

San Mateo County Harbor District

Board of Harbor Commissioners  
Brown Act Refresher

May 18, 2016

# Why Another Brown Act Training??

1. Always good to be reminded
  2. New Board Members
  3. Number of questions have recently arisen
- All of us play a role in compliance

# Brown Act Overview

- State law
- Applies to “legislative bodies” and their “meetings”
- Requires meetings to be open, public and accessible
- Requires notice, published agenda, availability of materials, opportunity for public comment before actions taken
- Provides for limited “closed sessions”
- Countless hypotheticals for which no black and white answer. Remember—open and public.

# Basic Reminders: Who is subject to the Brown Act

- “Legislative bodies”
  - Board of Harbor Commissioners
  - Committees created by Board
- *Be conscious of multiple roles*



# Basic Reminders: What is a “Meeting”?

- Majority of members of legislative body
- Hear, discuss, deliberate, or take action
- Any item/issue within subject matter jurisdiction of legislative body



# Basic Reminders: What is NOT a “Meeting”?

- Contact between less than a majority
- Contact between member and non-member
- Advisory committee (“Ad hoc” ) meetings
- Conferences, other agencies’ meetings that are open to the public
  - No caucusing or discussion among members about business within the body’s subject matter jurisdiction
  - Exceptions for scheduled/agendized sessions/discussions

# Basic Reminders: Closed Session Exceptions

- Limited to restricted, agendaized topics
- Specific notice requirements, safe harbors
- Most often used by SMCHD for negotiations, personnel evaluations, and litigation consultation with counsel
- Duty of confidentiality



# Basic Reminder: Quorums outside of noticed meetings

§ 54952.2 (b) (1): Majority of legislative body shall not, outside a meeting, use a series of communications **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.

- Serial Conversations
- E-mail, social media sites, blogs, other technology
- Social engagements
- Parking lot / hallway discussions





# Basic Reminder: Penalties/Enforcement

- Civil action: depending on context/allegation, judge can void action, require recording of closed sessions
- Criminal action: misdemeanor for official to attend a meeting where action is taken in violation of Brown Act with intent to deprive public of information
- Criminal or civil: litigation can be filed to force agency to halt violations after agency gets opportunity to cure
- Media, public opinion



# Some Hypothetical Situations

- General Manager sends email to all five Commissioners saying “Please see attached article about the District.”

# Some Hypothetical Situations

- General Manager sends email to Commissioners A and B saying “I just spoke to Commissioner C who is very much opposed to plans for Project X. I know you are in favor of the project so thought you should know.”
- Commissioner A sends email to Commissioner B saying “I just spoke to Commissioner C who is very much opposed to plans for Project X. I know you are in favor of the project so thought you should know.”

# Some Hypothetical Situations

- Commissioners A and B are on Advisory Committee for GM Selection. They meet privately and in the course of discussion, agree on an issue that will be part of the Budget to be voted on by the full Commission.

# Some Hypothetical Situations

- Commissioners A and B are on the Finance Committee. They meet privately and in the course of discussion, agree on an issue that will be part of the Budget to be voted on by the full Commission.

# Some Hypothetical Situations

- District agendas Special Meeting to discuss issues relative to OPM and at appointed time, only two Commissioners are present, both of whom are members of OPM Liaison Committee, a standing committee.

# Some Hypothetical Situations

- District agenda Finance Committee meeting and only one member is present.

# Some Hypothetical Situations

- Agenda item states “Capital Improvement Plan for Pillar Point Harbor.”
  - Motion to approve contract with Acme Construction Co. for construction of new bathrooms at Oyster Point Marina
  - Motion to approve contract with Acme Construction Co. for construction of new bathrooms at Pillar Point Harbor



# Some Hypothetical Situations

- Commissioner A and B make up a Standing Committee.
  - Commissioners C, D, and E attend a properly agendized committee meeting.
  - Commissioner C stands in the back of the room and says nothing.
  - Commissioner D addresses the Committee during the Public Comment period.
  - Commissioner E sits at the front of the room and applauds and cheers at various times during the meeting.

# RESOURCES

League of California Cities:  
“Open and Public”

<http://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>

California Attorney General:  
Brown Act Pamphlet --2003

[http://ag.ca.gov/publications/2003\\_Main\\_BrownAct.pdf](http://ag.ca.gov/publications/2003_Main_BrownAct.pdf)