



# The Brown Act and The San Francisco Sunshine Ordinance

Meetings and Public Records Requests

Presented by:

Virginia Dario Elizondo, Deputy City Attorney, San Francisco City Attorney's Office

Starla Sousa, Legal Assistant, San Francisco City Attorney's Office



# Why were Open Meeting Laws and Public Records Laws created?

The Brown Act was signed into law in 1953.

- Created in response to the public's concern that governments were holding secret meetings.

The Sunshine Ordinance was enacted in 1993 by the Board of Supervisors and later amended in 1999 by the voters.

- To keep government policy and procedures transparent by giving citizens the right to access government proceedings and records.



# The Brown Act

Government Code sections 54950-54963

*Local legislative bodies, such as boards, councils and commissions are a group of people who come together to discuss and come up with the most effective ideas.*

The Ralph M. Brown Act is the law that guarantees the public's right to attend and participate in **meetings** of local legislative bodies.

# Sunshine Ordinance

Chapter 67 of the San Francisco Administrative Code

*San Francisco Ordinance was developed to insure easier access to **public records** and to strengthen **open meeting laws**.*

# Meeting Defined

- A meeting occurs whenever a majority of the members of a policy body come together at the same time and place. Admin. Code § 67.3(b)(1)
- A meeting occurs even if the policy body takes no action but only gathers information collectively or discusses an issue.
- A meeting may also occur under certain circumstances even if a majority of the members are not physically together at the same time and place.

# Open Meeting Basics

Meetings must be open to the public and held within city limits. Cal. Govt. Code § 54954(b); Admin. Code § 67.6(b)

The public must have advance notice of meetings

- 72 hours for regular and special meetings
- 72 hours to members of the legislative body and press if requested for special meetings

The public has the right to observe and participate in the meetings

- Separate public comment on every action item
- General public comment period for all other subjects under the body's purview (regular meetings only)

All deliberations and actions must occur during open, properly noticed meetings.

The remote attendance policy in response to COVID, has to be reauthorized each month.

The City must provide notice of the cancellation of a meeting to the public as soon as reasonably possible. Admin. Code § 67.6(g).

# Agenda Requirements

The law requires two specific postings for regular meetings and we strongly recommend, where feasible, two additional postings:

1. The public library. Policy bodies must send two copies of the agenda to the Government Information Center at the San Francisco Public Library, which must receive the copies at least 72 hours before the meeting. Admin. Code § 8.16.
  2. The departmental website. Policy bodies must post the agenda on their website at least 72 hours before the meeting. Cal. Govt. Code § 54954.2(a)(1), (d); Admin. Code § 67.7(a)
- Policy bodies must send copies of agendas and agenda packets for regular and special meetings to any member of the public who has on file a valid written request for such materials. Cal. Govt. Code § 54954.1.
  - Policy bodies must make the agenda and documents that make up the agenda packet available, without surcharge, in appropriate alternative formats to persons with disabilities. Cal. Govt. Code § 54954.1; Admin. Code § 67.7(f).

# Agenda Requirements (continued)

- Agenda must be brief, clear, easy to read and understand.
- Contain meaningful descriptions of each items of business that the policy body will discuss or on which it may take action, this also applies to special meetings.
- On occasion there can be confusion between a description that is meaningful and one that is brief. In these cases, it is better to err on the side of a longer, more informative description. Where description of an agenda item presents close or difficult issues, we advise that staff responsible for preparing the agenda consult the City Attorney's Office before posting the agenda.
- Each agenda item must state whether the policy body will take action on the item and describe the proposed action, or will simply conduct a discussion. Admin. Code § 67.7(a).
- If an agenda describes an item as a discussion item, the policy body may not take action on it. However, if the author of the agenda does not know if an item will only be discussed or if the policy body may want to take action, then they can describe the item as "discussion and possible action."
- If the agenda discusses a document one page long, then it must be added to the agenda. If the document is longer than one page, then the agenda must indicate where the documents are available for public inspection and copying. Admin. Code § 67.7(b).

# Meetings and Non-Meetings

Sunshine – Quorum are the members of the policy body.

- Quorum is the minimum number of members of a society that must be present at a meeting to make the meeting valid. The majority must be a majority of the number of members designated by law, rather than the number of seats actually filled. Charter § 4.104(b).

Meeting:

- Seriatim meeting: a policy body members consecutively discuss issues among themselves, not in public.
- Responding to comments on social media made by other members of the legislative body
- Retreat, site visit, or meal

Not a meeting:

- Separate conversations with staff to ask questions or receive information
- Communications on social media platforms to answer questions or solicit information from or provide information to the public
- Individual conversations with members of the public
- Attendance at the following, provided that legislative business is not discussed:
  - Conferences
  - Open and public meetings of other organizations or legislative bodies
  - Ceremonial or social events
  - Standing committees of the legislative body (observation only)



# Conduct of Meetings

Many policy bodies have rules of conduct in their bylaws or resolutions.

## **Do:**

- Start meetings at the scheduled time or later (for example, to wait for a member due to traffic, etc.)
- Take roll and be sure the quorum is present
- Notify the attendees if agenda items that are listed will be discussed in a different order. Admin. Code § 67.15(e).
- Conduct commission votes openly and publicly.
- If an item has been discussed and the quorum decides to change their stance later in the meeting, that is permitted. When this occurs, the presiding officer must make it clear that the group has not completed its consideration of the item and they intend to bring it up again which includes public comments.
- The presiding officer may order the removal of individuals engaging in disruptive behavior. Depending on the circumstances, before taking this step, the presiding officer should warn the offending individual and afford an opportunity to correct the behavior.

# Conduct of Meetings

## **Don't:**

- No secret or anonymous ballots.
- Start meetings before the time listed on the agenda.
- Conduct meetings without a quorum.
- Read or send text messages during meetings.
- An absent member of a policy body may not vote by proxy. See generally Charter §§ 2.104(b), 4.104(b); Admin. Code §§ 1.29, 67.16.
- Once an action has been taken, the policy body must disclose the action and announce the vote of each member of the body. Cal. Govt. Code § 54953(c)(2).

# Closed Sessions

Closed-door meetings may be held to discuss:

- Real estate negotiations
  - Existing or anticipated litigation
  - Personnel matters
  - Labor negotiations
  - Security matters
- 
- However, closed sessions must be properly noticed on the agenda and any action taken must be publicly reported at the end of the session
  - Individual members of legislative bodies may not disclose information discussed in closed session

# Public Attendance and Comment

- Cannot require sign-in or ID to attend

Must allow:

- Public to record
- Provide opportunity to comment before any action is taken
- Provide general comment period for non-agenda topics within body's purview
- Make writings related to open session business available to public
- Commission members may not respond or act in response to public comment, but may briefly respond or ask questions, refer to staff for follow-up or request that something be placed on a future agenda for discussion

# Brown Act and Sunshine Violations

- Actions taken in violation of the Brown Act or Sunshine Ordinance are invalid.
- Any member of the policy body, who deprives the public from information it is entitled to, is guilty of a misdemeanor. Cal. Govt. Code § 54959.
- Under the Public Records Act, a person may sue to enforce the right to inspect or receive a copy of a record. Cal. Govt. Code §§ 6258, 6259(a).
- Civil lawsuits can result in:
  - Invalidation of legislative body action
  - Award of costs and attorney fees
  - On occasion, local governments have been required to pay substantial attorneys' fee awards, in the hundreds of thousands of dollars, in public records cases where the court has ruled for the plaintiff.

# Sunshine Ordinance allows the public to request Public Records

## What is a Public Record?

- It is any writing that contains information relating to the conduct of public business prepared, owned, used by a state or local agency.

## Examples of Public Records:

- Emails, including attachments to emails, video recording, audio recording, voicemail, text messages and photographs.





# What is a Public Record Request?

- A request for documents made orally in-person, by phone or submitted by fax, mail, personal delivery, email or any other electronic communication. Admin. Code §67.21(b)
- The requested documents must be clear and defined enough for the department to understand what records are being sought.

Example:

Request for all DPH surveys from March 2019 to March 2022.



# Anonymous requests permitted

- Public record laws do not require anyone to submit a request using the requester's true name.



- The City must respond to anonymous public records requests, or a request under a alias, as long as the City has a way to transmit a response to the requester through, for example, a mailing address or an email address.

# Duty to Respond

- Departments can not refuse to respond to a request.
- Failure to respond can lead to employee discipline.
- Failure to respond may lead to legal action.
- However, sometimes for good faith reasons, departments miss a deadline. When this happens, the department should reach out to the requester immediately and process the request as quickly as possible.

# Information on personal communications devices

- Any communication relating to the City's business that a public employee or official sends or receives on a personal electronic device such as cell phones and personal computers are subject to disclosure as public records.
- This does not mean that employees must keep these communications.
- Sometimes devices have limited storage capacities.
- These communications are subject to the departments retention policy.

# Privacy

- Legal protections for privacy also apply to information in City records about members of the public.

For example, the following information may not be disclosed:

- Social security numbers
- Medical information
- Attorney/Client privilege
- Bank account numbers
- Personal email addresses, phone numbers and addresses

# You do not have to remember all of this information!

This presentation is intended as a general overview to answer most of the questions we commonly hear from departments, boards and commissions.

If you have any questions, feel free to ask us now or contact us in the future as needed.

Thank you for your time!