

Brown Act Basics

October 10, 2019

*What XCAP Members Need to
Know About*

California Open Meeting Law

Presentation by City of Palo Alto City Attorney



OVERVIEW

1 INTRODUCTIONS

2 OBJECTIVES

- Why the Brown Act?
- Brown Act Basics: Meetings, Agendas, Public Comment
- Challenging areas: e-mail, social media

3 HOW TO USE THIS PRESENTATION

- Primer, non-exhaustive, if you have questions later... ASK!
- Three take-aways: stick to the agenda, expect public participation, avoid serial meetings

4 YOUR QUESTIONS AND COMMENTS

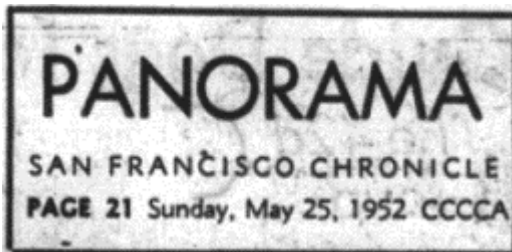
Your Secret Government: It Comes in Many Guises

SINCE the Nation's beginning Americans have been concerned with secret government; "Star chamber session" was a fighting phrase in 1776, and has been ever since.

In the effort to keep public servants doing public business in full public view, success has been generally proportionate to the amount of interest shown by the public.

This is the first of a series of articles dealing with this problem of government-behind-closed-doors as it applies at the local — the Bay Area — level.

By **MICHAEL HARRIS**



10-part expose (May-June 1952):

- "Informational" caucuses, "star chambers", committee of the whole, "pre-council", "work sessions", "study sessions"
- Unannounced meetings; No agendas
- Locked doors, secret meeting locations
- Meetings adjourned, reconvened after public departs
- Leave meetings to confer, return to vote
- Direct press, public to leave
- Require public and press to ask permission to attend committee meetings



WHAT IS A “MEETING” UNDER THE BROWN ACT

Majority of members . . . [come together] to hear, discuss or deliberate on any matter within their subject matter jurisdiction.

- Cal. Gov. Code § 54952.2(a)

Typically: In person meetings. But also: a majority uses direct communication or intermediaries to discuss an item within the legislative body’s jurisdiction - can be by phone, email, fax, text, messengers, etc.

MEETING CAN INCLUDE:

- Retreats or Workshops of the Legislative Body
- Informal gatherings
- Serial Meetings
[telephone, email, text or personal intermediaries]

MEETINGS USUALLY *DON’T* INCLUDE:

- Contact with staff
- Contact with other community members
- Conferences, community meetings
- Other legislative body meetings
- Social, ceremonial events

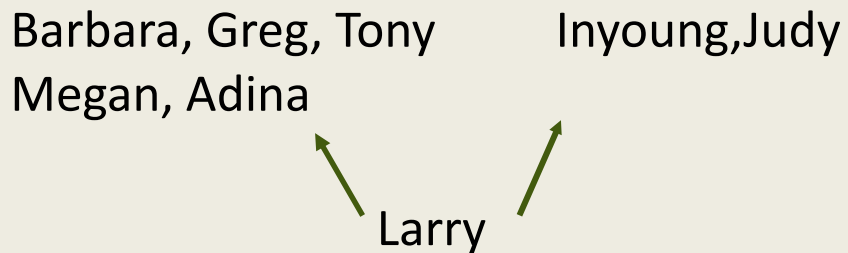
SERIAL GATHERINGS ARE MEETINGS

- Majority of members gathering together
- Different places and/or times
- Including through intermediaries

The “Daisy Chain”

Phil → Larry → Adina → Judy → Pat →
Nadia → Keith → Dave → Cari

The “Hub and Spoke”



CAUTION!

- Forwarding or responding to email
- Conversations via social media
- Messages passing through non-XCAP members

MEETING REQUIREMENTS

REGULAR TIME & PLACE

Generally, must meet in Palo Alto

- There are limited exceptions – staff will work w/ City Atty
- Telephone participation

NOTICE & AGENDA

- Meeting time, place
- ***“brief, general description” of items: sufficient to inform interested members of public of the subject matter so they can determine whether to participate***
- Action or Discussion
- Post in public accessible place + website
- 72 hours in advance (regular)
- 24 hours in advance (special)

STICK TO THE AGENDA - IF AN ITEM IS NOT ON THE AGENDA:

- No action *or* discussion.
- OK: Limited response to public comment, brief question to staff/public, staff/member announcements, referral to staff, place on future agenda

PUBLIC PARTICIPATION

AT ALL MEETINGS

- Item specific: Before or during consideration of an item

REQUIRED FOR REGULAR MEETINGS, OPTIONAL FOR SPECIAL

- Oral Communications: any issue within subject matter jurisdiction

PUBLIC COMMENT PROCESS

- Public can talk about anything, members cannot.
- If NOT on agenda: brief response, refer to staff, future agenda.
- Reasonable time limits ok.
- Should be consistent.
- Speaker cards MUST be voluntary/optional. Anonymity is ok.

ENCORE: Public Records

- XCAP-related documents are likely public records.
- If a request is made, you may be asked to search your devices and provide records
- Standard professional communication protocols should be followed