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BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Marin LAFCO Brown Act and Levine Act

January 12, 2024

Intent of the Brown Act



- The Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business.
- It is the intent of the law that their actions be taken openly and that their deliberation be conducted openly.

Brown Act



- The Brown Act applies to:
 - Local agencies
 - Legislative bodies
 - Persons elected to legislative bodies, prior to assuming office

Legislative Body Includes:



- LAFCO Commission
- Committee or Other Body (Permanent, Temporary, Decision-Making or Advisory, Created by Formal Action of the Legislative Body)
- Private Board, LLC, or other entity that:
 - Is created by the governing body; or
 - Receives funds and a designated member from the legislative body

Ad Hoc Committees vs. Standing Committees



- Ad Hoc Committee – temporary advisory committees that are **solely** less than a quorum of the legislative body and serve a limited purpose and will dissolve when the task is completed
- Standing Committee – continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body

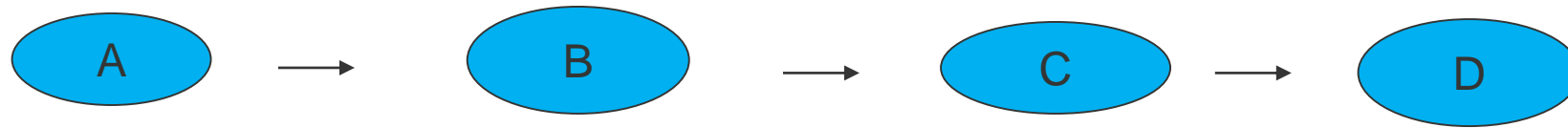
Meeting



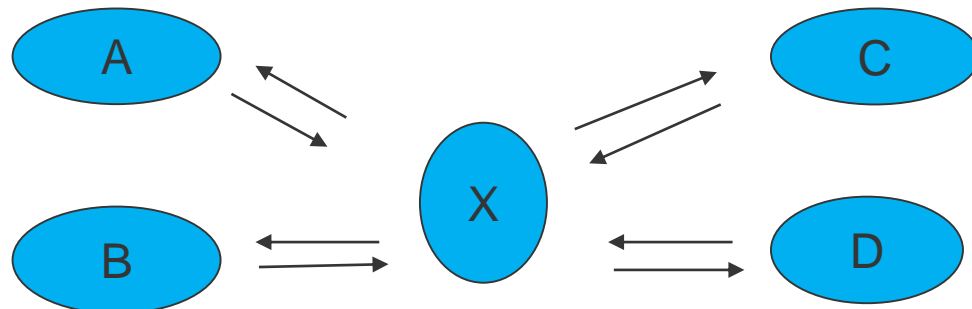
- Gathering of Majority – to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the legislative body
- Serial Meeting – series of communications to discuss, deliberate, or take action on an item of business that is within the subject matter jurisdiction of the legislative body

Brown Act – Serial Meetings

- Chain



- Hub and Spoke



The Brown Act does not apply:



- Contacts with public
- Conferences open to the public on issues of general interest to the public
- Open and publicized meeting on local topic originated by person or organization other than the agency

The Brown Act does not apply:



- Open and noticed meeting of another government agency
- Purely social or ceremonial occasions
- Committee of solely less than a quorum of the legislative body, without continuing jurisdiction (ad hoc committees)

No Action Allowed



- No action or discussion allowed for any item not listed on agenda except for:
 - Adding items by 2/3 vote because of need for immediate action that came to the attention after the agenda is posted
 - Adding items by majority vote for emergency situation
 - Item continued from another meeting within 5 calendar days

No Action Allowed (cont'd)



- No action or discussion allowed for any item not listed on agenda except for:
 - Brief response to statement or question from public
 - Questions to staff for clarification of a matter based upon public comment
 - Brief announcement or report on member's or staff's own activities

No Action Allowed (cont'd)



- No action or discussion allowed for any item not listed on agenda except for:
 - Provide reference or information to staff
 - Ask staff to report back at a future meeting on any matter

Brown Act and Social Media

AB 992



- You can post on social media about the Commission
- You can answer questions, provide information to the public, or solicit information from the public regarding the Commission

Brown Act and Social Media AB 992



- Requirements to Avoid Serial Meetings
 - Must be open and accessible to the public – cannot block or deny access to post
 - You cannot discuss amongst yourselves Commission business on social media
 - No direct responses to other Commissioners – such as emojis or likes that express a reaction

Teleconferencing and the Brown Act



- Traditional Teleconference Rules – identify location on agenda, post at the location, location is available to the public, quorum participates within the jurisdiction of the agency, roll call votes
- AB 361– Response to COVID-19 pandemic, no longer in effect
- AB 2449 – State of emergency provisions of AB 361 recodified and new hybrid meeting option for just cause and emergency circumstances

AB 2449 – Just Cause



- Allows for hybrid video meetings (less than a quorum participating remotely) for just cause for no more than 2 meetings per calendar year
- Just Cause
 - Childcare or caregiving need for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner
 - Contagious illness that prevents in-person attendance
 - Physical or mental disability need
 - Travel while on official Commission business or another state or local agency

AB 2449 – Just Cause



- Official must notify the legislative body at the earliest opportunity possible, including at the start of the meeting, of their need to participate remotely for just cause and give a general description of the circumstances of why they need to participate remotely.

AB 2449 – Emergency Circumstances



- Allows for hybrid video meetings (less than a quorum participating remotely) under emergency circumstances.
- Emergency circumstances is a physical or family medical emergency that prevents in-person attendance.
- The official must request to participate remotely and provide a general description of the circumstances relating to the need to participate remotely. No requirement to disclose medical diagnosis, disability or confidential medical information.

AB 2449 – Emergency Circumstances



- The Commission must vote on the member's request.
- The official should make the request to participate as soon as possible, if the request occurs after the posting deadlines, the Commission can still take action on it at the beginning of the meeting.

AB 2449 Requirements



- Camera must be on the official at all times
- If an individual 18 years or older is in the room at the remote location, the relationship with that individual must be disclosed publically
- All votes must be by roll call
- If a disruption to the Commission's online meeting occurs, the Commission cannot take any further action until the online meeting is restored
- Only less than a quorum can participate remotely using AB 2449

AB 2449 Requirements



- Cannot be used more than 20% of regular meetings in a calendar year, or more than 2 meetings if meeting less than 10 times per year. It cannot be used more than 3 consecutive months.

The Levine Act (Gov. Code § 84308)



- **Previous Rule:**

- Political Reform Act – A campaign contribution is not a source of income and therefore does not give rise to a conflict
- Levine Act (Part of PRA) – If the board is *appointed*, not *elected*, then there is a conflict of interest in those who made a campaign contribution of more than \$250
- Applies to proceedings for licenses, permits, entitlements and most contracts
 - ❖ Contract exceptions: competitively bid, labor and personal employment

- **New Rule (SB 1439):**

- The Levine Act applies to ***both*** elected and appointed boards

The Levine Act - SB 1439



- While a proceeding is pending, and for 12 months following the final decision, an officer **must not accept, solicit, or direct a contribution of more than \$250** from a party, party's agent, or participant or participant's agent (if the officer knows the participant has a financial interest)
 - Applies to contributions to the officer and to contributions to others directed by the officer
 - For contributions following the final decision, the official can cure the violation if contribution is returned within 14 days if certain conditions are met

The Levine Act - SB 1439



- Officer must **disclose** on the record any contributions of more than \$250 received within the prior 12 months from a party or participant in the proceeding, or their agents
- Officer must **not participate** in any proceeding if the officer has willfully or knowingly received a contribution of more than \$250 from a party, party's agent, or participant or participant's agent (if the officer knows the participant has a financial interest) within past 12 months
 - Does not apply if the contribution is returned within 30 days

The Levine Act – SB 1439



- “Party” means any person who files an **application for, or is the subject of**, a proceeding involving a license, permit, or other entitlement for use.
- “Participant” means any person who is not a party but who **actively supports or opposes** a particular decision in a proceeding involving a license, permit, or other entitlement for use **and who has a financial interest in the decision**
- “License, permit, or other entitlement for use” means all business, professional, trade, and **land use licenses and permits** and all other entitlements for use, including all entitlements for land use, **all contracts** (other than competitively bid, labor, or personal employment contracts), and **all franchises**.

(Gov. Code § 84308)

The Levine Act – SB 1439



- A person is the “agent” of a party to, or a participant in, a pending proceeding involving a license, permit or other entitlement for use **only if**:
 - the person represents that party or participant **for compensation** and
 - **appears before or otherwise communicates** with the governmental agency for the purpose of influencing the pending proceeding.
- If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are “agents.”

(2 Cal. Code Regs. § 18438.3)

The Levine Act - SB 1439



- Party to a proceeding must disclose a contribution of more than \$250 made within the past 12 months by the party or party's agent
- Party and participant (and their agents) must not make a contribution of more than \$250 to any officer of the agency while the proceeding is pending and for 12 months following the proceeding



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Questions?

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