

**CONTRA COSTA COUNTY LIBRARY COMMISSION
AGENDA ATTACHMENT 10**

MEETING DATE: Thursday, March 12, 2009

AGENDA ITEM #: 12 D

ITEM: AMENDMENTS TO THE BROWN ACT

Library Commissioners will receive information on the recent amendments to the Brown Act
(Open Meeting Law.)

RECOMMENDED ACTION:

None:

Office of the County Counsel
651 Pine Street, 9th Floor
Martinez, CA 94553

Contra Costa County
Phone: (925) 335-1800
Fax: (925) 646-1078

Date: February 10, 2009

To: All County Department Heads and Fire Chiefs

From: Silvano Marchesi, County Counsel
By: Mary Ann McNett Mason, Deputy County Counsel

M.A.M.

Re: Recent Amendments to the Ralph M. Brown Act (Open Meeting Law)

Please provide a copy of the attached informational memorandum about amendments to the Brown Act, effective on January 1, 2009, to all of the various commissions and advisory bodies and to the individual members of those entities, for which your staff provides assistance or liaison.

MAM/am

attachment

cc: Members, Board of Supervisors, District Offices
County Administrator
Attn: Julie Enea, Senior Deputy County Administrator
Lara Delaney, Senior Management Analyst
District Attorney
Attn: Steve Bolen, Senior Deputy District Attorney
Clerk of the Board (Press Box)

Office of the County Counsel
651 Pine Street, 9th Floor
Martinez, CA 94553

Contra Costa County
Phone: (925) 335-1800
Fax: (925) 646-1078

Date: February 10, 2009
To: County Boards, Commissions, and Committees and their Administrative Officers and Secretaries
From: Silvano B. Marchesi, County Counsel
By: Mary Ann McNett Mason, Deputy County Counsel *M. A. M.*
Re: Amendment to the Ralph M. Brown Act Effective *January 1, 2009*

For your information, we summarize a recent amendment to the Ralph M. Brown Act, the open meeting law, as amended by Statutes of 2008, chapter 63. This amendment took effect January 1, 2009.

Government Code section 54952.2 has been amended in three significant ways. First, the definition of a "meeting" has been revised. Second, the scope of the communications that can constitute a prohibited serial meeting has been expanded. Finally, the section now identifies which staff member communications to individual board members outside of noticed public meetings are permissible and which can result in a prohibited serial meeting.¹

A. Definition of "Meeting" For Purposes of the Brown Act

A meeting of a legislative body, such as the Board of Supervisors or the Planning Commission, is *any* congregation of a majority of the body's members at the same time and location, including a permitted teleconference location, "to hear, discuss, deliberate, or take action" on any item that is within the body's subject matter jurisdiction.² All meetings must be noticed in accordance with the Brown Act and the County's Better Government Ordinance.³

B. The Prohibition on Serial Meetings Has Been Expanded

The Brown Act now expressly provides that outside of a lawfully noticed meeting, a majority of the body shall not use a series of communications of any kind, directly or through intermediaries, either to discuss, to deliberate, or to take action on any item of business that is

¹ "Board" and "Board members" as used herein refers generically to various types of bodies: boards, committees, commissions, subcommittees, etc.

² Gov't. Code, § 54952.2 (a).

³ Gov't. Code, § 54954.2; Ord. § 25-2.206 (a.)

within the subject matter jurisdiction of the body.⁴ A mere serial discussion by a majority of the body about one of its business items is now sufficient to violate the Brown Act. For example, a series of e-mails or telephone calls among a majority of board members about a pending a land use matter can be an unlawful serial meeting, even if no consensus about the decision is reached before the matter is considered at a properly noticed public meeting. With this amendment, the Legislature specifically rejected a prior California Appellate decision holding that an unlawful serial meeting does not occur unless over the course of the communication members of the body develop a collective concurrence about action to be taken.⁵

C. Express Parameters For Informal Staff Communications With Board Members Added

Parameters for staff interactions with board members have been clarified. The serial meeting prohibition does not prevent an employee or official of a local agency from engaging in *separate* conversations or communications outside of a noticed meeting with a majority of board members to answer questions or to provide information about a matter in the body's subject matter jurisdiction, *as long as the staff member does not communicate one board member's positions or comments to another board member.*⁶ To avoid acting as an intermediary in a prohibited serial meeting, a staff member must be very careful not to share information about one or more board members' views or concerns with another board member. Outside of a noticed meeting, staff should provide information or answer questions for board members on an individual basis. In addition, staff should not send e-mail communications to a majority of board members to request the members' response on any business matter.

MAM/am

cc: Members, Board of Supervisors
County Administrator
Attn: Julie Enea, Senior Deputy County Administrator
Lara Delaney, Senior Management Analyst
Department Heads
District Attorney
Attn: Steven Bolen, Senior Deputy District Attorney

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⁴ Gov't. Code, § 54952.2 (b) (1).

⁵ Statutes of 2008, chapter 63, § 1; see *Wolfe v. City of Fremont*, (2006) 144 Cal.App.4th 533

⁶ Gov't. Code, § 54952.2 (b) (2).