



Bagley-Keene Open Meeting Act

Presented by:

Civil Rights Enforcement Section, Public Rights Division
Office of the Attorney General, California Department of Justice

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Overview

- Purpose and Application to State Bodies
- What **is** a Meeting?
- What is **not** a Meeting?
- Scheduling and Conducting a Public Meeting
- Closed Sessions
- Summary and Key Points



Purpose of the Open Meeting Act

- Promotes open consensus building model of public decision making
- Ensures that the public has a seat at the table



What is a Meeting?

- A gathering **OR** communication;
- Between a **majority** (or **quorum**) of members;
- To **hear, discuss, deliberate, or decide (vote)** on task force issues; that
- Includes **all phases of decision-making.**



Discussions That Should Not Happen Outside of a Public Meeting

- Clarifying Council's jurisdiction
- Conversations to facilitate agreement or compromise
- Conversations that advance resolution of an issue
- Any aspect of the deliberative process



Prohibited: Serial Communications

- This prohibition applies to **all forms** of communication
- But what is it?



Examples of Serial Communications

- A chain of emails by a majority of members to discuss, deliberate, or take action on any item of business. Even if the emailers were personal intermediaries of the commissioners themselves.
- When taken as a whole, the series of communications involves a majority of members that communication may violate the Act. For example, one chain of emails with some members and a second chain of emails on the same topic with another subset of members.



Communicating with Fellow Council Members

- **Do not** talk with other members about informational memoranda or agenda items outside of a properly noticed public meeting.
- **Do** talk socially—we're all humans!
- A majority of members **may** attend a conference or similar gathering that is open to the public and of general interest (including purely social or ceremonial events, local public meetings, and open and public meetings of another state body) as long as members do not discuss Council matters amongst themselves.



Communications with Public Outside of Meeting

- Members **may** communicate individually with members of the public.
- Members **must not**:
 - indicate to the public how they intend to vote on a matter pending before the Council; or
 - solicit or orchestrate such contacts.



Staff Briefing Exception

- Staff **may** brief or respond to questions from individual Council members.
- Staff **may not** share communications from one Council member with any other Council member.
- **Do not reply all!**



What is not a meeting?

- A communication between a Council member and any other person, as long as it is not being used to circumvent the serial meeting requirement.



What is not a meeting?

- Conferences open to the public;
- Open meetings of other public bodies;
- Other meetings of a state body that are public;
- Noticed and open standing committees (3 members or more) of that body when other members of that body are there as observers only; and
- Social events.



Scheduling and Conducting a Public Meeting

- Notice and Agenda
- Rights of the Public
- Remote Meetings
- Closed Sessions



Requirements for Notice and Agenda

- At least 10 calendar days' written notice of meeting. (Gov. Code § 11125(a).)
- Agenda must be made public with 10 days' notice.
- Both notice and agenda are posted to the Council website.



Rights of the Public

- Right to Participate at Public Meetings
 - No identification requirement
 - Subject to reasonable time limits
- Right to Access Public Meeting Records
 - Some records may be exempt from disclosure
- Right to Monitor Votes of Each Member
 - Voting by roll call



Remote Meetings

An advisory body can hold an open meeting by teleconference if:

- A member who participates remotely is listed in the minutes
- **Notice** is provided at least **24 hours in advance** of the meeting of any member participating remotely
- At least one **staff member** of the state body shall be present at the physical location
- The agenda shall be posted at the physical location
- The public must be able to participate or remotely observe the meeting
- Remote members shall **remain on camera**



Closed Session

- Matters that may be discussed:
 - Personnel matters
 - Matters affecting individual privacy
 - Administrative disciplinary matters
 - Pending litigation
 - Response to a confidential final draft audit record
 - Threat of criminal or terrorist activity



Summary and Takeaways

- When Council meets to **gather information, deliberate, or make a decision**, the Bagley-Keene Act requires that the public have a seat at the table in most instances.
- **Serial meetings** conducted outside of a noticed public meeting that ultimately involve a majority of Council frustrate the Act's goals of transparency and violate the law.
- The Act's requirement for a **ten-day notice and agenda**, public testimony, and the conduct of open meetings ensure the public's right of participation in the Council's consensus-building process.



Summary and Takeaways

- A member **may** contact Council staff to ask questions or gather information about an upcoming item, so long as the member and staff do not share these conversations with other members outside of a properly noticed meeting.
- When a member receives information from staff, **do not** communicate with other members about this information.
- If information is sent to all Council members, **do not reply all**.
- A Council member **may** communicate individually with members of the public to share the work of Council, indicate whether the views expressed are those of Council or their own, and listen to comments.



Summary and Takeaways

- **Do not** discuss Council business with more than one other Council member outside of a public meeting to help avoid causing an accidental serial meeting.
- A majority of Council may be present at social events, meetings of other public bodies, and public conferences, but may not discuss Council business outside of a properly noticed Council meeting.