



Introductory Legal Training for Commissioners and Board Members

*Overview of the Brown Act, Public Records Act, and
other applicable laws.*

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Training Objectives



Objective: Commissioners will receive legal training and information necessary to carry out their duties and responsibilities related to serving on the County's Boards and Commissions.

Goals:

- 1) Commissioners will learn about and/or review their understanding of Brown Act requirements for public meetings;
- 2) Commissioners will learn about the Public Records Act, Conflicts of Interests, and other applicable laws for their positions.

Training Overview

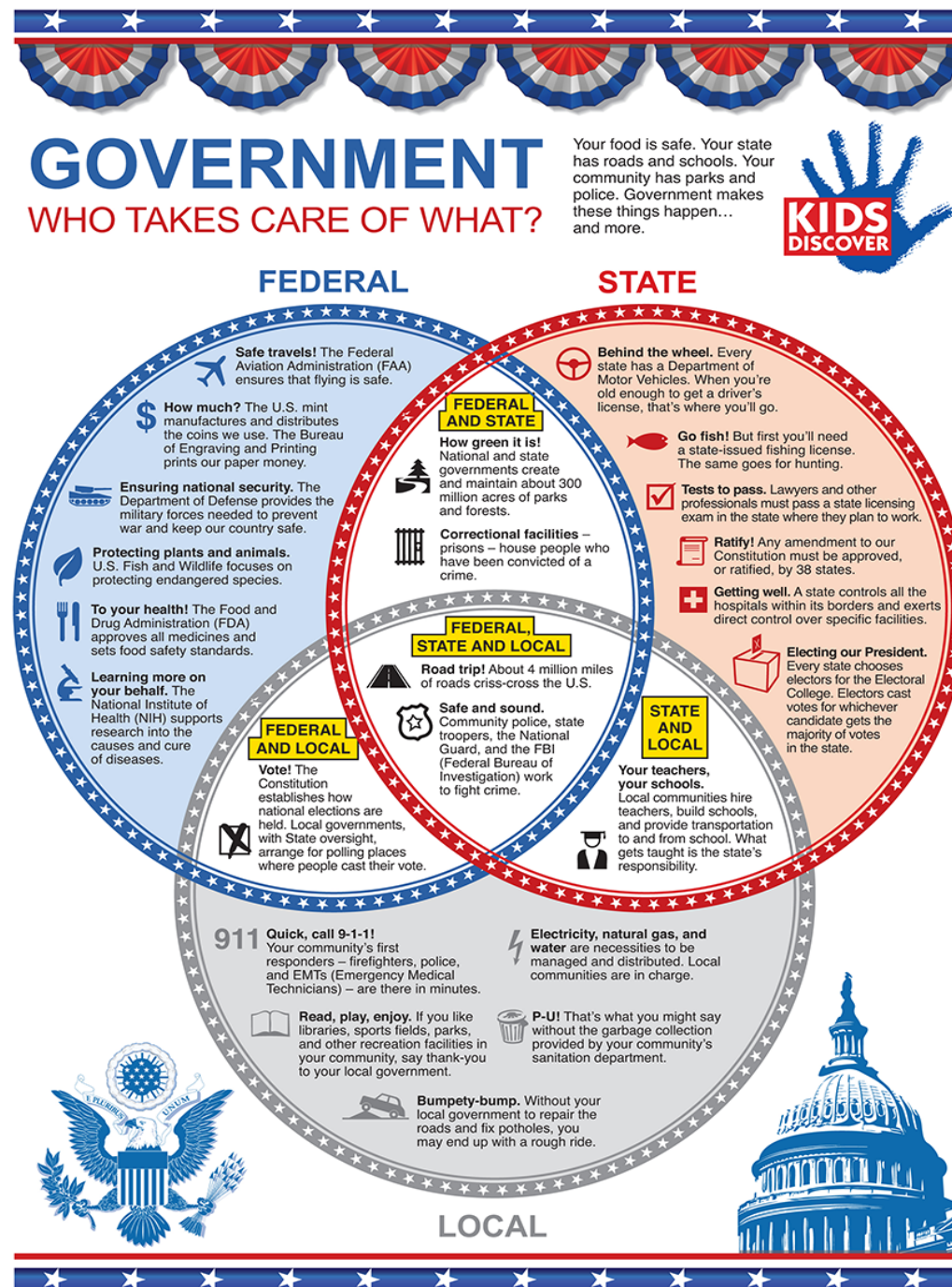
Today's Topics:

- 1) U.S. Government Principles
- 2) The Ralph A. Brown Act – Open Meeting laws
- 3) The Calif. Public Records Act (CPRA)
- 4) Ethical Obligations & Conflicts of Interest



Federalism:

- A system of government where power is shared and divided between different levels of government.
- Key principle embodied in our U.S. Constitution.
- Legal Authority:
 1. Federal Laws
 2. State Laws
 3. Local Laws

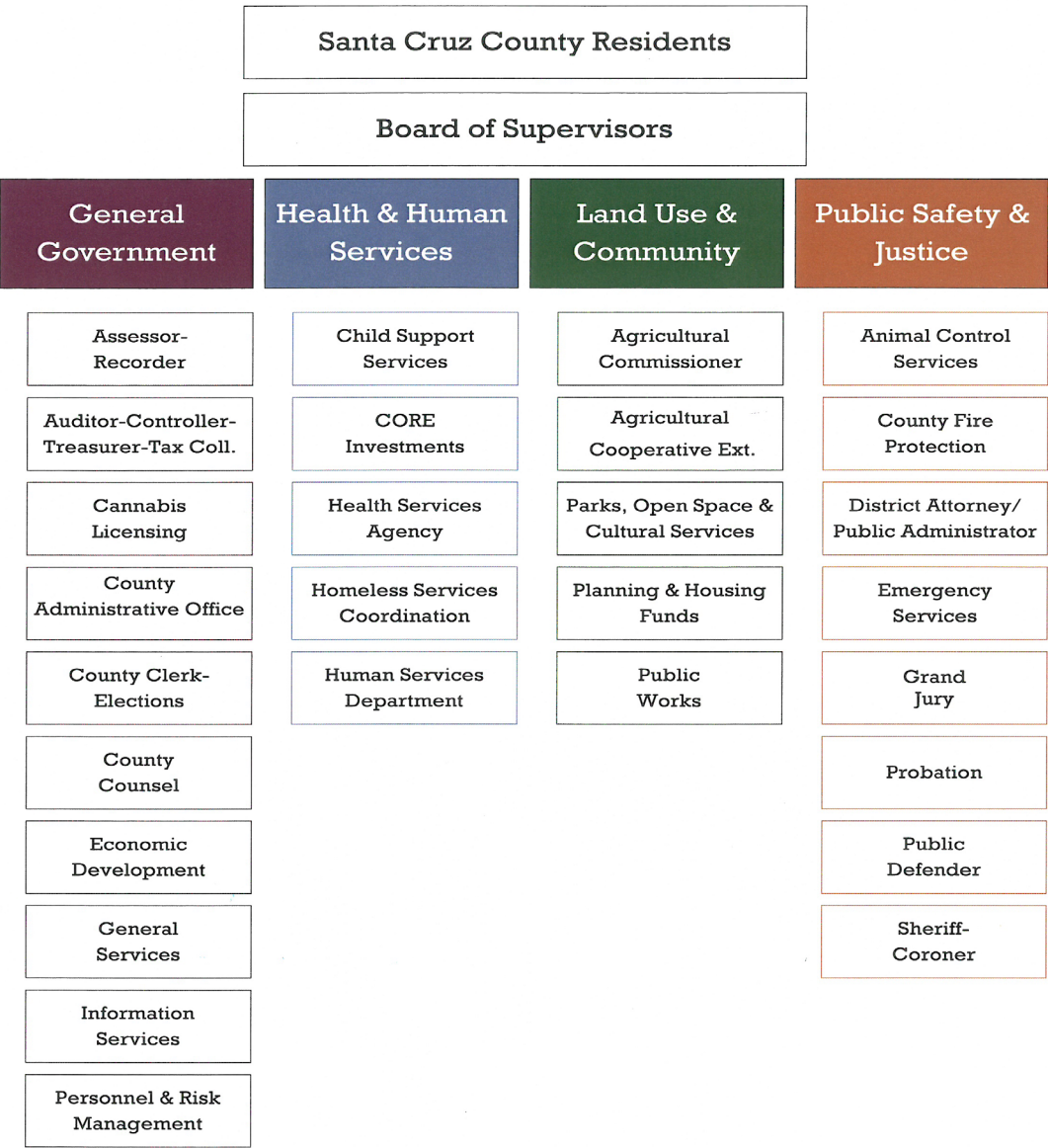


Overview of County Government



- There are 5 elected members of the Board of Supervisors.
- The Board of Supervisors directly appoints the following positions:
 - County Executive Officer
 - County Counsel
 - Public Defender
- There are also 5 elected Department Heads:
 - Assessor-Recorder
 - ACCTTC
 - County Clerk/Registrar of Voters
 - District Attorney
 - Sheriff

COUNTY ORGANIZATIONAL CHART



Subordinate Commissions and Boards

- The Santa Cruz County Board of Supervisors, through our County Code Chapter 2.38, has authorized the creation of subordinate or subsidiary legislative bodies, known as Commissions or Boards.
- Some subordinate bodies are legally mandated by federal and/or state laws, and others are created at the discretion of the Board of Supervisors.
- Generally, Commissions and Boards can be classified into:

Advisory Commissions/Boards	Decision-Making Commissions/Boards
Advise and make recommendations to the Board of Supervisors on specific subject matters as outlined in their purpose, powers, and/or duties. Serve as “eyes and ears” and as representatives of the Board of Supervisors.	1) Advise and make recommendations AND 2) <i>Conduct Quasi-Judicial/Administrative Hearings which make decisions that may impact a community member’s life, liberty, and/or property rights.</i>

Santa Cruz County Code – Chapter 2.38

- Chapter 2.38 – Applies to ALL Boards, Commissions, Committees and Department Advisory Groups:
 - Generally - “Commissions Policy Ordinance of Santa Cruz County”
 - Outlines important areas such as creation procedures, membership qualifications, applications, terms in office, vacancies, etc.
- 2.38.110 – Compliance with the Brown Act
- 2.38.120 to 2.38.160 – Officers, Meetings, Bylaws, Quorums, Meeting Minutes.
- 2.38.230 – Subcommittee establishment or dissolution
- 2.38.260 – Public Records Maintenance
- 2.38.270 – Ethical Obligations

Boards and Commissions – Ordinances and Bylaws

- Each County Board and Commission has its own Ordinance in the Santa Cruz County Code.
- An Ordinance specifies the purpose and duties – the “what” – which the Board of Supervisors has delegated to that subordinate body and/or includes requirements as outlined by federal or state law.
- All ordinances for Commissions and Boards must follow and adhere to Chapter 2.38, unless an exception or variation is specifically included.
- The Bylaws of a commission or board specifies the “how” their business will be conducted and other operational procedures. Must align with ordinance.
- Ordinances and bylaws can only be changed with after legal review by the County Counsel’s office and approval of the Board of Supervisors.

Part I

Brown Act Basics

The Ralph A. Brown Act –
Cal Gov't Code Section 54950 et seq.

Part I. The Brown Act – Background

- 1952: San Francisco Chronicle published a 10-part series of articles about “Secret Backdoor” Government Dealings in Sacramento.
- 1953: Ralph A. Brown, California Senator, sponsored legislation, now known as the “Brown Act” for Open Government.
- 2004: Added to the California Constitution via Prop 59 ensuring the public right of access to government information and actions.

“All people have the right of access to information concerning the conduct of the people’s business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

The Brown Act – Applicable Bodies

- In the original statute, the Legislature designated the law applies to “legislative bodies”:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and 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 their deliberations be conducted openly.”

- Broad coverage: applies to members of nearly every type of local government body, elected or appointed, decision-making or advisory.
- BOS has appointed you in their place to be their “eyes and ears” for specific issues, and in doing so, delegated some of their powers and responsibilities on behalf of their constituents and districts.
- Therefore, the Brown Act applies to each commissioner and board member in this County.

The Brown Act – General Requirements

Meaningful Agenda

- Must be posted at least 72 hours before a Regular Meeting in location “freely accessible to the public” and on the local agency’s website;
 - Must state the Meeting time and place; and
 - Must provides a brief general description but “must be sufficiently detailed to give notice to the public of the subject matter to be considered and of actions that may be taken by the body at the meeting.”
 - Should be clear for each Agenda item: to be discussed only, will have “action” take on it, or if necessary, both; reports for information purposes, etc.
- **Prohibits any action or discussion of items NOT listed in the Posted Agenda (with a few very narrow exceptions: emergency/immediate need type item)**

The Brown Act – Public’s Participatory Rights

- Protects the public’s right to attend, observe, and participate in meetings.
- **Public Comment/Oral Communications Section**: Community members can speak on any item of interest, *within the body’s subject matter jurisdiction*.
- Reasonable speaking time limits also permissible. Chair should announce how much time each speaker has before the public comment period begins.
- Public members can’t be required to register their names, provide info, etc. Any “sign in list” and/or name on speaker cards are completely voluntary.
- BUT a person CAN be removed who is “willfully interrupting proceedings” and “meeting breaks” are allowed to restore order.

The Brown Act – Public's Participatory Rights

Additionally:

- Gives public access to review agendas and any other writings or written materials related to any subject matter or action for upcoming or past meeting, or that has been distributed to Commissioners. (includes Calif. Public Records Act.; with exceptions.)
- ADA Accessible Language: Agenda must also include information on how, to whom, and when a request for a disability-related modification or accommodation can be made by a person with a disability to participate meaningfully in the meeting.
- Translation/Bilingual Services: additional time to give the same opportunity to participate.

The Brown Act – “Meetings”

- Under Calif. Gov. Code § 54952.2(a), a meeting is defined as:
 - ❖ “any congregation of a majority of the members ...
 - ❖ at the same time and same location, including teleconference ...
 - ❖ to hear, discuss, deliberate, or take action
 - ❖ on any item that is within the subject matter jurisdiction of the legislative body.”
- Intent is to limit “business” from being conducted outside of our publicly scheduled meetings.
- Quorum: 50% +1 of commissioners appointed, not just those present. Cannot start a “meeting” without a quorum.

The Brown Act – Types of Meetings

- Types of Meetings: Differences in Notice, time, and subject matter requirements
 1. **Regular ** - 72 Hours Notice; Posted Agenda and Materials**
 2. Special* - 24 Hour Notice; Posted Agenda and Materials
 3. Emergency - rare
 4. Adjourned - rare
 5. Closed Sessions – never without County Counsel’s prior approval
- Always welcomed to: talk to County Staff Department Liaison (who will contact County Counsel, if necessary) with questions, scheduling matters, agenda items, etc.

The Brown Act – Meetings

- **Exceptions** to “Meetings” definition:
 - ✓ 1-1 conversation with individual citizens *** (exception on next page)
 - ✓ Attending Conferences
 - ✓ Attending Community Meetings
 - ✓ Attending *other* legislative bodies meetings, including standing committees
 - ✓ Attending social or ceremonial events

→ AS LONG AS there is NO discussion or action of any business related to board or committee’s jurisdiction
- **But meetings DO include:** collective briefings, retreats, workshops, field trips, study sessions, etc.

The Brown Act – “Serial Meetings”

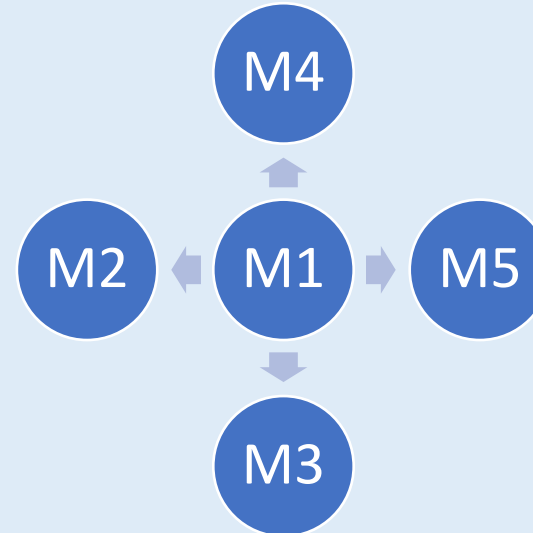


- **Serial Meetings:** “a majority of members ... shall not, outside of a meeting ... use a series of communications of any kind, direct or *indirect*, or *through intermediaries*, to discuss, deliberate, or a take action on any item of business ...” (Cal. Gov. Code § 54952.2(b).)
- Two types to be aware of:

“Daisy Chain”



“Hub and Spoke”



Subcommittees – “It Depends”

“AD HOC” Subcommittees: “For This”

- Allowed for Advisory Commissions only (No decision-making duties or powers in their ordinance);
- Less than a majority of Commission or Board
- Accomplishing or resolving a specific task or defined purpose;
- Temporary in nature and for a short, limited period of time (6 months or less);
- Only as necessary and/or needed;

→ **Only if meets these guidelines, then NOT subject to the Brown Act!**

“Standing” Subcommittees:

- *Regardless of size or composition;*
- Continuing subject matter jurisdiction or
- Fixed Meeting scheduled established by action of the legislative body

In other words: *Permanent, ongoing, or open-ended time period

→ ***Are considered “legislative bodies” and must follow the Brown Act!!!***

See also: Cal. Gov. Code § 54952; SCCC 2.38.150

The Brown Act – Watch out!



- Social Functions, gatherings, and other community events that give the “appearance” of meetings.
- **Emails:** Do not engage in “reply all” responses, “BCC”, group emails, or forwarding emails. Best practice to send a 1-1 email to Dept Staff Liaison only.
- Social Media: Comments on Facebook, Twitter (X), blogs, where other commissioners could see or respond to an item that may come up during a future meeting for discussion or action.
 - **AB 992 – Jan. 2021**: creates a bright-line rule that members of a legislative body may not respond *directly* to any communications posted on the internet *by other members of the same legislative body* regarding a matter within the jurisdiction of the legislative body.

The Brown Act – Remedies & Consequences

- Invalidation of improper agenda item: usually begins with an opportunity to “cure or correct” and re-address properly at an agenda meeting;
- Civil Actions: with possible costs and attorney’s fees awarded, and other corrective steps;
- Criminal Complaints: 1) an overt act and 2) where intent to “deprive the public of information to which member should know or has reason to know the public is entitled”, punishable as a misdemeanor

Quick Poll Time!

- What grade would you give this Commission for its Brown Act Compliance with Agendas? And why?
- What do you appreciate from this Agenda?
- What could be improved?

<https://www.scparks.com/Home/AboutUs/ParksRecreationCommission.aspx>

Part II.

The California Public Records Act

(“CPRA”)

Cal. Gov. Code Section 6250 et seq.

II. The California Public Records Act (CPRA)

- Purpose: Under Gov. Code § 6250 seq., to provide access to information about the conduct of the public's business.
- Gives the public right to inspect and/or obtain copies of records from gov't entities.
- Can receive most records which include written documents (both paper and electronic, i.e. emails), any existing video & audio records that exist at the time of the request.
 - With limited exceptions
- Application:
 - All written records received, distributed, created, etc by the commission will be saved and accessible upon request.
 - Your Emails and Texts related to this Commission: also subject to PRA. (Even if saved in or sent from your personal email account and/or personal phone.)
- Remember: please use your best judgment accordingly before putting anything in writing.

Part III.

Ethical Obligations

Overview: Conflicts of Interest

- A “conflict of interest” is a situation in which a person serving has an *actual or perceived competing professional or personal interest* on the outcome of a matter that is pending or action that will be taken by the commission or board.
- Different types:
 - Financial - \$\$, real property, personal property
 - Familial – including spouse, partner, and children
 - Professional/Work/Employer
- Competing interests can make it difficult to be impartial in fulfilling duties to the public.
- “Perceived” conflicts of interest can exist even if no unethical or improper acts have taken place.
- Safeguards exist to ensure that public leaders are acting in the public’s best interest and not to further their own self-interests.

Overview: Bias or Favoritism

- Important for Commissioners to avoid the appearance of favoritism to certain people and organizations with whom a Commissioner or Board Member is affiliated in daily/outside personal and/or professional life.
- Example:
- Possible options when encountering a conflict of interest:
 - Disqualify self by stating for the record
 - Leave room and/or refrain from discussion
 - Abstain from voting on that matter
- If uncertain whether you have a conflict on an item on the agenda, please ask your Commission Liaison to consult with your assigned county counsel.
- Take a look at: Chapter 2.38.270 which includes list of Commissions and Boards required to adopt file a Form 700 based on the County's Unified Conflict of Interest Code.

Additional Considerations

Cannot use your title or position as a Commissioner:

- To influence decisions on other bodies or people, unless a majority of the body has voted to take up/speak on that issue
 - Otherwise, must indicate that you are speaking as a “private citizen” or other professional capacity
- For financial gain or benefit
 - Not Okay: personal website, ads for your business, non-county email signature, political endorsements and/or campaigns.
 - Okay: Resume/Applications/Linkedin as “Volunteer Experience”

Questions?
*Thank You for your
Public Service!*

