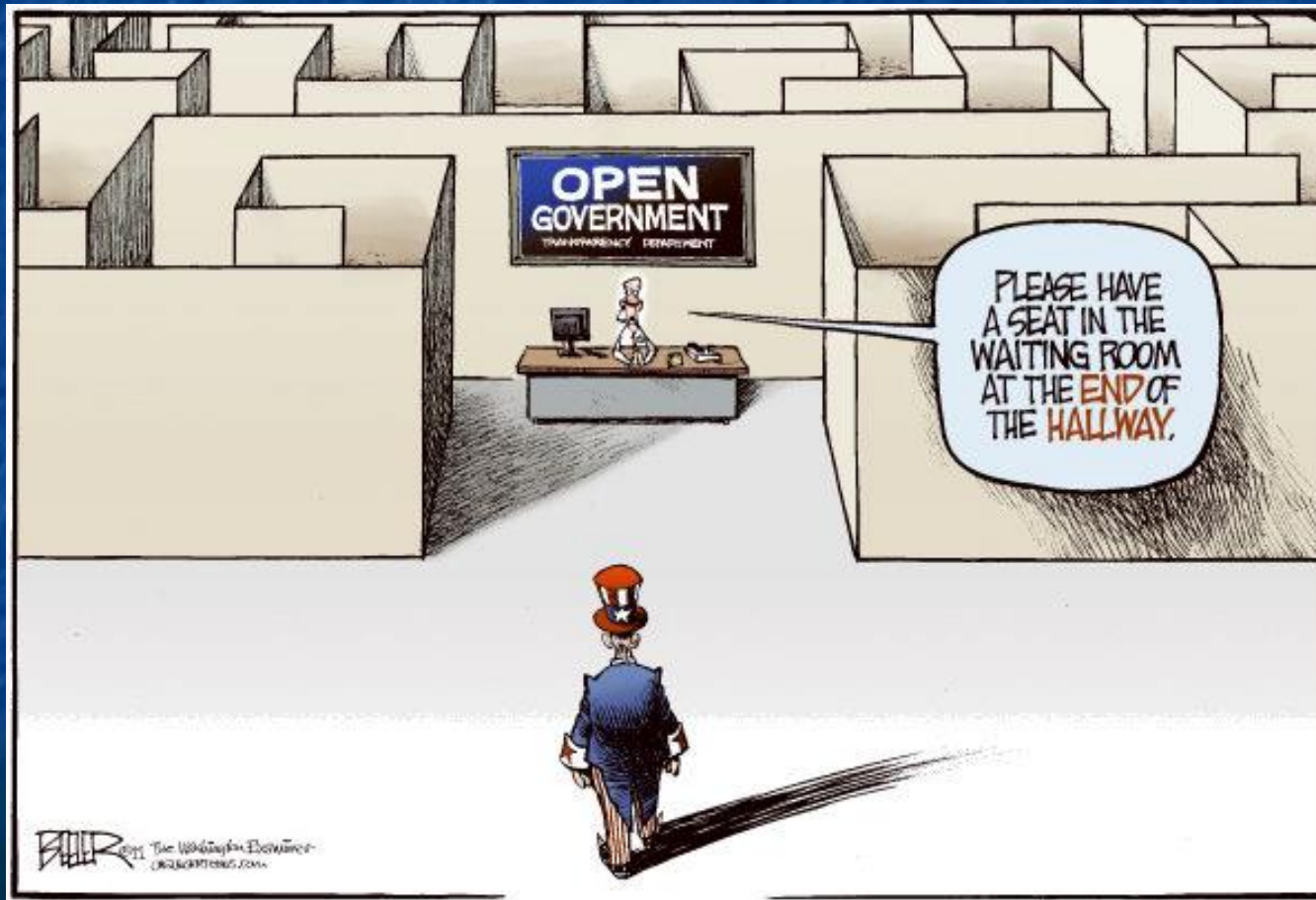


The Brown Act

*Open and Public
Meetings*

❖ “Your Secret Government” series in San Francisco Chronicle in 1952



❖ Ralph M. Brown, State Assembly,
carried the bill, enacted 1953

❖ Gov. Code §§ 54950 - 54963

❖ Applies to “legislative bodies”
of local government agencies

- county
- city
- school district
- community college district
(includes student & faculty boards)

❖ State government agencies covered by Bagley-Keene Act (enforced by AG)

“Legislative Bodies”

(GC § 54952)

➤ Governing body of local agency

OR

➤ Other local body created by statute (state/federal)

“Legislative Bodies” (cont.)

- Any commission, committee, board, or other body created by charter, ordinance or formal action of a legislative body
 - permanent or temporary
 - decision-making or advisory

“Legislative Bodies” (cont.)

- “Standing Committees” of leg. body (*finance, personnel, policy, etc.*)
 - continuing subject matter jurisdiction, OR
 - meeting schedule fixed by charter, ordinance, resolution or formal action of leg. body

“Legislative Bodies” (cont.)

- Exception: *ad hoc* committees
 - advisory
 - composed solely of members of leg. body
 - less than quorum
 - limited purpose, dissolved when task completed

Is It A “Legislative Body?”

➤ *Frazer v. Dixon Unified School District*
(1993) 18 Cal.App.4th 781

- Committee to address complaints by parents about books used
- Board, having final decision, adopted policy outlining procedure, committee and delegated decision to superintendent

Is It A “Legislative Body?”

Frazer v. Dixon

- committee: principal + 2 teachers (chosen by principal)
- committee reported to complaining parent and superintendent who then decided

Is It A “Legislative Body?”

Frazer v. Dixon

- Court ruled: **committee = leg. body**

“adoption of formal policy calling for committee to advise Superintendent and, in turn, Board when request for reconsideration is sufficient **formal action**”

Open “Meetings” (GC § 54952.2)



“Meeting”

“Any congregation of a **majority of members** of legislative body at same *time* and *location* to hear, discuss, deliberate, or take action upon any item within subject matter jurisdiction”

“Meetings” (cont.)

EXAMPLE:

- 3 of 5 members of school board visited school classroom to observe
 - Could constitute a “meeting” if gaining information or understanding for action

“Meetings” (cont.)

EXAMPLE:

- Majority go to dinner together
 - Could constitute a “meeting” if gaining information or discussing matters within subject matter jurisdiction

“Meetings” (cont.)

Exceptions:

- **Individual contact**
- Permissible to speak with other member or staff to answer questions or provide information, IF person does not communicate comments or position of other member with any other member(s)

“Meetings” (cont.)

Exceptions:

- **Seminar and conference**
 - open to public
 - issues of general interest to public or to cities
 - majority must NOT discuss among themselves

“Meetings” (cont.)

Exceptions:

- **Community meeting**
 - must be open & publicized
 - NOT discuss among themselves
- **Social or ceremonial occasion**
 - majority must NOT discuss among themselves

“Meetings” (cont.)

Exceptions:

- **Other legislative body** (same or another jurisdiction)
 - must NOT discuss among themselves except part of scheduled meeting

“Meetings” (cont.)

Exceptions:

- **Standing committees**
 - member(s) of body but not of committee may attend
 - but if it establishes quorum of body, their attendance must be as “observers” and should not speak or even sit on the dais

“Meetings” (cont.)

➤ “Teleconferencing” allowed IF remote location:

- connected by phone or video
- identified in notice & agenda
- posted & accessible to public
- all votes by roll call
- allow public participation at remote location, including comments

“Meetings” (cont.)

➤ No “Serial Meetings”

- series of meetings/communications
- exchange ideas among majority
- through person or technology
- even though majority never gather at same time

“Meetings” (cont.)

- No “Serial Meetings”
 - Emails
 - Phone conversations
 - Text messages

Notice & Agenda Requirements

PLANNING AND LAND USE MANAGEMENT COMMITTEE, SPECIAL MEETING

THURSDAY, AUGUST 6, 2009

BOARD OF PUBLIC WORKS EDWARD R. ROYBAL HEARING ROOM 350, CITY HALL – 10:00 AM
200 NORTH SPRING STREET, LOS ANGELES, CA 90012

MEMBERS: COUNCILMEMBER ED P. REYES, CHAIR
COUNCILMEMBER JOSE HUIZAR
COUNCILMEMBER PAUL KORETZ

Barbara Greaves – Legislative Assistant – 213-978-1068/e-mail Barbara.Greaves@lacity.org
Patrice Lattimore – Legislative Assistant – 213-978-1074/e-mail Patrice.Lattimore@lacity.org

Note: For information regarding the Committee and its operations, please contact the Committee Legislative Assistant at the phone number and/or email address listed above. The Legislative Assistant may answer questions and provide materials and notice of matters scheduled before the City Council. Assistive listening devices are available at the meeting. Upon 24-hour advance notice, other accommodations, such as sign language interpretation and translation services, will be provided. Contact the Legislative Assistant listed above for the needed services. TDD is available at (213) 978-1055.

FILE NO.

SUBJECT

(1)

05-0872-S613
CD 10

IN COUNCIL: 9-1-09

Communication from Councilmember Wesson, Council District 10, and application filed by David R. Welch, Esq., Representative, requesting a hardship exemption from the Medical Marijuana Dispensaries Interim Control Ordinance (No. 179027) for Natura Flora located at 3433 Farmdale Avenue.

Fiscal Impact Statement Submitted: No
Community Impact Statement: None submitted

DISPOSITION _____

(2)

05-0872-S547
CD 10

IN COUNCIL: 9-1-09

Communication from Councilmember Wesson, Council District 10, and application filed by Craig Rubin requesting a hardship exemption from the Medical Marijuana Dispensaries Interim Control Ordinance (No. 179027) for the dispensary located at 2370 Robertson Boulevard.

Fiscal Impact Statement Submitted: No
Community Impact Statement: None submitted

DISPOSITION _____

Notice & Agenda (cont.)

- Post agenda prior to meeting
 - “regular meeting” – 72 hours
 - “special meeting” – 24 hours
 - post in place accessible to public
 - brief general description (~20 words) of each item of business to be transacted or discussed

Notice & Agenda (cont.)

- **“Regular meeting”** – must establish a time and place for holding
- **“Special meeting”** – may be called anytime with proper notice
 - but not to discuss salaries, salary schedules or fringe benefits

Notice & Agenda (cont.)

➤ NO action or discussion on item or subject not listed on posted agenda

Exceptions:

- **Need for immediate action**, discovered after posted agenda, requires 2/3 vote
- **“Emergency situation”** (GC § 54956.5) determined by majority vote

Notice & Agenda (cont.)

➤ “Emergency situation”

- work stoppage
- activity that severely impairs public health and/or safety
- dire emergency (crippling disaster, actual or immediate threat of terrorist act)

Notice & Agenda (cont.)

➤ **Adjournment**

- may adjourn regular or special meetings to another time
- must post notice within 24 hours
- If adjourned meeting is more than 5 days after, must post new agenda 72 hours in advance

Notice & Agenda (cont.)

➤ Disclosure of materials

- Public right to review materials distributed to members of body
- Agenda must state where public can review materials or obtain copy
- If distributed less than 72 hours before meeting, must make available immediately

Public Participation

Public right to make comments at meetings



Proposal to limit public speaking at supervisors' meetings put under review

By Christina Villacorte, Staff Writer
Posted: 01/10/2012 08:14:46 PM PST
Updated: 01/11/2012 03:07:13 PM PST



Public Participation (cont.)

- Regular meetings:
 - general comments on anything within subject matter jurisdiction
 - specific comments on agenda items before or during body's consideration of item

Public Participation (cont.)

- Special meetings:
 - comments regarding only agenda item, during or before consideration

Public Participation (cont.)

➤ May preclude comments on item considered at prior meeting where comments were allowed

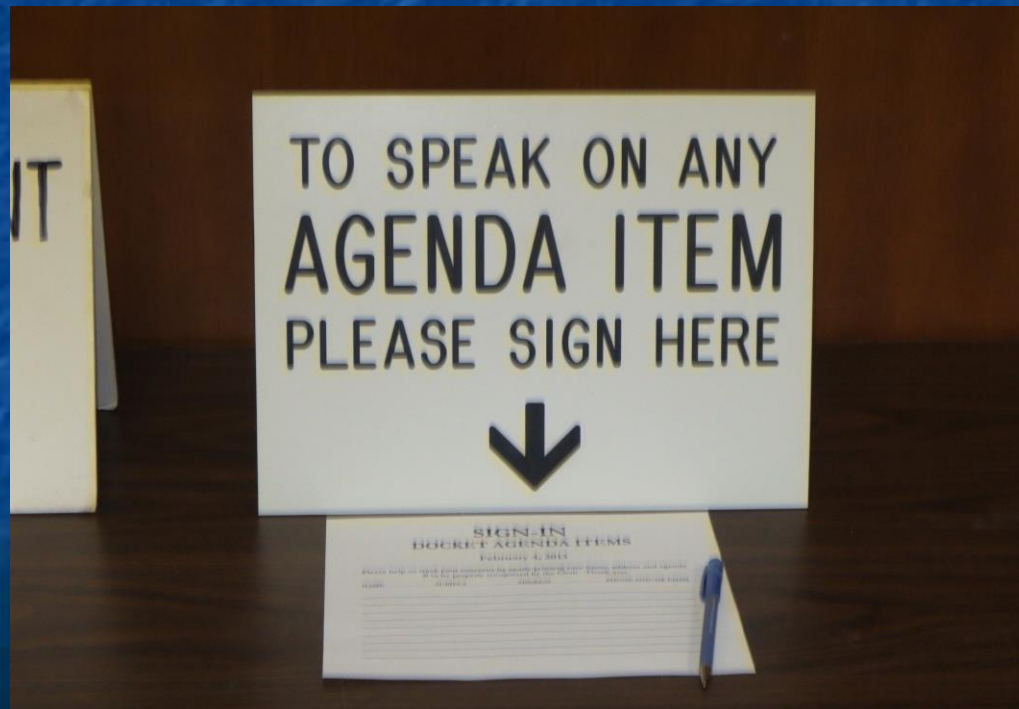
- comments at prior meeting of committee or full body
- But, if version of item is different from prior meeting, than public right to make comments again

Public Participation (cont.)

- Reasonable regulations on “time, place and manner”
- Time limits
 - per person (~3-5 min.)
 - total for public comment (~15-30 min.)

Public Participation (cont.)

- Manner/rules of decorum
 - may require fill out a request



Public Participation (cont.)

- Manner/rules of decorum
 - limit to subject matter jurisdiction (or can cut off)
 - content neutral (must allow criticism, but not slander)



Public Participation (cont.)

- disruption (can remove)



Public Participation (cont.)

- Public right to record open meetings
 - audio, video, photos & broadcast
 - many bodies record on own
 - May be limited or prohibited if causes noise, illumination, obstruction or disruption

Closed Sessions

Body may meet in closed sessions only for specific exceptions



Closed Sessions

- must reference specific GC § exception on agenda
- must allow public comment before convening into closed session
- must reconvene public mtg. and report any action and vote taken

Closed Sessions (cont.)

- Permissible closed sessions:
 - Conference with real property negotiators
 - License/permit determination
 - Conference with legal counsel – existing or anticipated litigation
 - Liability claims

Closed Sessions (cont.)

More permissible closed sessions:

- Threat to public services or facilities
- Public employment: dismissal, discipline, performance evaluation or appointment
- Conference with labor negotiators

Remedies

Civil Remedies:

- Injunction, mandamus or declaratory relief to prevent or stop violations or threatened violations (GC § 54960)

Remedies (cont.)

- Action to void past acts of body
(GC § 54960.1)
 - written demand to cure within:
 - 30 days if action was in open session but violated agenda requirements
 - 90 days otherwise

Remedies (cont.)

- Void past acts
 - body has 30 days to cure violation
 - If body fails, may file suit within 15 days of:
 - Receipt of decision from body
 - End of 30-day period to cure

Remedies (cont.)

- Who can file civil suit?
 - district attorney
 - “interested person”
 - Includes public, public entity or its officers

Remedies (cont.)

Criminal Penalties: (misdemeanor)

“attendance by a member of a body at a meeting where action is taken in violation, and member **intends** to deprive public of information to which member knows or has reason to know the public is entitled”

Handling Complaints

- Receive complaint from public official, concerned citizen or **gadfly**



Handling Complaints

1. Acknowledge receipt but NOT indicate opening investigation

2. Gather materials:

- agendas, minutes, recordings
 - web site, request, complainant
- send investigator for on site investigation?

Handling Complaints

- request agency for additional information or clarification
 - ☐ thru city attorney?
 - ☐ but NOT ask for explanation or informally discuss our analysis
 - ☐ objectively reviewing conduct, usually not intent

Handling Complaints

3. Analysis & Conclusion:

- statute, case law, AG Opinions
- rule of strict construction

4. Issue written response explaining our conclusion:

- to agency IF violation
- to complainant always + copy of violation letter sent to agency

Handling Complaints

Compliance is our goal

