

# Board Member Primer

A Summary of Issues that  
Board Members Encounter



# 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 provided in this chapter.”






## What is a “Legislative Body”?

- Governing body of a local agency (i.e., City Council/Board of Supervisors)
- A local agency created by state or Community Services District)
- Any sub-committee, board, or commission created by the local agency

# Exceptions

- Ad Hoc Committee
  - Advisory to legislative body
  - **TEMPORARY**
  - Limited Purpose
  - Composed of less than quorum of legislative body's members
- Special advisory groups
  - Created by staff or a single member of the legislative body
  - Advisory to staff or the single member
- Public employees



A photograph of four business professionals in a meeting. On the left, a woman with long blonde hair in a grey blazer is talking to a woman with brown hair in a black blazer. In the center, a man in a dark suit is looking towards the woman in black. On the right, an older man with grey hair in a dark suit is looking towards the man in the center. They are all standing and appear to be in a discussion.

# What is a “Meeting”?

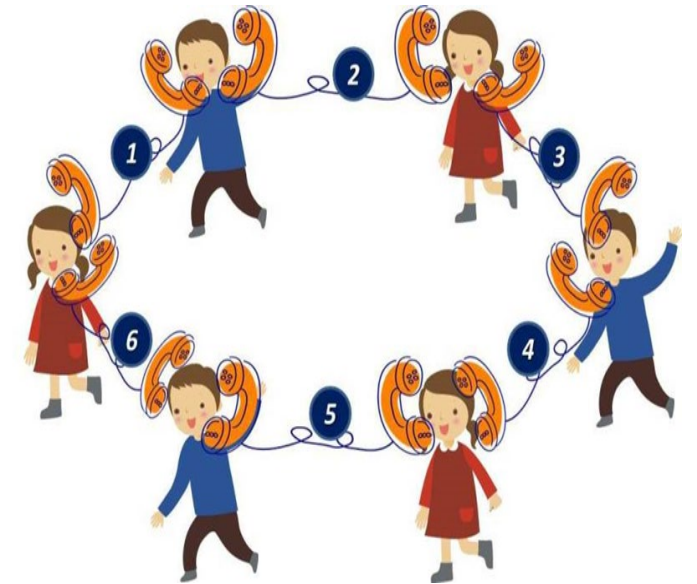
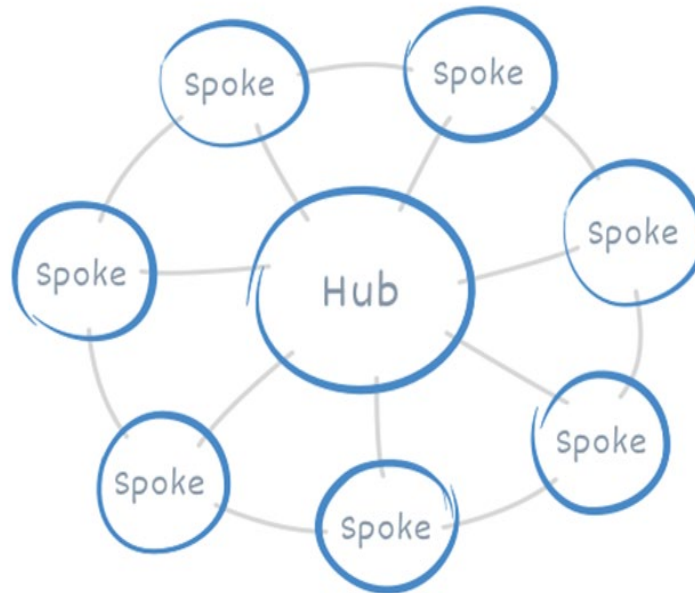
1. Any congregation of a **majority of the members** of a legislative body;
2. At the same time and location, including teleconference, to **hear, discuss, deliberate, or take action;**
3. On any item that is **within the subject matter jurisdiction** of the legislative body.

# SERIAL MEETINGS

- A majority of the members of a legislative body shall not, outside a meeting, 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.



# Examples of Serial Meetings





# Recommendations for Email/Technology

- Avoid sending emails to the whole Board
- Be careful replying to emails
  - Do not communicate your position on a pending matter
  - Do not direct a reply to majority of the body
- Think carefully before sending any email
  - Remember, your email can be forwarded by others to a majority of the body





Legal  
Constraints  
on Public  
Officials

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The First Amendment

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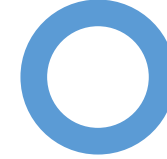
The Brown Act

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Fair Process Rules in  
Agency Proceedings

# The First Amendment

- Public Officials who use social media may be subject to the requirements of the First Amendment
- Are you communicating about matters within the subject matter jurisdiction of your agency?
- Is there two-way communication?



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# Things to Consider – The Trump Case

- President Trump has been using the @realDonaldTrump Twitter account since 2009
- After his election, the President used his account to communicate with the public about his presidency and administration, among other matters.
- Individuals who were “blocked” from viewing or replying to tweets on the President’s account based on the critical nature of their earlier tweets sued the President under the First Amendment.





## Can a “Personal” Webpage Become a Public Forum?

- The Trump case shows that courts may conclude that an official has created a public forum on his or her “personal” webpage.

Does the  
Brown Act  
allow me to  
post about  
Town Business  
on Social  
Media?

- YES, . . .
  - BUT members of a board cannot use social media to discuss among themselves “business of a specific nature that is within the subject matter jurisdiction of the legislative body.”
  - CAN use social media to communicate with public
  - CANNOT have one member post on discussions by other members
  - CANNOT weigh in with “likes” or emojis, because emojis count as discussion





# Fair Process Limitations on the Use of Social Media

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- Board Members Must:
  - Not prejudge the matter
  - Be Fair and Impartial
  - Make decisions based only on evidence presented by staff or applicant



Golden  
Rule: Never  
Post What  
Don't Want  
in the  
Newspaper

<b>Be</b>	Be transparent and open
<b>Think</b>	Think carefully about the tenor and consequences BEFORE you post
<b>Wait</b>	Never post angry, tired, or after that extra glass of wine
<b>Resist</b>	Resist posting about matters coming before the Board
<b>Do not block</b>	Do not block others based on their viewpoint or identity

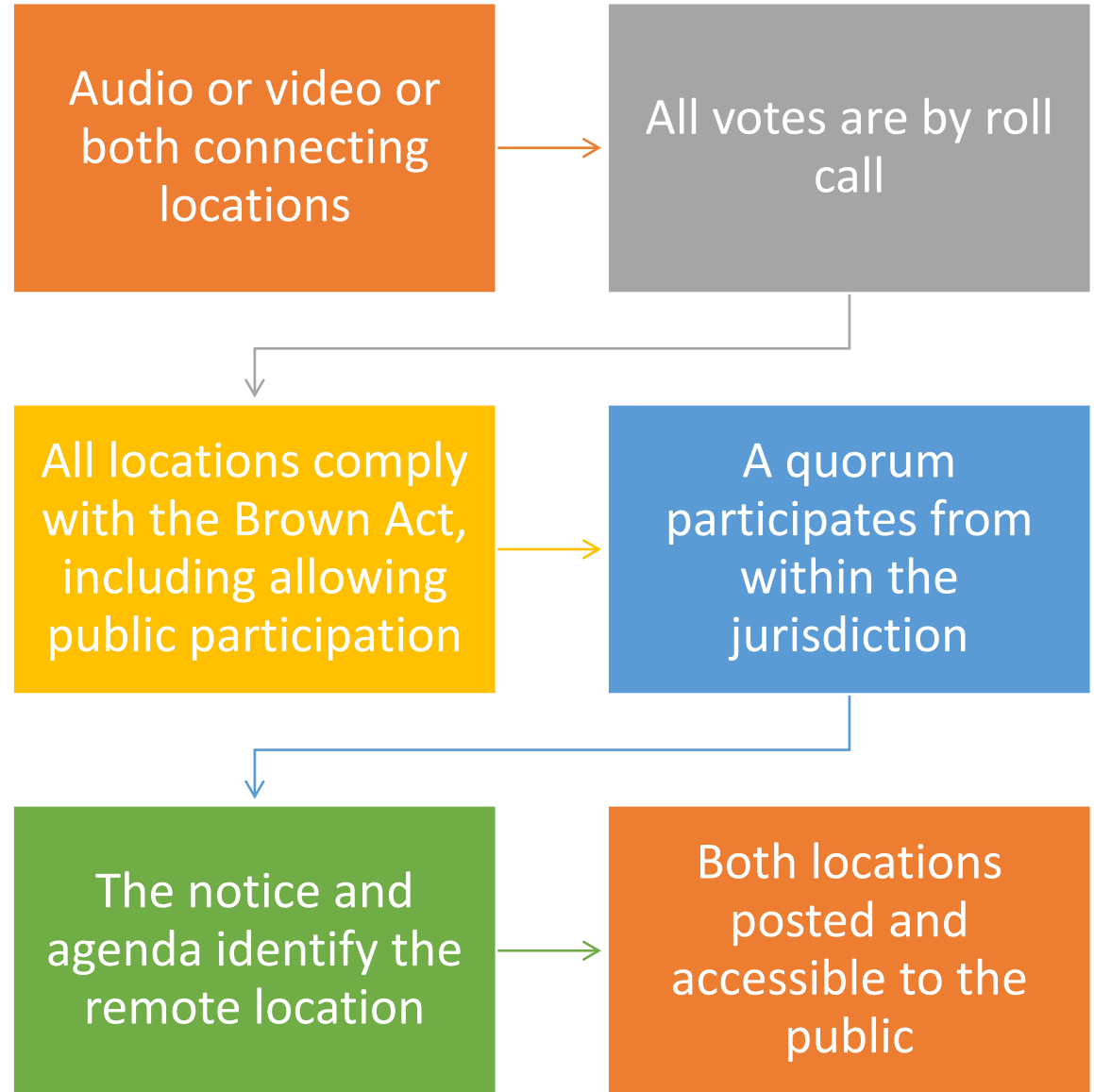


# Committees

- All committees established by the Board must comply with the Brown Act, UNLESS it:
  - Is ADVISORY, not decision-making; AND
  - Includes ONLY Board Members; AND
  - Includes LESS than a quorum; AND
  - Does NOT have continuing subject matter jurisdiction; AND
  - Is NOT meeting on a fixed schedule set by the Board.



# Teleconferencing



# Teleconferencing in Special Situations

## AB 361

- State of Emergency

## AB 2449

- Just Cause
- Emergency Circumstances



# Violation of the Brown Act



- What happens when the Board or an individual violates the Brown Act?
  - Criminal prosecution possible
  - Civil Action: District Attorney or Interested Person
    - Must send Cease and Desist Letter within 9 months
    - Agency must respond within 30 days to cure alleged violation
    - Lawsuit must be filed within 15 days after the 30-day cure period expires
  - Mandamus Action
    - To declare action taken by agency is null and void
    - Must make written demand to cure and correction within 90 days of action

# Violation of the Brown Act

- What happens when a court determines a Brown Act violation occurred?
  - Violative act is nullified
  - Agency pays the plaintiff's attorney's fees
  - Civil penalties
  - Criminal penalties



Questions

Do you have  
any  
Questions? 