



What MACs need to know: Brown Act Plus





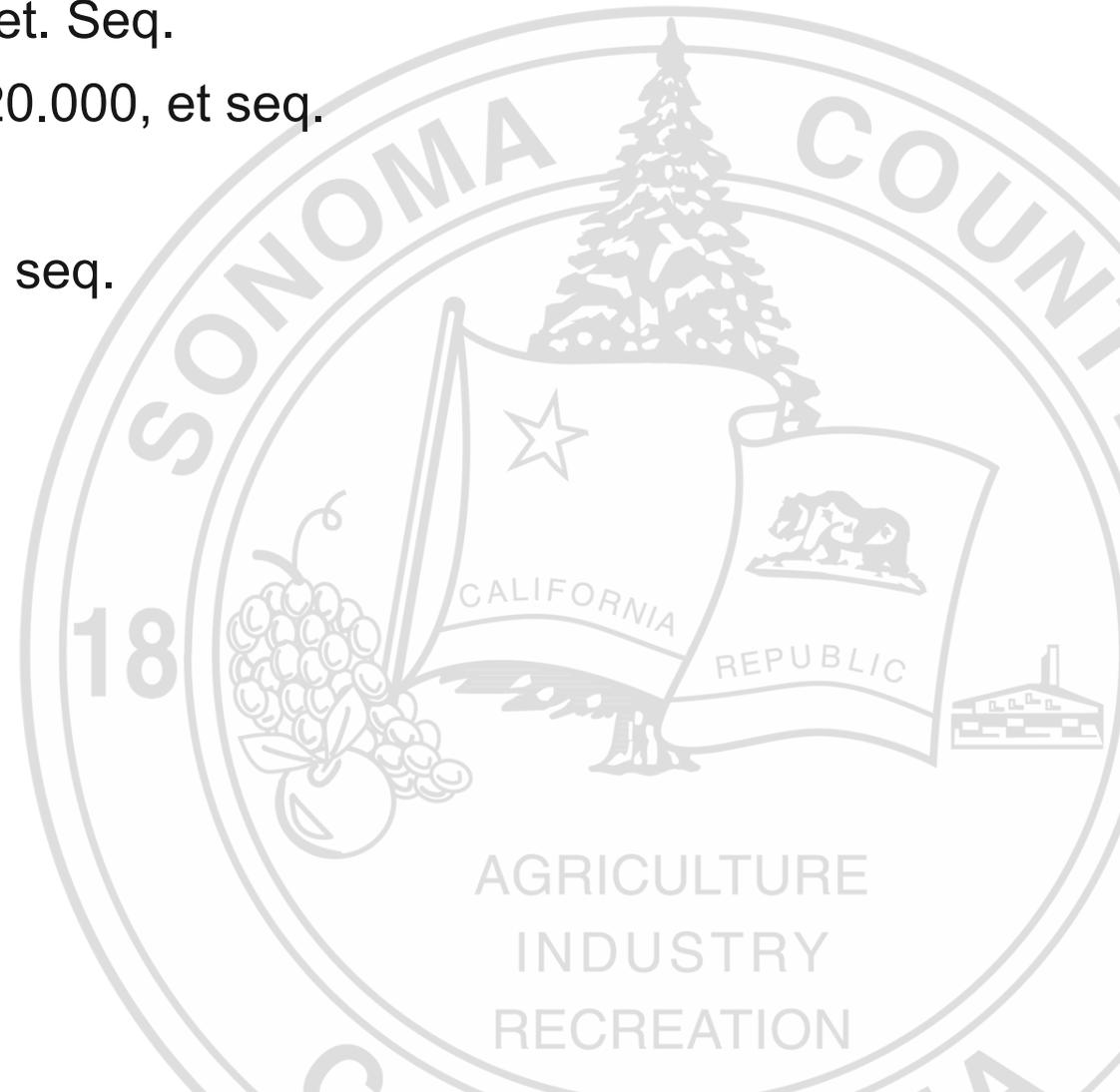
Local Legislation to be Aware of

The Brown Act – Cal Gov Code § 54950, et. Seq.

Public Records Act – Cal Gov Code § 7920.000, et seq.

Conflict of Interests

- Financial – Cal Gov Code §87100, et. seq.
- Common law – judicially created





Brown Act – Open Meeting Rule

Open Meeting Rule:

- “All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting.” (Cal. Gov. Code § 54950(a))
- **Legislative body** is broadly defined in the Brown Act to include: “a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.”
 - **Advisory Committees** (aka ad-hocs), composed solely by members that are less than a quorum of the members of legislative body are not legislative bodies.

Public Policy and Intent:

- “[C]ommissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.” (Cal. Gov. Code § 54950)



What is a meeting?

Meeting: any congregation of a majority of the members of the legislative body at the same time/place, to hear, discuss, deliberate or take action on any item within the body's jurisdiction.

- All meeting locations must be publicly accessible and ADA compliant

Two types of meetings:

1) Regular Meeting:

- Dates of regular meetings determined by Bylaws or Chair or Secretary of MAC
- Agenda requirement published 72 hours in advance of the meeting
- Agenda must specify time and location of meeting and be posted in publicly accessible areas, including on the agency's website
- Agenda must include a brief description of each item to be discussed and the Board limited to discussion on only those items.
- The public must be given the opportunity to directly address the legislative body on each agenda item either before or during consideration of the item.

2) Special Meeting:

- Meetings called as needed
- Publication of Notice of Meeting 24 hours in advance of the meeting



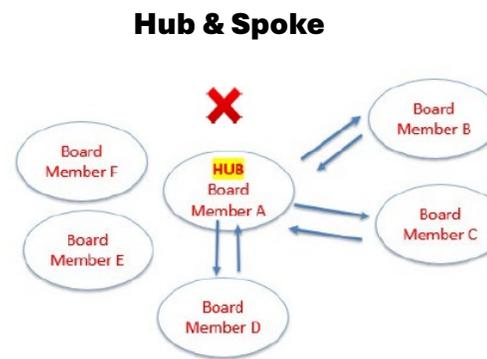
Serial Meeting Prohibition

A majority of members of a legislative body shall not, outside of an open and public meeting, *use a series of communications of any kind, directly or through intermediaries*, to discuss, deliberate, or take action on any item of business. Cal. Gov. Code Sec. 54952.2(b)

- Staff or local agency officials can have conversations with members of the local legislative body outside of a meeting to answer questions or provide information, so long as staff doesn't relay the comments or position of any member to another.

Examples of Violations:

- Daisy Chain: phone, email or text chain involving Board majority
- Hub and Spoke: one Board member coordinates with Board majority





What is Not a Meeting?

- Individual conversations between a local legislative body member and any other person.
- Attendance at social or ceremonial events where no business of the local legislative body is discussed.
- Community forums and meetings of other government bodies, provided a majority of members of the local legislative body do not discuss amongst themselves the business of their jurisdiction.
- Attendance at public conferences if a majority of members of the local legislative body do not discuss amongst themselves the business of their jurisdiction.



Social Media Under the Brown Act

Legislative body members can post on a public (open and accessible) social media platform to answer questions, provide information and solicit information from the public regarding a matter that is within the subject matter jurisdiction of the body, so long as a majority of legislative body members do not use social media to discuss any business amongst themselves.

- However, legislative body members shall not respond directly to any communication that is made, posted, or shared by any other member on a social media platform regarding a matter within the subject matter jurisdiction of the body. This includes reacting to posts or commenting with emojis. 👍
- Instagram is an ok social media platform to use because it is open and accessible to all, while Nextdoor may not be because it requires approval to join.
- Social media postings may never substitute proper Brown Act noticing requirements!



Teleconferencing Under the Brown Act

Traditional teleconferencing - pre-dates COVID-era remote meeting legislation.

Remote participation - During COVID, the legislature adopted new remote participation rules to allow for remote participation in certain circumstances. Repealed with SB 707.

Alternate teleconferencing and remote participation - SB 707, effective January 1, 2026, is a major overhaul of the Brown Act, including allowing more flexible approaches to teleconferencing/remote participation under certain circumstances.

Specific rules apply to different teleconferencing avenues - always check the Brown Act before attempting a teleconference.



SB 707 – Alternate Teleconferencing

SB 707 authorizes:

- Remote participation must be allowed as a reasonable accommodation under the ADA and will be treated as in person attendance.
- Hybrid Teleconference with in-person quorum (“Just Cause”).
- “Eligible subsidiary body” – defined as a local legislative body that serves exclusively in an advisory capacity.
 - If authorized by the Board of Supervisors, SB 707 would allow “eligible subsidiary bodies” to teleconference for a limited period of time if the Board can make certain findings.
 - County Counsel is currently analyzing which of the County’s bodies are “eligible subsidiary bodies” to inform the Board should it wish to act to authorize teleconferencing under this section for some or all eligible subsidiary bodies.
- A copy of the Brown Act must be given to all elected or appointed members of a local legislative body.



Land Use Project Considerations

Constitutional Fair Process - Basic Requirements:

- Obligation to be a Fair and Unbiased Decisionmaker – *even when acting in an advisory role*
- Free of personal bias (including biases that have nothing to do with financial interests)
- Due process requires notice and opportunity to be heard
- If a MAC/CAC member obtains information (evidence) outside of a noticed public meeting on a project, that information should be disclosed on the record at the beginning of the MAC meeting on the project in enough detail to allow the property owner to respond.



Housing Project Considerations

New Law: Under California's SB 330 (Housing Crisis Act of 2019) and subsequent laws, County is limited to a maximum of **5 hearings** for eligible, objective-compliant housing development projects. This rule applies to projects “deemed complete” by Permit Sonoma to prevent excessive delays.

“Hearing” broadly defined: Public workshops, commission meetings (including continuances), appeals, *etc.* held by the County – including by any MAC, MAC ad hoc, or individual MAC member.

Even if a housing project is referred to your MAC, do not hold any “hearing” without clearance from Permit Sonoma. There are penalties for failing to approve a compliant project within five hearings.



The Public Records Act

- **WHY:** Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person.
- **WHO:** Any member of the public may request local agency public records, more commonly known as a public records act (PRA) request.
- **WHAT:** "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. **This includes emails, text messages, written documents, pictures and more.**

The location of public records on personal devices does not change the character of the records – they are still public!



The Public Records Act

- **HOW:** Request for records can be made in writing or orally to any member of the local agency body. No magic words are needed, and any request for documents should be treated as a PRA request.
- **WHEN:** The local agency has 10 days to determine if any responsive records exist and respond in writing to the requestor informing them if any records exist. Responsive records can be provided at a later date as specified in the initial response letter. In unusual circumstances, the deadline to respond to the requestor can be extended from 10 days to an additional 14 days to determine if responsive records exist but the requestor must be notified of the reason for the delay. If no records exist, the requestor must still be notified in writing.
- **WHERE:** Public records are found on any device in which a public official conducts local agency business, including personal emails and cell phones. **Officials' emails re: public business sent to/from private accounts are still public records.**



Conflicts of Interest

Two main sources of a conflict of interest

1. Financial Conflicts of Interest
2. Common Law Conflicts of Interest

A public official must recuse themselves and leave the room before consideration on any agenda item in which there is a conflict of interest. Even if there is no actual conflict of interest, the appearance of one can be enough to warrant recusal.

As a best practice, MAC members should always review the agenda ahead of the meeting to ensure there are no potential conflicts of interest.



Financial Conflicts of Interest

Governed by the Fair Political Practices Act (FPPC)

A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.

A public official has a financial interest in a decision...if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family...as specified.

Five categories of financial interests - Business entity, real property, income, gifts, personal finances/those of immediate family.



Financial Conflicts of Interest

Generally, a public official must be designated on an agency's conflict of interest code (Code) to be required to report financial interests. Because MACs are advisory bodies, there are currently no MACs that are designated on a Code to be required to report their financial interests.

However, if at any time it is determined that a MAC has decision making authority, this could change.

As a best practice, if any MAC member has a financial interest in any agenda item before the MAC, the MAC member should proactively recuse themselves.

For example, if the spouse of MAC member is bringing a project to the MAC for a recommendation, the MAC member should likely recuse themselves from participation in the agenda item because their personal finances could be impacted.



Common Law Conflicts of Interest

- Based on the premise that a public officer must avoid situations where their personal interests conflict with their professional duties. The intent is to have undivided loyalty to the public agency and no appearance of impropriety.
- Based on case law and not any statutory violation.
- May be based on purely non-financial interests.
 - For example, a MAC member should not participate in an advisory recommendation on a project their child is involved with.
- If any questions exist about whether there is a conflict of interest in a certain scenario, please contact District staff for the MAC.



Questions

This legislation is mentioned in the Advisory Board best practices handbook. If you want more information on any of the topics discussed, please contact District staff for your MAC.