

Mayors and Council Members Academy

Wednesday, January 24, 2024
3:45 p.m. – 5:15 p.m.



LEAGUE OF
**CALIFORNIA
CITIES**

Strengthening California Cities
through Advocacy and Education

Your Legal Powers and Obligations; Open Government & Conflicts of Interest

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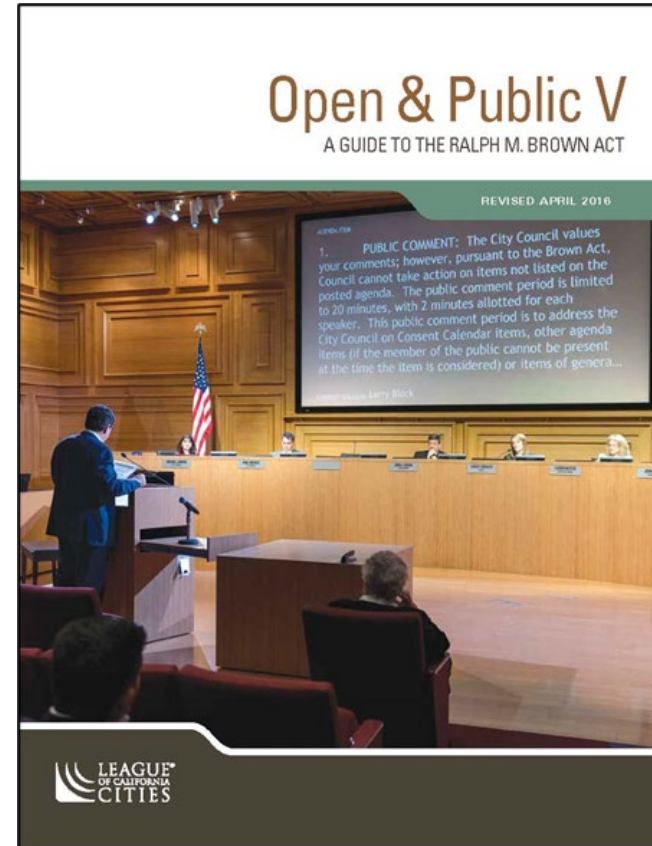
Legal Resources

The People's Business A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT



www.calcities.org/CPRAGuide

Open & Public V A GUIDE TO THE RALPH M. BROWN ACT



www.calcities.org/BrownActguide

Agenda

- City Powers and Limitations
- General Law Cities v. Charter Cities
- Raising Revenue
- Open Government and Transparency
- Ethics
- Councilmember's Role Concerning City Employees

Sources of Law

- United States Constitution
- Federal Statutes
- California Constitution
- State Statutes
- County Ordinances
- City Charters
- City Ordinances
- Other Public Entities
- Court Decisions



Preemption

- Basic Rule: when there is a conflict between laws, the “higher” government wins
- A “conflict” exists when:
 - An ordinance contradicts federal/state law
 - An ordinance duplicates federal/state law
 - An ordinance regulates an area “fully occupied” by federal/state law
- Charter cities have authority over “municipal affairs”

City Powers

- Constitution
 - Tax
 - Public Works
 - “Police Power”
- Statutes/Regs
- Caselaw

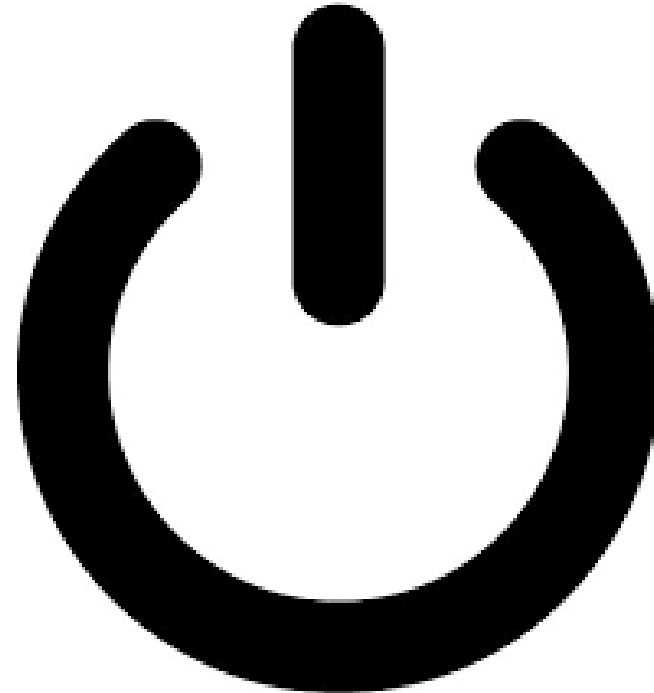


Police Power

- Granted by the California Constitution
- Power to regulate to further the public's health, safety, convenience and general prosperity
- Examples:
 - Land use regulations
 - Fire and safety regulations
 - Fees

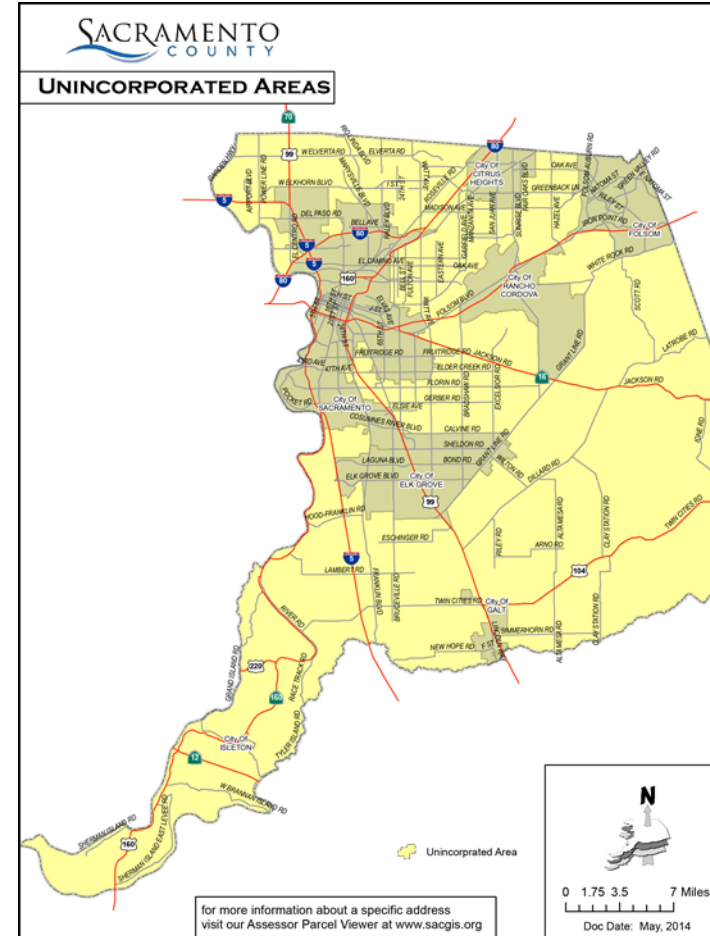
City Powers cont.

- Means of exercise
 - Ordinance
 - Resolution
 - Minute Order
- Legislative v. quasi-judicial
- Individual authority?



Limitations on Powers

- City limits
- No gifts of public funds
 - Expenditures must have a public purpose
- Preemption by state or federal law
- Manner of exercising
- Referendum/Initiative



General Law v. Charter Cities

- 121 charter cities
- General law cities are bound by state law
- Charter cities have authority over “municipal affairs”



Revenue Sources

- Taxes
 - General- requires majority approval
 - Special – requires 2/3 approval
 - Proposition 26 broadly defines tax unless an exemption applies
- Fees
- Assessments
- Debt Financing



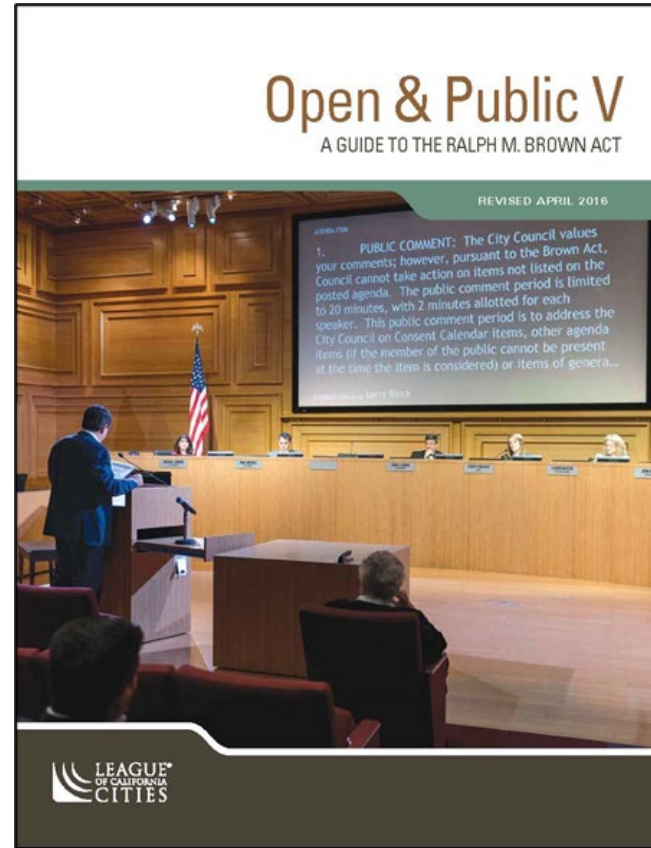
Open Government and Transparency

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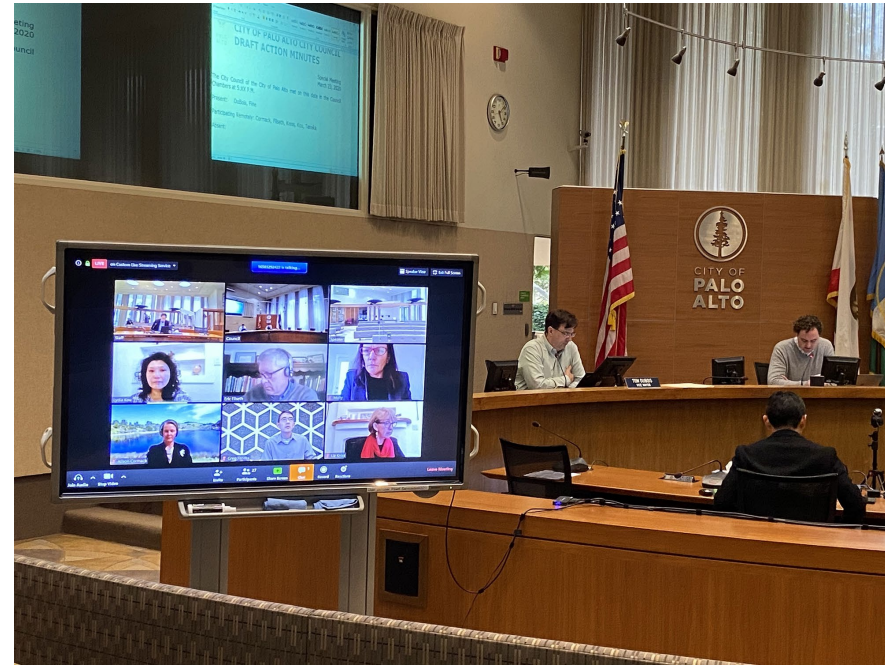
Open & Public V A GUIDE TO THE RALPH M. BROWN ACT



www.calcities.org/BrownActguide

Brown Act

- Requires “meetings” of a “legislative body” to be “open and public”



“Legislative Body”

- Includes:
 - Governing body (city council)
 - Newly elected members who have not yet assumed office
 - Appointed bodies
 - Standing committees (regardless of composition)
 - Governing body of a private organization in limited circumstances



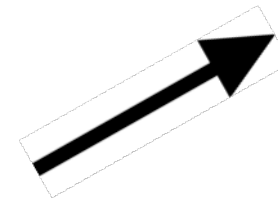
“Legislative Body”

- Does not include:
 - Temporary advisory committees composed of less than a quorum
 - Groups that advise a single decision maker



“Meetings”

- Includes:
 - Any gathering of a majority of the legislative body “to hear, discuss, deliberate, or take action” on a matter within the agency’s subject matter jurisdiction
 - Oral collective briefings
 - Legislative retreats
 - “Serial meetings”
 - Daisy chains or hub-and-spoke meetings
 - Use caution with email/social media



“Meetings”

- Use of email or other technology/media by a majority of a legislative body to discuss, deliberate, or take action on items within the body’s jurisdiction violates the Brown Act
- Recent social media legislation: AB 992
 - Clarifies communications officials can have on social media platforms open to the public
 - Officials can communicate on social media but should not directly respond/react to anything posted/shared regarding city business by another member of the legislative body



“Meetings”

- Does not include:
 - Individual contacts or staff briefings
 - Conferences
 - Community meetings
 - Meetings of other legislative bodies
 - Social and ceremonial gatherings
 - Attending standing committee meeting

“Open and Public”

- Includes:
 - Notice
 - Must post agenda in advance containing brief general description of items to be discussed
 - 72 hours for regular meeting
 - 24 hours for special meeting
 - Also on website
 - Teleconferencing rules
 - Cannot discuss non-agenda items
 - Public Comment



“Open and Public”

- AB 2449 (effective Jan. 1, 2023)
 - Allows use of teleconferencing without identifying each location in notice and agenda and making accessible to public if “just cause” or “emergency circumstances” exist and specified procedures and rules are followed

“Open and Public”

- AB 2449:
 - “Just Cause” defined as:
 - Childcare/caregiving
 - Contagious illness
 - Physical/mental disability
 - Travel for public business
 - Procedures:
 - Notify legislative body at earliest opportunity and provide general description of circumstances
 - Less than 2 meetings per year and other temporal limitations



“Open and Public”

- AB 2449:
 - “Emergency circumstances” defined as:
 - A physical or family medical emergency that prevents a member from attending in person.
 - Procedures:
 - Provide description (no more than 20 words and no personal medical information) and request legislative body allow remote participation
 - Legislative body must approve



“Open and Public”

- AB 2449:
 - Other rules:
 - Use both audio and visual technology for remote participation
 - Remote participants must disclose others over 18 in the room
 - Provide notice and a way for public to remotely hear, visually observe and remotely address the body
 - Call-in, internet-based, and in-person
 - Cannot require advance comments; must provide live option
 - If technology is disrupted, no further action can be taken

“Open and Public”

- Does not include:
 - Closed sessions
 - Examples:
 - Litigation
 - Real Estate Negotiations
 - Public Employment
 - Labor Negotiations
 - Requirements:
 - Agenda – “safe harbor” descriptions
 - Public report of actions and votes
 - Confidentiality



Public Records Act

- “Public records” must be disclosed unless they are “exempt”



“Public Records”

- Includes:
 - Any writing containing information relating to the conduct of the public’s business that is prepared, owned, used or retained by the agency regardless of physical form or characteristic
 - Electronic records
 - *City of San Jose v. Smith*: “writings about public business are not excluded simply because they have been sent, received or stored in a personal account.”



“Public Records”

- Does not include:
 - Statutory list of exemptions
 - “Catchall” allows nondisclosure where the public interest in nondisclosure clearly outweighs the public interest in disclosure



Ethics

- Political Reform Act
 - Prohibits official from making, participating in, or influencing a governmental decision in which he or she has a financial interest
 - Reporting obligations
- Government Code section 1090
 - Prohibits official from having a financial interest in their agency's contract
- Incompatible Offices
 - Prohibits public official from holding multiple offices that are incompatible with one another

Councilmember's Role with Respect to City Employees

- May have appointing authority over the city's highest officials (e.g., city manager)



City Council-City Attorney Relationship

- City is the client
- Consult the city attorney early and often
- Relay all pertinent facts and objectives
- Recognize that a concrete answer is not always possible

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