A STATE OF EMERGENCY

AB 361 permits teleconferencing without complying with some of the usual Brown Act teleconferencing requirements if the legislative body holds a meeting during a proclaimed state of emergency*, and:

- ❖ State or local health officials have imposed or recommended measures to promote social distancing; or
- ❖ The legislative body holds a meeting to determine, or has determined, by majority vote, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

**Can only be declared by the Governor, not declared by local officials*

AB 361: TELECONFERENCING DURING A STATE OF EMERGENCY

In order to continue to teleconference under AB 361, the legislative body is required to, not later than 30 days after teleconferencing for the first time under this law, and every 30 days thereafter, make the following findings by majority vote:

- ❖ The legislative body has reconsidered the circumstances of the state of emergency.
- ❖ Any of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - State or local officials continue to impose or recommend measures to promote social distancing.

MEETING NOTICE AND ACCESSIBILITY REQUIREMENTS UNDER AB 361

A legislative body that holds a teleconferenced meeting pursuant to AB 361 shall:

- ❖ Give notice of the meeting and post agendas, as required by the Brown Act.
- ❖ Allow members of the public to access the meeting, and the agenda shall provide an opportunity for members of the public to address the legislative body directly.
- ❖ Give notice of the means by which members of the public may access the meeting and offer public comment.
- ❖ The meeting agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

TELECONFERENCING REQUIREMENTS UNDER AB 361

- ❖ Teleconference meetings must be conducted in a manner that protects the statutory and constitutional rights of the public appearing before the legislative body.
- ❖ In the event of a disruption in broadcasting of the meeting or a disruption preventing public comment that is within the local agency's control, the legislative body cannot take further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based service option is restored.

AB 361: PUBLIC COMMENT

- ❖ The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body in “real time.”
- ❖ A legislative body that provides a *timed public comment period* for each agenda item must not close the public comment period for the agenda item, or the opportunity to register to provide public comment, until that timed public comment period has elapsed.
- ❖ A legislative body that takes *public comment separately on each agenda item* must allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment or otherwise be recognized for the purpose of providing public comment.
- ❖ A legislative body that provides a *timed general public comment period* that does not correspond to a specific agenda item shall not close the public comment period, or the opportunity to register to provide public comment, until the timed general public comment period has elapsed.

AB 361: SUSPENDED TELECONFERENCE REQUIREMENTS

- ❖ No requirement that at least a quorum of the legislative body must participate from locations within the local agency's jurisdiction.
- ❖ An agenda does not need to be posted at each teleconference location.
- ❖ The notice and agenda do not need to include the address of each teleconference location.
- ❖ No requirement to provide a physical location from which the public may attend or comment.

MEETINGS

- Regular Meeting

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

- Special Meeting

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

The notice, which also serves as an agenda, must state: (a) that a special meeting has been called by the chair or majority vote of the members, whichever is the case; (b) the time and place of the special meeting; and (c) the business to be transacted or discussed.

THE AGENDA

- 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!
- List location of the meeting and the location for document inspection.

ADDING AN ITEM TO THE AGENDA

- After the agenda is posted, an item may be added only if one of the following occurs:
 - Emergency – when prompt action is needed because of actual or threatened disruption of public facilities (only applies to bodies with ultimate decision-making authority).
 - Newly arising item - unknown at the time of the original posting and immediate action needed.

PUBLIC'S RIGHTS

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

- 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

- 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

- 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.

PENALTIES AND REMEDIES

- 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.