

HOUSING AUTHORITY OF THE CITY OF ALAMEDA
RALPH M. BROWN ACT PRESENTATION

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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 (see AB 992)

AB 992
SOCIAL MEDIA COMMUNICATION
(EFFECTIVE JANUARY 1, 2021)

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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

ALL MEETINGS MUST BE HELD WITHIN JURISDICTION OF HOUSING AUTHORITY

Exception-

Assembly Bill 361 (Chapter 165, Statutes of 2021) (AB 361) was signed into law by the Governor on September 16, 2021, and went into effect immediately.

- It amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology after the September 30, 2021 expiration of the current Brown Act exemptions as long as there is a "proclaimed state of emergency" by the Governor.
- This allowance also depends on state or local officials imposing or recommending measures that promote social distancing or a legislative body finding that meeting in person would present an imminent safety risk to attendees. Though adopted in the context of the pandemic, AB 361 will allow for virtual meetings during other proclaimed emergencies, such as earthquakes or wildfires, where physical attendance may present a risk. **AB 361 will sunset on January 1, 2024.**

ALL MEETINGS MUST BE HELD WITHIN JURISDICTION OF HOUSING AUTHORITY CONT....

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- Exception-
- Assembly Bill 2449 (“AB 2449” or the “Bill”) was signed into law by the Governor on September 13, 2022, and went into effect immediately.
- AB 2449 amends provisions of the Brown Act relating to remote participation by members of legislative bodies in meetings open to the public. The Bill addresses procedural challenges that members of local agencies have experienced while complying with the Brown Act in the wake of COVID-19 pandemic. More specifically, AB 2449 provides for alternative teleconference procedures by no longer requiring that remote meeting locations be identified or necessarily have them be open to the public.

ALL MEETINGS MUST BE HELD WITHIN JURISDICTION OF HOUSING AUTHORITY CONT....

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- To take advantage of AB 2449's benefits, (1) a majority of the members of the legislative body must participate in-person from the same location clearly identified in the agenda, which (2) must be within the boundaries of the agency's jurisdiction and (3) must be open to the public. This means that only a minority of members may participate remotely for a planned meeting.
- Additionally, under AB 2449, an agency must prepare a two-way audiovisual platform online that gives remote participants the ability to interact via videoconference in real-time, and/or a live webcasting of the meeting with a two-way telephonic service that allows participants to dial-in and contribute verbally.
- Any member opting to participate remotely must provide one of two specific reasons for doing so: (1) "just cause", or (2) emergency circumstances.

ALL MEETINGS MUST BE HELD WITHIN JURISDICTION OF HOUSING AUTHORITY CONT....

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- The Bill defines “just cause” as (1) childcare or caregiving need of a child, parent, grandparent, sibling, spouse or domestic partner; (2) contagious illness that prevents a member from attending in person; (3) a need related to a physical or mental disability; (4) travel while on official business of the legislative body or another state or local agency.
 - The member planning on participating remotely must notify the legislative body at the earliest opportunity possible—including at the start of meeting which they intend to attend remotely—of their need accompanied with a general description of the relevant “just cause” for remote participation. Additionally, “just cause” reasons for participating remotely cannot be used by any member for more than two meetings in a calendar year if the agency meets fewer than ten times annually.

ALL MEETINGS MUST BE HELD WITHIN JURISDICTION OF HOUSING AUTHORITY CONT....

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- “Emergency circumstances” is defined as a physical or family medical emergency that prevents a member from attending in person.
 - ▣ As opposed to the “just cause” option for remote participation, this alternative requires that the member request the legislative’s body approval to participate remotely. If there is insufficient time to include the request on the posted agenda for the meeting for which the request is made, the legislative body can act to address the request at the beginning of the meeting in accordance with existing law.

ALL MEETINGS MUST BE HELD WITHIN JURISDICTION OF HOUSING AUTHORITY CONT....

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- Under both scenarios, the following requirements also apply:
 - 1 Any member participating remotely shall do so through both audio and video technology.
 - 2 Remote members must publicly disclose at the meeting, prior to any action, whether any other individuals 18 years or older are present in the room with the member at the remote location, and the general nature of the member's relationship with such individuals.
 - 3 AB 2449 does not apply for any member participating solely by teleconference from a location for a period of more than 3 consecutive months, or 20% of the regular meetings for the agency within a calendar year.
- 3 **AB 2449 will sunset on January 1, 2026.**

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—except when AB361 and AB2449 Exceptions Apply
- 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 AB2449 or AB361 findings are made

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

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Government Code Section 6250 et seq.

- Fundamental precept is that government records should be available to the public upon request, unless there is a specific reason not to do so
- Requests for records are not required to be on a specific form, nor even in writing
- AHA has a duty to respond to PRA requests-they can't be ignored, even if exempt from disclosure
- There is no duty to create a record that does not exist at the time of the request

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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- **What is a public record?** Any “writing containing information relating to the conduct of the public’s business prepared, owned, used, or maintained by any state or local agency regardless of physical form or characteristics.”
- **What is a writing?** And “handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”
- **Personal email/personal phones** – subject to the PRA if used for Authority business.

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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- The requester is not required to state the reason for the request.
- Public records are to be available for inspection during the Authority's normal office hours
- The Authority may provide a form for requesting public records, but the requester is not required to use it. Authority staff can assist requester in filling out the form, or simply fill out the form as a record of the request
- The PRA request must be focused, specific, and reasonable clear so the Authority can determine what record or records are being sought. If the request isn't clear, or is overly broad, the Authority has a duty to assist the requester in reformulating the request to make it cleared or less broad

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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Timing for responding to a request for copies of records.

- The Authority must respond promptly, but no later than 10 days from the date of the request, as to whether or not the records will be disclosed
- The Authority may extend the 10 day response time for up to 14 days because of the need to search for and collect the records from field facilities or other separate location, because the request is voluminous, to consult with another agency with a substantial interest in the request, or, in the case of electronic records, to compile data, write programming language or a computer program. This must be done in writing
- Can try negotiating a longer response time. If so, make sure to confirm in writing

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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Examples of exemptions applicable to AHA:

- Personnel, medical or similar records - Disclosure would constitute an unwarranted invasion of personal privacy
- Deliberative process (decision making process)
- Preliminary, notes, drafts, and memos
- Investigative reports
- Litigation and attorney records
- Real estate appraisals and engineering evaluations – before property acquired or the terms of the contract have been agreed upon
- Personally identifiable information protected under the Privacy Act (i.e., social security number etc..)
- Disclosure of recipients of public benefits – Welfare & Institutions Code Section 10850
- Public Interest balancing test – Based on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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- Once a record is disclosed, unless by mistake, all exemptions that apply to that particular record are waived and it becomes subject to disclosure
- Options for response: 1) disclose the record; 2) withhold the record; or 3) disclose the record in redacted form
- ALWAYS CONSULT WITH LEGAL COUNSEL BEFORE WITHHOLDING A RECORD!

GENERAL QUESTIONS

