

BERKELEY HOUSING AUTHORITY  
RALPH M. BROWN ACT, CA. PUBLIC RECORDS ACT, AND  
COMMISSIONER ROLES AND RESPONSIBILITIES  
PRESENTATION

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# BROWN ACT

# THE BROWN ACT



- Public bodies shall take their actions openly and deliberations should be conducted openly
  - Open meetings
  - Dates and times of meetings must be noticed
  - Agenda must describe all matters to be discussed or considered at the meeting
  - Meaningful opportunity for public comments
- Government Code Section 54950

# WHAT IS A QUORUM?

- Quorum: Unique to California Housing Authorities
  - ▣ Health and Safety Code Section 34276
    - Seven Commissioners Appointed to Board
      - Two Commissioners Appointed Must be Tenants of the Housing Authority
  
- Vote of the Board of Commissioners
  - ▣ Majority of Commissioners Empowered to Vote (unless larger number required by Bylaws)
    - Four Commissioners Constitutes a Quorum

# HOUSING AUTHORITY COMMITTEES



- Standing Committees- Are Subject to the Brown Act
  - i.e., Development and Finance Committee
    - Quorum= majority of the appointed members (2)
- Ad-Hoc Advisory Committees- Are Not Subject to the Brown Act (limited duration)

# THE "LESS THAN A QUORUM" EXCEPTION

- Committee- An advisory body composed solely of members of the Board of Commissioners and less than a quorum of the members
  - Ad-Hoc Committee Formed for Specific Purpose, limited duration
  - A Standing Committee has:
    - Continuing subject matter jurisdiction, and
    - A meeting schedule set by formal action of the Board of Commissioners

# WHAT IS A MEETING?

- A "meeting" includes any congregation of a **majority of the members of the Board of Commissioners at the same place** and time to hear, discuss or deliberate on any matter which is within the subject matter jurisdiction of the Housing Authority. (Virtual spaces constitute "same place")
  - Workshops, study sessions, retreats and field trips
  - HUD Meetings – Housing Authority Matters - if Quorum is present
  - Action need not be taken
- If less than a majority of members are not present- then there is no meeting (issue- if a member leaves early)

# WHAT IS A MEETING? (CONT.)

- Any use of direct communication, personal intermediaries, or technological devices through which a majority of the members develop a collective concurrence as to action to be taken on an item is prohibited.
  - Serial meetings
  - Daisy Chains
  - Hubs and Spokes
  - E-mail – the common e-mail practice of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act
  - Text messages (including during the meetings), Twitter, Facebook, Instagram, internet based social media

# SOCIAL MEDIA COMMUNICATION

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"A member of the legislative body ***shall not*** respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body."

# A MEETING IS NOT

- Community meeting, conferences and social gatherings
  - ▣ Individual contacts or conversations between a Commissioner and any other person
  - ▣ Conferences or similar gatherings open to the public that involve a discussion of issues of general interest
  - ▣ Open and public meetings organized to address topics of local community concern by a person or organization other than the Housing Authority
  - ▣ Social or ceremonial events

# A MEETING IS NOT (CONT.)

- Attendance by a majority at other open, noticed meetings
  - ▣ Legislative body of another local agency
  - ▣ Standing Committee of the Housing Authority if the Commissioner (**who is not on the committee**) attends only as an observer
- So long as no business is discussed among the members

# TYPES OF MEETINGS



- Regular meeting
- Special meetings
  - ▣ 48-hour advance notice required by Housing Authority Law (Health and Safety Code Section 34283) (Brown Act allows 24 hours advance notice)
  - ▣ Public comment only on agenda items
- Adjourned to future date if within five (5) days for items not heard at Regular or Special Meeting

# MEETING LOCATION

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- Meetings must be held within the jurisdiction of the Housing Authority, with exceptions
- Teleconference options....

# TELECONFERENCING

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- Teleconferencing may be used and must comply with Brown Act Requirements:
  - ▣ All votes must be taken by roll call
  - ▣ Notice and agendas as required by Brown Act
  - ▣ Members of public must be able to access the meeting and an opportunity to address legislative body
  - ▣ Agendas must be posted at teleconference locations and locations identified in agenda and notices
  - ▣ At least a quorum must participate from within boundaries of jurisdiction

# TELECONFERENCING, CONT.

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- Provide at least:
  - ▣ A 2-way audiovisual platform, and/or
    - Online platform that provides the ability to participate in a meeting via both interactive video conference and 2-way telephonic service
  - ▣ A 2-way telephonic service and live webcast of the meeting
    - Telephone service that does not require internet access and allows participants to dial a phone number to listen and verbally participate
- When give notice of time of meeting or post agenda, must also give notice of how the public may access the meeting and offer comment
  - ▣ Must identify and include an opportunity to attend via a call-in option or internet based service option

# TELECONFERENCING, CONT.

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- If disruption that prevents broadcasting of the meeting:
  - ▣ Take no further action until public access to the meeting via call-in or internet based service is restored
- Public comments cannot be required to be submitted in advance of meeting; must provide opportunity for public to offer comments in real time
- Individuals desiring to provide public comment through use of an online platform that is not under control of the legislative body may be required to register by the third-party platform

# TELECONFERENCING, CONT.

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- If there is a timed public comment period for each agenda item, public comment period for that item cannot be closed before the time has elapsed
- If no timed public comment period, then a reasonable time per agenda item must be allowed for members of the public to provide comment
- If timed general public comment period that does not correspond to a specific agenda item, the public period shall not be closed until the time has elapsed

# TELECONFERENCING, CONT.

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- If Commissioner participates in teleconference meeting from a remote location it must be listed in the meeting minutes along with provision of law relied on for remote participation
- Legislative body must have and implement procedures to receive and resolve request for reasonable accommodation for individuals with disabilities
- If participate from remove location, must identify anyone 18+ years old present in room and general nature of relationship

# TELECONFERENCING: DISABILITY

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- Commissioners with a disability that require remote participation as a reasonable accommodation:
  - Must have both audio and visual
    - But camera can be turned off if there is a physical condition related to the disability that requires it
  - Must disclose at the meeting before any action is taken whether any other individuals 18+ years old are present in the room and general nature of relationship
  - Remote participation is treated as attendance in the physical meeting location

# TELECONFERENCING: DISABILITY, CONT.

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- Disability = physical disability or mental disability as defined in Title 42 of US Code
- Remote participation = participation in a meeting by teleconference at a location other than the physical meeting location designated in the meeting notice

# TELECONFERENCING: REDUCED REQUIREMENTS

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- Several circumstances; applicable to BHA:
  - Just Cause
  - Proclaimed State of Emergency
- Not required to post agendas at remote location and not required to make remote location accessible to the public

# TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Just Cause:
  - ▣ At least a quorum must participate in person in a singular physical location identified in the agenda
  - ▣ Must comply with teleconferencing requirements
  - ▣ Commissioner must notify legislative body at earliest opportunity of need to participate remotely and general description of circumstances
  - ▣ Must participate through both audio and visual technology
  - ▣ Can only be used 2 times
  - ▣ Meeting minutes must identify just cause provision relied on

# TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Just Cause is any of the following:
  - Childcare or caregiving need
  - Reasonable accommodation for disability
  - Travel while on official business of legislative body or another state or local agency
  - Immunocompromised child, parent, grandparent, sibling, spouse, domestic partner
  - Physical or family medical emergency
  - Military service obligations under official written orders

# TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Proclamation of State of Emergency or Local Emergency:
  - Teleconferencing used for either:
    - Purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to health or safety of attendees
    - After determination above is made, as a result of the emergency, meeting in person would present imminent risks to health or safety of attendees
  - May use 2-way telephonic service without a live webcasting of meeting

# TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Proclamation of State of Emergency or Local Emergency:
  - ▣ If emergency remains active, in order to continue to teleconference, legislative body shall, no later than 45 days after first teleconference, and every 45 days thereafter make findings:
    - Legislative body reconsidered the circumstances of the emergency, and
    - Emergency continues to directly impact ability of members to meet safely in person

# ADDITIONAL EXCEPTIONS

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- Additional Exceptions applicable to a Housing Authority:
- To inspect real property
- To participate in interagency meetings
- To comply with a court order
- To meet with federal or state officials

# CONDUCT OF MEETINGS



- All meeting locations must be accessible to the disabled
- No meetings may be held in a facility that discriminates
- No meetings may be held in a location which requires payment by the public in order to be present

# CONDUCT OF MEETINGS (CONT.)



- All meetings to be open to the public
- Audio and video taping, photographing, or broadcasting by the public and the media must be allowed unless it cannot be done without noise, illumination, or obstruction of views that would constitute a persistent disruption of the proceedings
- No mandatory sign-in
- No secret ballots
- Teleconferencing – OK if prior requirements met

# PUBLIC COMMENT

- ❑ Public comment must be permitted before or during the Board of Commissioners' consideration of an item on the agenda
- ❑ Board of Commissioners may limit time allocated for public testimony on particular issues and for each individual speaker
- ❑ Cannot prohibit public criticism of the policies, procedures, programs, or services of the Housing Authority (unless disruptive to meeting)
- ❑ Special meetings must include public comment on the items on the special meeting agenda only

# ITEMS NOT ON AGENDA



- Board of Commissioners cannot discuss or take action on any item not on the agenda
  - Except:
    - May respond briefly to statements made or questions posed by members of the public under public comment
    - May ask questions for clarification, provide a referral to staff, ask staff to report back or schedule an item for a subsequent meeting
    - May make brief report on his or her activities

# AGENDA REQUIREMENTS



- Agenda must be posted at least 72 hours before a regular meeting, listing time and place of meeting
- Agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting
- Must contain information as to how and to whom a request for disability-related modifications or accommodations may be made

# ADDING ITEMS TO THE AGENDA

- Items can only be added to regular meeting agenda if:
  - The Commission finds that there is an immediate need to take action and the action came to the attention of the Authority after the posting of the agenda and there is a 2/3rds vote of the Commission members present must vote to add an item (the vote must be unanimous if less than 2/3rds of the Commissioners are present);
  - Upon determination by a majority vote that an emergency situation exists; or
  - The item was listed on a posted agenda for a prior meeting occurring not more than five (5) days before, and the item was continued from the prior meeting.

# WRITTEN MATERIALS



- Any Written Materials Provided to Board Must be Available to Public
  - ▣ Government Agency
    - Must be Available at the Meeting
    - On-line if meeting virtually
  - ▣ Any Person
    - Must be Made Available After the Meeting, except if meeting virtually
  - ▣ Public Records

# CLOSED SESSIONS

- May only be held if specifically authorized by the Brown Act
- All items to be discussed in Closed Session must be disclosed on the agenda
- Permissible Closed Sessions
  - ▣ Conference with Real Property Negotiators to discuss price and terms of payment
  - ▣ Conference with Legal Counsel re Potential or Actual Litigation
  - ▣ Threat to Public Services or Facilities
  - ▣ Appointment, Employment, Evaluation of performance, Discipline, or Dismissal of a Public Employee
  - ▣ Conference with Labor Negotiators

# CLOSED SESSION (CONT.)

- Closed Session Minutes are not required, but are confidential if kept
  - ▣ Vote by Consensus - Directions to Staff/Legal Counsel
  - ▣ Formal Votes Required: Action
    - Settlement of claims and litigation
    - Filing or defending an appeal in litigation
    - Filing amicus brief in litigation
    - Litigation
    - Approving Real Estate Agreement
    - Approving Labor Agreement
    - Employ, Dismiss or Accept Resignation of Employee
  
- Reporting Out of Closed Session

# VIOLATIONS OF THE BROWN ACT

- Can lead to invalidation of the action taken
- Criminal
  - ▣ Each Commissioner who attends a meeting where action is taken in violation of the Brown Act, with the wrongful intent to deprive the public of information to which it is entitled is guilty of a misdemeanor.
- Civil
  - ▣ Any person can bring an action to enjoin a violation of the Brown Act, after first requesting a cure. The successful plaintiff can be awarded attorneys' fees and costs.

# California Public Records Act