

THIS PRESENTATION SHOULD NOT BE RELIED UPON AS LEGAL ADVICE
OR AS A COMPLETE BROWN ACT ANALYSIS. INFORMATION WAS EDITED
SPECIFICALLY FOR THE CFCI ADVISORY BODY.

GOVERNMENT TRANSPARENCY

The Ralph M. Brown Act

Presented by:

Office of County Counsel

Presented to:

Care First Community Investment Advisory Body

September 22, 2021

Brown Act

PURPOSE - The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

INTENT - It is the intent of the law that public commissions actions be taken openly and that their deliberations be conducted openly.

Brown Act Applies to:

Local Legislative Bodies:

- ▶ Boards of Supervisors

Groups Created by the Board:

- ▶ Commissions/Committees
- ▶ Advisory Bodies

Brown Act 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

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 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.
- ▶ 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 COMMITTEE BUSINESS
AMONG THEMSELVES.**

MERELY SERVING FOOD IS NOT A LOOPHOLE

Quorum

There must be a **quorum/majority** of members present for the committee to take action.

No quorum, no action.

The meeting can continue to hear from members present, speakers, public, but no action can be taken.

SUBCOMMITTEES

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

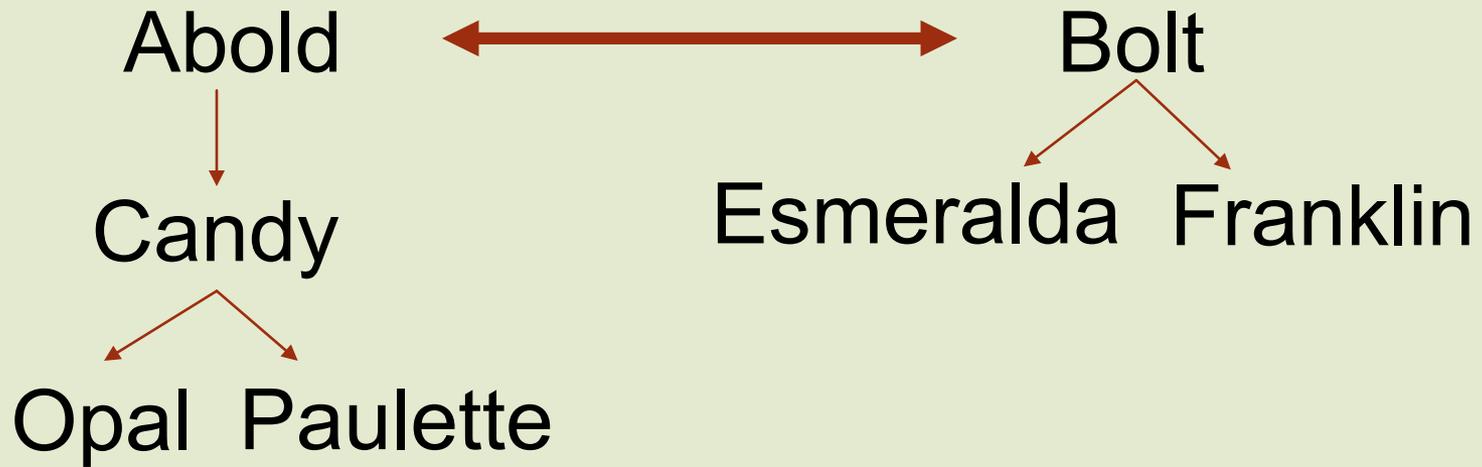
Serial Communications

CAUTION

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 as a whole, involves a majority of the body's members.

VIOLATION OF THE BROWN ACT

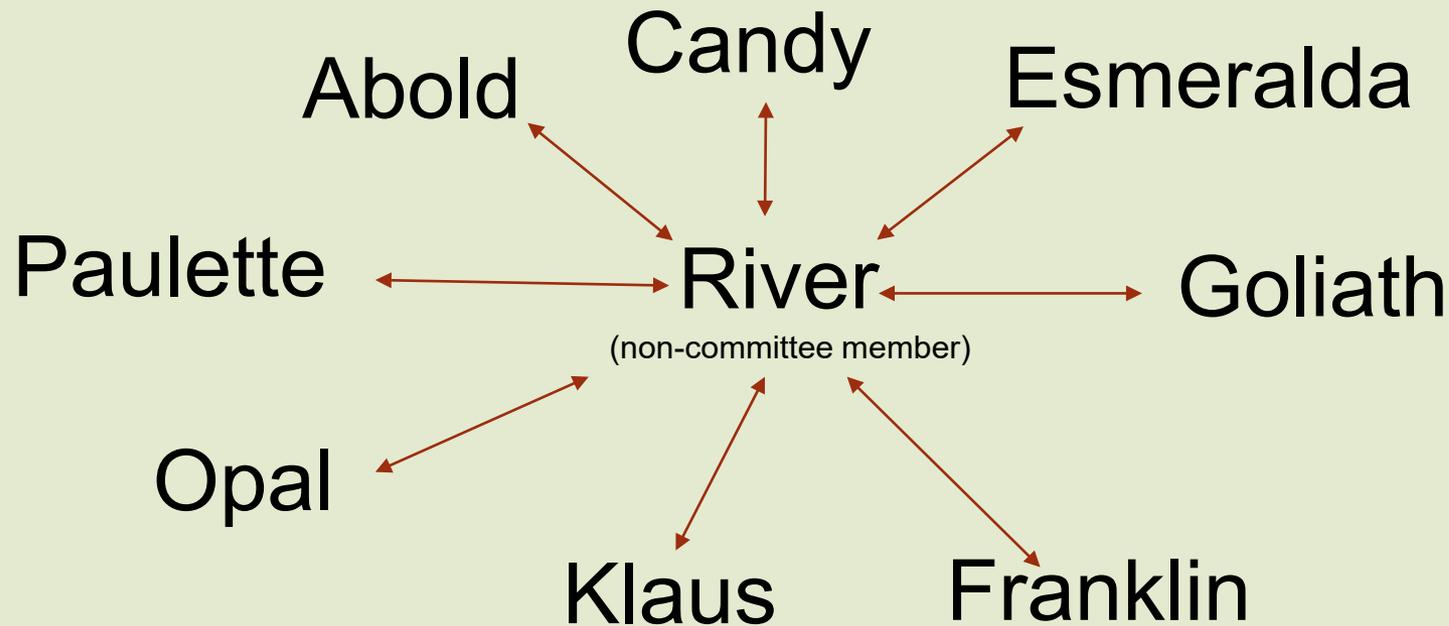
Example: 10 member committee; 6 members for quorum



Klaus Goliath Quincy

Serial Communications

- ▶ The use of a committee member or even a non-committee member as an intermediary is prohibited.



Bolt

Quincy

Social Media

New Law – AB 992, **eff. Jan. 1, 2021**, until Jan. 1, 2026

- 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, chat rooms, etc.

Social Media

New Law – AB 992, **eff. Jan. 1, 2021**, until Jan. 1, 2026

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**.

Social Media

<u>Permitted</u>	<u>Prohibited</u>
<p>✓ A <i>member</i> of a legislative body may communicate 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.</p>	<p>✗ A majority may not use an internet-based social media platform to discuss agency business.</p>
<p>✓ A <i>member</i> of a legislative body may use social media to discuss personal matters with another member of a legislative body.</p>	<p>✗ A <i>member</i> may not respond directly to any communication posted or shared by another member regarding agency business on an internet-based social media platform.</p> <p>**Includes: NO likes, thumbs up, emojis, or other symbols.</p>

Executive Orders

During State of Emergency

- ▶ Summary of Changes (Executive Orders N-25-20 and N-29-20):
 - ▶ Brown Act's teleconference rules waived or suspended.
 - ▶ Public meetings must be accessible telephonically or otherwise electronically to all members of the public to observe and to address the body.
 - ▶ A physical meeting location for attendance by members of the public and for offering public comment is not required.

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*.
 - ▶ Example: “For discussion and action...”
- ▶ If it’s not on the agenda, it cannot be discussed!
- ▶ List location of the meeting and the location for document inspection.

The Agenda

EXAMPLE

Inglewood City Council

- Special meeting with one agenda item in June 2017 to approve a vote on an exclusive negotiating agreement between Inglewood, two city-run agencies and Murphy's Bowl LLC. It did not include scope of work or where the land was to be developed.
- LA DA's office found that the agenda did not provide a sufficient description of the matter to be discussed. This could lead to the item being void, but complaint with DA's office was filed too late for action to be taken.

<https://www.latimes.com/sports/clippers/la-sp-clippers-arena-inglewood-state-law-20190529-story.html>

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*).
 - ▶ Advisory body does not have decision-making authority
 - ▶ Newly arising item - unknown at the time of the original posting and immediate action needed.
 - ▶ Changing the location of the meeting after the agenda has been posted raises Brown Act issues.

Public's Rights

19

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 committee's jurisdiction.

Public Comment

20

- Fair and reasonable rules may be adopted to assist the body in processing comments from the public.
 - Regulating time and manner, such as a reasonable time limit, is OK.
 - Regulating content is not allowed.
 - At least twice the allotted time should be provided to a member of the public who utilizes a translator, unless simultaneous translation is utilized.
- Chair may clear room in the event of an actual public disruption and proceed with the press present.
- Public comment is not a debate. Avoid back and forth.

Robert's Rules of Order

- Ensures meetings are:
 - Fair
 - Efficient
 - Democratic
 - Orderly

- Facilitates the discussion from the public

How Items are Discussed

- ▶ Chair announces item to be discussed
 - ▶ “Now turning to item 2 on agenda which ...”
 - ▶ Discussion/Debate occurs among members
 - ▶ Chair closes discussion and asks for the motion to be moved, then asks for a second.
- ▶ Reminder: public comment must occur before voting.

Voting

- Chair then states the action to be taken, then asks for vote
 - “The action before us is the adoption of the motion that ...”
- Voting instructions:
 - One person; one vote; must be present to vote
 - Under current Executive Order for virtual meetings, votes must be by roll call
 - Each member responds: yes, no, abstain
- Chair announces results of the vote
 - Simple majority rules unless otherwise stated in bylaws or required by statute