# THE BROWN ACT

California's Open Meeting Law

Advisory Committee Members & Communication/Discussion Outside of Meetings

April 16, 2009

# Why Am I Here?

- Limited overview of a small part of the Brown Act
  - What can you discuss/communicate outside of meetings?
- Follow-up from Kathleen Crookham's call:
  - Concern among Committee Members about discussion/communication outside of meetings (E-Mail).
  - Concern about individual intersection decisions & inability to see "total" picture.
  - Concern about process—how to get items/concerns on the Committee's Agenda.

2

## **POLICY BEHIND THE BROWN ACT:**



"... 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. The people insist, on remaining informed so that they may retain control over the instruments they have created..." (Government Code §54950)

**************************************	
<u></u>	
	·
·	
·	
·	
•	
· .	

## **OVERVIEW:**

The Brown Act applies to "legislative bodies" which must conduct their business only at public "meetings" where they can consider only items of business listed on "agendas."

"All meetings . . . shall be open and public and all persons shall be permitted to attend any meeting. . ." (§54954(a))

# WHO IS GOVERNED BY THE BROWN ACT?



- · Any "legislative body"
- Governing body of any local agency, i.e., city councils
- Local agency commissions, committees, boards or other bodies
   permanent or temporary, decision making or advisory. (§54952)

# **WHAT IS A MEETING?**

- Any <u>congregation of a majority</u> ... to hear, discuss, deliberate, or take action on any item within subject matter jurisdiction of the legislative body.
- Use of a <u>series of communications</u> 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.

mediaries, to
action on any
in the subject
slative body.
(§54952.2(b)(1))

## SERIAL MEETINGS

Are a chain of communications, each of which involves less than a quorum of a legislative body, but which together involve a majority of the body's members. It is also a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next and excluding the public. (Sutter Bay Assoc. v. County of Sutter (1987) 58 Cal. App.4® 860)



# WHAT CONSTITUES A SERIES OF COMMUNICATIONS?

- · Old law: "technological devices"
- · Originally telephone
- · Now e-mail, "IM", chat rooms, blogs, etc.
- Technological devices may create a "virtual serial meeting"
- Case held letter circulated for signature was a violation [Campron Cause v String (1983) 147 Cal App.3d 518]

# E-MAIL

- · City Attorneys hate e-mail
- · E-mail never goes away
- E-mail can create a "virtual serial meeting"
- Cal. Attorney General concluded the same—even if posted on the agency's website deprived public of right to participate (84 Cal.Op.AttyGen 30 (2001)
- There are <u>at least three problem</u> "<u>buttons</u>":

		***				
					<del></del>	
		***************************************				· · · · · · · · ·
	-					
<del></del>						
			·			
			<del></del>		····	•
		•••				
	•			-		
	· <del>- · .</del>					
		,				
		-				
		<del>-,,</del>				
				<del></del>	·	

# CRECOPY G. DAL Cy Above Cy Above

Section Section	≱4 800 04 41:04:24:14:17 05:23	X # ##	 ;
No. Deckroppy			Sarte Van
GREGORY'S, DIAZ		. '	
Dry of Merced 576 West 18th Street Merced Cultumia, 95370			
209) 385-8865 209) 385-8867 209) 385-8865 209) 385-8865 209) 385-8865			
med California 953No 9) 385-8865 9) 388-7907	. *	i on CONTINENTIAL word w	

Company of the second
Company of the Compan
50
aldresser-oved ob
addresser noved ob Versey work produc
Herzeg work produk Hei addressen und pr EUC and ang untock
Ľ

## E-MAIL

What starts out as "legal" under the Brown Act:

 I think we should do "x" at our next meeting

Becomes "illegal" when it is replied to by a majority or by "Reply to All":

- "l agree" [Reply to All]
- "Good idea!!!" [Reply to All]
- "Concurr . . . " [Reply to All]

## **EXCEPTIONS TO MEETING:**

- Individual contacts: Individual contacts or conversations between a member of a legislative body and any other person.
- Conferences: Public or educational conferences on matters of general interest.
- Community Meetings: Publicized and public meetings to discuss a topic of local community concern organized by someone other than the city.

### 14

# Exceptions (cont'd):

- Other Legislative Bodies: Open and noticed meeting of another body of the public agency.
- Standing Committees: Open and noticed meeting of a standing committee within own agency, provided not a member of standing committee.
- Social or Ceremonial Events: Purely social or ceremonial events as long as no discussion of business w/in subject matter of jurisdiction of local agency.

			٠.
 	7	· · · · · · · · · · · · · · · · · · ·	
 <del>"</del>			
 75 1			

## **CRIMINAL ENFORCEMENT ACTIONS:**

- -"Action is taken" by the legislative body, i.e., an actual vote is taken, or a collective decision, commitment or promise is made by a majority to make a positive or negative decision.
- -The member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.

16

## **CIVIL ENFORCEMENT ACTIONS:**



**Civil Enforcement Actions:** 

- Enforcement actions can be brought by the district attorney or any interested person to get a court to order the stopping of any violations of the Brown Act.
- To void actions in violation of the Brown Act.

ť

# IF THERE IS EVER AN INADVERTANT ERROR:

- IT CAN BE CURED OR "FIXED"
  - Cure is not admissible as evidence in civil or criminal action—i.e., not an admission.



18

# DISCUSSION, QUESTIONS, & ANSWERS