

BPAC UPDATE, COUNTY LEGISLATIVE PROGRAM, AND BROWN ACT REVIEW

SAN MATEO COUNTY ATTORNEY

12/19/24

COUNTY ATTORNEY'S ROLE WITH RESPECT TO BPAC



BPAC UPDATE



BPAC FOUNDING DOCUMENT: BOARD OF SUPERVISORS RESOLUTION NO. 073998 (JANUARY 21, 2015)



RESOLUTION NO. 073998

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION AUTHORIZING THE ESTABLISHMENT OF THE SAN MATEO COUNTY BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, on January 27, 2015, this Board authorized the designation of the San Mateo County Parks and Recreation Commission as the Bicycle Advisory Committee (BAC) pursuant to Metropolitan Transportation Commission Resolution No. 4108; and

WHEREAS, the Board continues to seek ways to improve community health and bicycling and walking for daily transportation results in improved individual and community health, reduced incidence of chronic disease, and reduced emissions of greenhouse gases; and

WHEREAS, the advisory role for bicycling and pedestrian mobility extends beyond recreation to include the needs of school children through Safe Routes to Schools, business districts, seniors, people with disabilities, and disadvantaged communities; and

WHEREAS, despite recent advances in construction of bike lanes and sidewalks, more can be done to increase rates of active transportation and to improve

NINE PURPOSES OF THE BPAC



- a. Advise the Board of Supervisors regarding funding priorities for bicycle and pedestrian projects and programs in the County.
- b. Advise the Board of Supervisors regarding project priorities for funding programs including the Transportation Development Act Article 3 grant program.
- c. Make recommendations to the Board of Supervisors regarding the County's annual priority list of bicycle and pedestrian projects for the capital improvement program.
- d. Make recommendations to the Board of Supervisors regarding the County's annual road resurfacing, maintenance, and operations program.

- e. Make recommendations to the Board of Supervisors regarding encouragement and education programs to increase walking and bicycling for transportation.
- f. Coordinate with jurisdictions, partners, and bicycle and pedestrian advisory committees of other agencies on multi-jurisdictional issues.
- g. Provide recommendations to committees, commissions, and departments on issues related to bicycling, walking, and complete streets.
- h. Review and provide recommendations to County staff regarding plans, policies, routes, Safe Routes to Schools, transit, traffic enforcement, and guidelines related to walking and bicycling.
- i. Report and make recommendations to the Board of Supervisors no less than once in every twelve (12) month period.



POWERS AND DUTIES OF BPAC



The duties, functions and powers of the Committee shall be as follows:

- a. To advise and make recommendations to the Board of Supervisors;
- b. Develop and implement a yearly work plan;
- c. Provide a public forum for input from members of the public and to identify unmet needs;
- d. To act as an advocate for people walking and bicycling;
- e. Other duties and activities as directed by the Board of Supervisors.

MAY 10, 2016 RESOLUTION EXPANDING MEMBERSHIP / CREATING ALTERNATE MEMBERS

RESOLUTION NO. 074494

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION EXPANDING MEMBERSHIP OF THE SAN MATEO COUNTY BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE TO PROVIDE FOR THE APPOINTMENT OF UP TO TWO ALTERNATE MEMBERS, AND APPOINTING MEMBERS AND ALTERNATES TO THE COMMITTEE

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, at its meeting of September 1, 2015, the San Mateo County Board of Supervisors adopted Resolution No. 073998, which established the San Mateo County Bicycle and Pedestrian Advisory Committee ("Committee"); and

WHEREAS, Resolution No. 073998 provides that the Committee shall consist of no more than five voting members; and

WHEREAS, this Board has determined that the interests of the County will best be served by providing for the appointment of up to two additional individuals to serve as alternate members of the Committee, with such alternate members authorized to participate in discussions and votes on matters before the Committee at meetings where one or more of the five regular members are absent; and

WHEREAS, this Board wishes to appoint to the Committee:

- (1) Cristina Prather Persson, representing Bicycle Transportation, for a term ending June 30, 2020;
- (2) Dianna Butcher, representing At-Large, for a term ending June 30, 2020;
- (3) William Kelly, representing Older Adults, for a term ending June 30, 2020;

- Expanded the Committee's membership to include two alternate member positions
- Alternate members could only participate in discussions and vote when regular members absent
- Appointed the initial individuals to the Committee

BPAC STAFF LIASON CHANGES



- Joel and Vanessa performed key work on grant-funded studies (NFO RR Crossing and Community Connections Study and the Coleman Ringwood Avenues Transportation Study)
- Some study recommendations moving to implementation, moved to DPW since DPW is implementing dept.
- No change in role as BPAC liaisons – just migrated to different dept.

JANUARY 23, 2024 RESOLUTION UPDATING STANDING RULES RE POLICY MATTERS AND ADVOCACY FOR COUNTY'S ADVISORY BOARDS, COUNCILS, AND COMMITTEES

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION AMENDING THE STANDING RULES FOR THE COUNTY'S BOARDS, COMMISSIONS, COMMITTEES AND COUNCILS TO DEFINE THE PROCESS FOR SUBMITTING A RECOMMENDATION THAT THE BOARD OF SUPERVISORS SUPPORT OR OPPOSE PENDING LEGISLATION AND ALIGNING IT WITH EXISTING BOARD POLICY ON LEGISLATIVE COORDINATION AND ADVOCACY

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, the Board of Supervisors has established numerous boards, commissions, councils and advisory committees that are groups of local residents who address a specific area of interest with the expertise and lived experience they possess and who serve a vital role in County government by gathering and analyzing public input and recommending options to the Board of Supervisors; and

WHEREAS, the San Mateo County Board of Supervisors has adopted Resolution No. 069276, *Resolution Specifying Standing Rules for Boards, Commissions, and Advisory Committees*, which sets forth the manner by which its boards, commissions, councils, and advisory committees achieve their work; and

WHEREAS, the Standing Rules set have been amended over the years; and

WHEREAS, in recent years, many of the County's advisory boards, commissions, committees, and councils have become more actively engaged in policy matters and it is desirable to have a clear process for recommending that the Board of Supervisors support or oppose pending legislation; and

- Recognizes vital role of Advisory B&C's in County gov't for residents with expertise/experience to gather and analyze public input and recommend options to BOS
- Since B&C's more actively engaged in policy matters, creates clear process for recommending BOS support or oppose pending legislation
- Only BOS and elected officials have authority to express official views of SMC on pending legislation
- Avoid communicating conflicting policy interests to legislative delegation and public

UPCOMING RESOLUTION TO UPDATE BPAC

- Converts two alternate members to full voting members, will be 7-member Committee
- Increases quorum from 3 to 4
- Clarifies Sec. 5 of powers and duties to “act as an advocate for people walking and bicycling **consistent with its role as an advisory committee and the Standing Rules for Boards, Commissions and Advisory Committees.**”
- “Coordinate with **jurisdictions**, partners, and bicycle and pedestrian advisory committees of other agencies on multi-jurisdictional issues” to avoid interpretation that direct advocacy to external Boards and Councils is permitted (consistent with new Standing Rules)
- “Make recommendations to the Board of Supervisors ~~regarding~~ **on how the** the County’s annual road resurfacing, maintenance, and operations program **can enhance bicycle and pedestrian access and infrastructure.**” (clarifies context)
- Updates staff liaisons’ department change from SD to DPW
- Supersedes 2015 reso and 2016 modifying reso so entire BPAC reso is now in one self-contained reso

QUESTIONS/FEEDBACK ON RESOLUTION TO UPDATE BPAC



COUNTY LEGISLATIVE PROGRAM



- To secure legislation
- To oppose or amend legislation
- To shape public policy
- To secure state and federal funding

FEDERAL LEGISLATIVE PRIORITIES

- Lists priority areas of concern to the County at a federal level (36 this year)

Example federal legislative priorities:

- Reproductive Rights
- Housing and economic development
- Infrastructure
- Medicaid

STATE LEGISLATIVE PRIORITIES

- Reserved for major issues with broad impacts
- Examples of 2024 Priorities:

Ending homelessness

Creating affordable housing

Modernizing the Brown Act

Building resiliency for natural disasters

COUNTY LEGISLATIVE PRIORITIES



The County Supports:

- 26.1. Allocation of formulas that ensure the County receives its fair share of infrastructure bond funding by reflecting, in part, the variation in the cost of living and doing business among the state's diverse communities.
- 26.2. Allocation of formulas that ensures San Mateo County transit agencies receive a fair share of proceeds from any new regional funding sources for operations or transit infrastructure investment.
- 26.3. Legislation that does not alter local control, governance or funding for San Mateo County Transit agencies without the express consent of the affected San Mateo County Transit agency boards of directors.
- 26.4. The protection from diversion or borrowing of the federal or state gas tax.
- 26.5. Prohibitions on the delayed pass-through of state transportation funding (HUTA) to counties caused by state budget delays.
- 26.6. Protection of dedicated statewide ongoing revenue sources, including recently approved Road Maintenance and Rehabilitation Account (RMRA) funding sources that support local operations and maintenance of existing and future infrastructure needs.
- 26.7. Updating, adjusting and/or indexing the current gas tax. Pursuing alternative funding strategies including vehicle miles traveled (VMT).
- 26.8. The Legislative Analyst's Office recommendation to require a statewide transportation needs assessment every five years, if the assessment has no fiscal impact on County funds or revenues.
- 26.9. The implementation and funding for affordable transportation for low-income youth and families.
- 26.10. Policies and funding that facilitate countywide coordination on public transportation planning, active transportation planning (i.e. bike highways), parking and electric vehicle charging infrastructure planning. The County supports funding for bicycling and pedestrian transportation improvements in the unincorporated County. The County supports funding to be tied to miles traveled by all vehicles, rather than on fuel sales. The County supports significant and regionally coordinated investments in public transportation, including transit systems that reduce vehicle miles traveled (VMTs).
- 26.11. Policies and funding that support improvements to streets and roads that encourage active transportation, such as walking and bicycling, transit, and other carbon-reducing road improvements, and promote urban densification and the concentration of services and housing near centers of transit.
- 26.12. Funding for electric vehicle charging infrastructure.
- 26.13. Funding to promote and implement micro-mobility strategies and other emerging transportation trends.

26.14. Improved safety measures for active transportation and improved transit access to reduce congestion and air pollution.

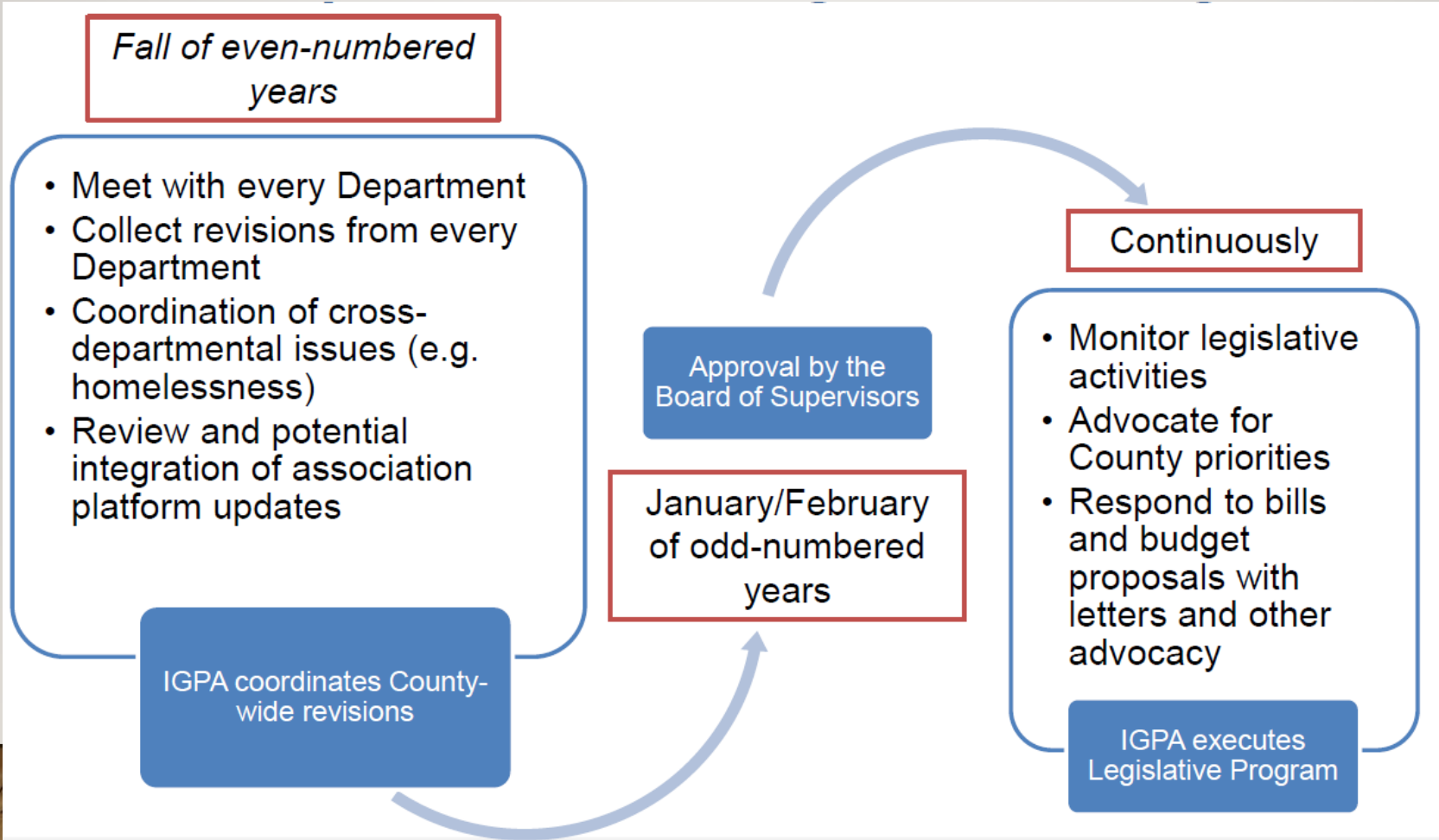
26.15. Funding for adaptation of transportation systems to climate change impacts.

WHO IMPLEMENTS THE COUNTY LEGISLATIVE PROGRAM?

- County has an Intergovernmental and Public Affairs Unit (IGPA), which
 - Liaises with state and federal officials,.
 - Develops and executes the County Legislative Program.
 - Coordinates and leads County advocacy efforts
 - Works with lobbying consultants



HOW DOES THE COUNTY LEGISLATIVE PROGRAM WORK?



COUNTY LEGISLATIVE COORDINATION AND ADVOCACY POLICY

- Requires formal board action by Board of Supervisors to set forth its position on a legislative issue
- County employees, including elected officials and appointed department heads, **may not** take any action that would imply the County's support or opposition to any pending legislation in the absence of, or inconsistent with, adopted Board positions.
- Letters of support or opposition to legislation will be prepared and coordinated with departments by the Legislative Officer or County staff in accordance with Board-adopted positions

COUNTY LEGISLATIVE COORDINATION AND ADVOCACY POLICY (CONTINUED)

- Written correspondence on behalf of the County to elected officials at the federal, state, or local level shall be transmitted over the signature of the Board President, the County Executive, or County advocates (IGPA)
- No department/agency shall take any action that would imply the County's support or opposition to any pending legislation or regulation in the absence of or inconsistent with an adopted Board position
- **Purpose: so County speaks with one voice, and different arms of County don't take inconsistent positions with each other**

San Mateo County Boards and Commissions Legislative Engagement Policy

In order to facilitate consistent and coordinated legislative advocacy on behalf of the County of San Mateo, all County Board and Commission members are expected to follow the Legislative Coordination and Advocacy Policy.



Key Points to Remember

Do not take any action that would imply the County's support or opposition to any pending legislation, budget proposal, or other policy unless it is consistent with Board-approved positions.

All legislative engagement must be coordinated through the Intergovernmental and Public Affairs Unit (IGPA) in the County Executive's Office. Your staff liaison can facilitate conversation with this Unit.

If you appear before a legislative body to express a personal opinion, you must state for the record that you are speaking as a private citizen, and not on behalf of the County or your Board or Commission.

Resources

The Intergovernmental and Public Affairs Unit
<https://www.smcgov.org/ceo/intergovernmental-and-public-affairs>

California Legislative Information
<https://leginfo.legislature.ca.gov/>

The California State Senate
<https://www.senate.ca.gov/>

The California State Assembly
<https://www.assembly.ca.gov/>

The California Legislative Analyst's Office
<https://lao.ca.gov/>

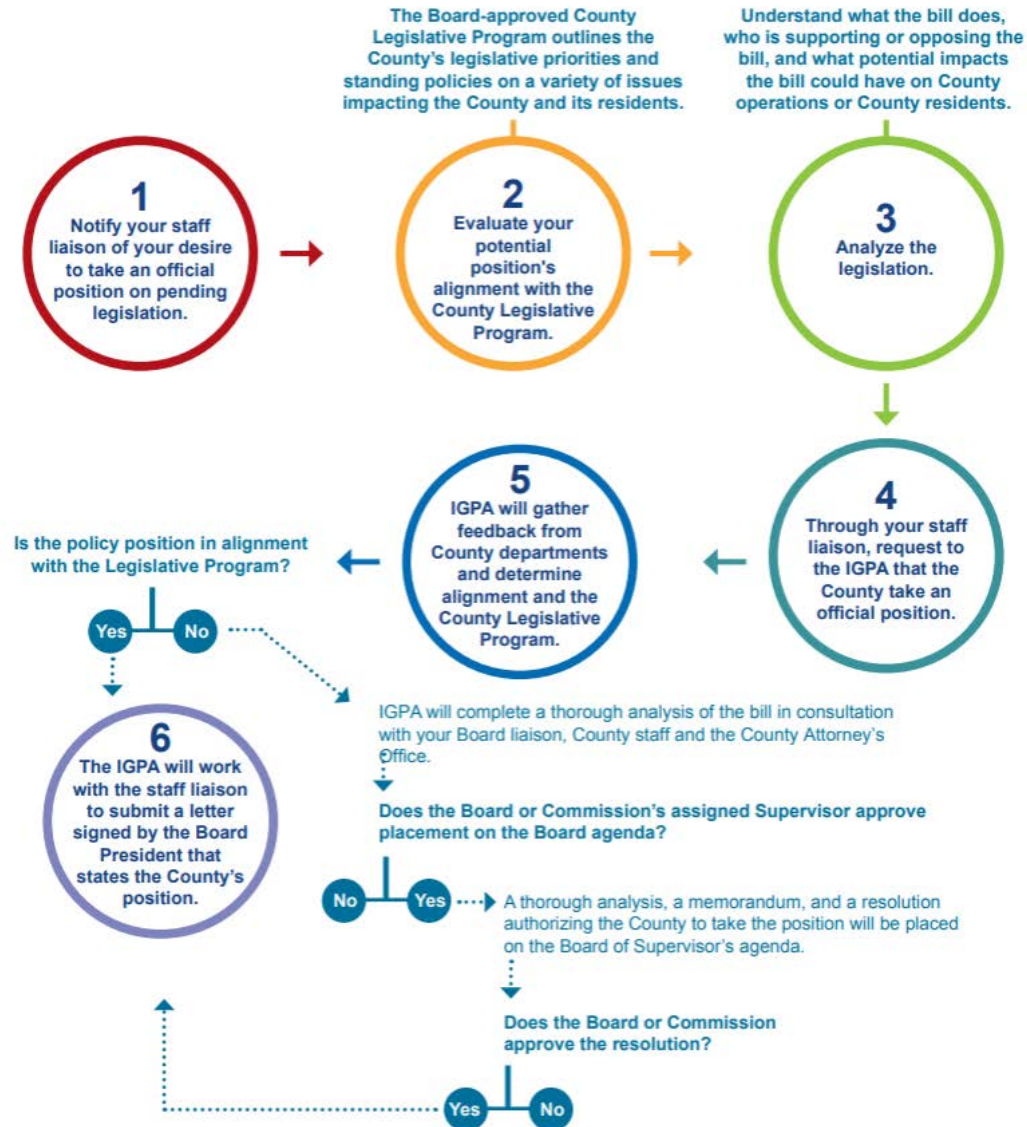
United States' Senate
<https://www.senate.gov/>

United States' House of Representatives
<https://www.house.gov/>



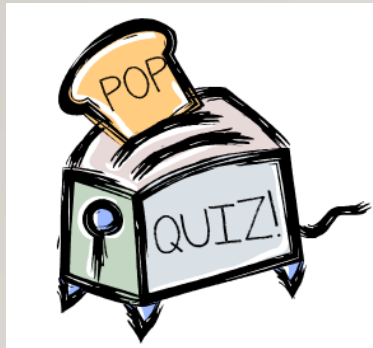
A Publication of the County Executive's Office/Intergovernmental and Public Affairs
Connie Juárez-Diroll, Chief Legislative Officer, (650) 599-1341

How to Take a Position on Pending Legislation



If a BPAC member reaches out to staff at an external agency, what is ok to ask?

What should they refrain from doing?



BROWN ACT AND MEETING REQUIREMENTS



WHAT IS THE BROWN ACT?

- Enacted in 1953
- Law's intent is that the actions of California's public Boards, Commissions, and Councils should be taken openly and their deliberations should be public
- Law attempts to balance public's right to access most proceedings and the need to conduct some proceedings with confidential candor



Ralph M. Brown

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- Presumption is in favor of public access
 - Privacy (“closed session”) for specified topic areas only
 - Exceptions to public access are construed narrowly
 - The Brown Act can be found at California Government Code §§ 54950 et seq.

THREE MAIN RULES

1. Notice to the public before any meeting describing when, where, and what for;
2. Opportunity for public participation during the meeting;
3. Exceptions to the public access/participation rules.

WHAT IS THE PUBLIC ENTITLED TO?

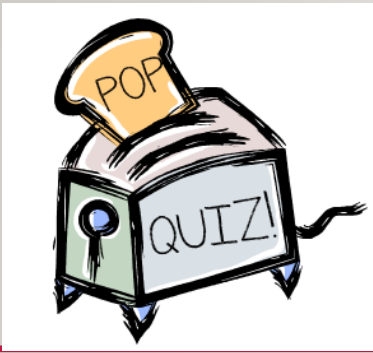
- To adequate advance notice the time, place, and topics of meetings
- To geographically proximate meetings (within the jurisdiction)
- To accessible meeting locations and assistive devices
- To record the meeting
- To bring new issues to the Board's attention (public comment)
- To timely receive access to the materials in the Board Packet
- To comment on each item before the Board deliberates (public hearing)
- To hear the deliberation, to know the (final) actions, and to know who voted how

WHAT IS THE PUBLIC ENTITLED TO (CONT'D)?

- The right to orderly comment is subject to reasonable rules and regulations
 - Per-speaker time limits
 - Per-item time limits
 - Not content-based (i.e., no rule against public criticism)

ADDRESSING A SPEAKER

- The public is allowed to comment on items not on the agenda
- Meanwhile, the Board is forbidden to “hear, discuss or deliberate” on items not appearing on the agenda
- The Board members may “briefly respond” to public comment
 - Give information or correct misinformation
 - Refer to staff for followup
 - Consider agendizing that matter for a future meeting



Should discussion between BPAC members and the public take place during the standing BPAC Announcements and Discussion agenda item?

WHAT IS A “MEETING”?

- Noticed, agendized public meetings
- Any gathering of a majority of the members in a place to hear, discuss or deliberate on a matter within the subject matter jurisdiction of the body
- Any use of a technological artifice to develop a collective concurrence as to a matter within the subject matter jurisdiction of the body (e.g., e-mail; social media)

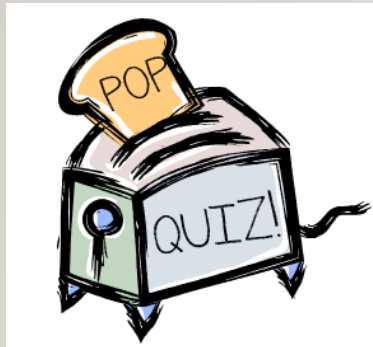
WHAT MEETINGS ARE

- Includes regular meetings, special meetings, study sessions, board retreats, workshops ...
- Includes lunches and social gatherings
- Includes telephone calls and e-mail chains
- Includes social media threads and bulletin boards
- Includes using intermediaries or representatives
- Includes circumstances where no action is taken!

“A MEETING” IS NOT:

- Individual discussions with stakeholders
- Attending a conference (without discussing substantive matters together)
- Attending a meeting of another public entity
- Attending a purely social or ceremonial gathering
- Giving testimony to a grand jury
- Attending a meeting of a standing committee (as long as the members creating a quorum *observe only*)

Do motions made during meetings need to be seconded?



“It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.”

REMOTE ATTENDANCE

BROWN ACT & REMOTE ATTENDANCE DEFAULT TELECONFERENCING

STEP 1: QUALIFYING CIRCUMSTANCES

- Teleconferencing may be used for all purposes during any meeting

STEP 2: REQUIREMENTS CHECKLIST

- Teleconference location is listed on the agenda, including full address (and room # if applicable)
- Agenda is posted 72 hours in advance of a regular meeting at the teleconference location (24 hours in advance for a special meeting) in BOTH the regular meeting location AND the teleconference location
- Each teleconference location is accessible to the public so the public may attend at the remote location
- A quorum of the members of the local public agency body is participating from locations within the boundaries of the territory over which the local public agency body exercises jurisdiction
- Each teleconference location is accessible to the public and has the technology, such as a speakerphone, to enable the public to participate
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location
- All votes must be by roll call

LIMITATIONS

- While the Brown Act contains specific requirements for conducting a teleconference (see above), the decision to use teleconferencing is entirely discretionary within the body



THE BROWN ACT & REMOTE ATTENDANCE AB 2449: EMERGENCY CIRCUMSTANCES

STEP 1: QUALIFYING CIRCUMSTANCES

- There is a physical or family medical emergency that prevents the board member or commissioner from appearing in person

STEP 2: REQUIREMENTS CHECKLIST BEFORE THE MEETING

FOR THE INDIVIDUAL MEMBER

- The member must inform staff and/or the board chair of the emergency as soon as practical
- The member must provide a general description of the emergency to the body in approximately 20 words without disclosing any personal medical information

FOR THE BOARD/COMMISSION

- The agenda has identified and included an opportunity for the public to attend and directly address the legislative body through a call-in option, an internet-based service option, and in person at the meeting
- The body has provided notice of how the public can access the meeting and offer comment
- The body has provided a way for the public to remotely hear, visually observe, and remotely address the legislative body
- NO requirement to post the teleconference location on the agenda

STEP 3: REQUIREMENTS CHECKLIST DURING THE MEETING

FOR THE INDIVIDUAL MEMBER

- The member receives board approval to use the emergency circumstances exception
- The member participating remotely is doing so through BOTH audio and visual technology
- The member participating remotely must publicly disclose at the meeting whether anyone else 18 years or older is present with the member and the general nature of the member's relationship with the individual

FOR THE BOARD/COMMISSION

- The body has approved the member's request to attend remotely via the emergency circumstances exception
- The public must be allowed to make "real time" public comment because the legislative body cannot require comments to be submitted before the start of the meeting
- If there is a disruption to the meeting broadcast or in the ability to take call-in or internet-based public comment, no further action can be taken on agenda items until the issue is resolved

LIMITATIONS

- AB 2449 will sunset on January 1, 2026
- A member may not participate in meetings remotely for more than three consecutive months or 20% of the agency's regular meetings within a calendar year. If the legislative body regularly meets less than 10 times a year, a member may not participate remotely for more than two meetings.



REMOTE ATTENDANCE

THE BROWN ACT & REMOTE ATTENDANCE

AB 2449: JUST CAUSE

STEP 1: QUALIFYING CIRCUMSTANCES

- (1) providing care to a child, parent, grandparent/child, sibling, spouse, or domestic partner OR
- (2) contagious illness that prevents attendance in person OR
- (3) tending to a need relevant to a physical/mental disability OR
- (4) traveling for business of the legislative body or another state/local agency

STEP 2: REQUIREMENTS CHECKLIST BEFORE THE MEETING

FOR THE INDIVIDUAL MEMBER

- The member informs staff and/or the board chair as soon as possible regarding their use of just cause
- The member has notified the legislative body at the earliest opportunity possible (can be as late as the start of a regular meeting) of their need to participate remotely for "just cause," including a general description of the circumstances justifying their need to appear remotely

FOR THE BOARD/COMMISSION

- The agenda has identified and included an opportunity for the public to attend and directly address the legislative body through a call-in option, an internet-based service option, and in person at the meeting
- The body has provided notice of how the public can access the meeting and offer comment
- The body has provided a way for the public to remotely hear, visually observe, and remotely address the legislative body
- NO requirement to post the teleconference location on the agenda

STEP 3: REQUIREMENTS CHECKLIST DURING THE MEETING

FOR THE INDIVIDUAL MEMBER

- The member does not require the board's approval to use the just cause exception
- The member participating remotely is doing so through BOTH audio and visual technology
- The member participating remotely must publicly disclose at the meeting whether anyone else 18 years or older is present with the member and the general nature of the member's relationship with the individual

FOR THE BOARD/COMMISSION

- The public must be allowed to make "real time" public comment because the legislative body cannot require comments to be submitted before the start of the meeting
- If there is a disruption to the meeting broadcast or in the ability to take call-in or internet-based public comment, no further action can be taken on agenda items until the issue is resolved

LIMITATIONS

- AB 2449 will sunset on January 1, 2026
- A board member may not claim just cause more than twice per calendar year
- A member may not participate in meetings remotely for more than three consecutive months or 20% of the agency's regular meetings within a calendar year. If the legislative body regularly meets less than 10 times a year, a member may not participate remotely for more than two meetings.



A “QUORUM”

- Number required to be present to transact business legally, usually a majority

YOUR MAGIC
NUMBER IS:

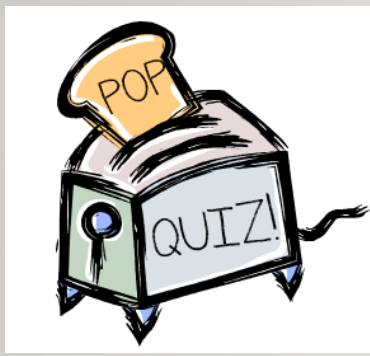
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(INCLUDING YOU)

*Will change to four once membership
increases to seven members

WHAT ABOUT SUBCOMMITTEES?

- Subcommittees created by formal action of the body must also comply with the Brown Act
- A special type of subcommittee, “advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body”, may meet without posting agendas or otherwise complying
 - Basically, to research a distinct complicated issue and report back in open session with a recommendation
- Consult with staff and counsel on the appropriate measures to effectuate your intent



If two BPAC members (one short of a quorum) collaborate on a task (e.g. research or drafting a letter that will be part of a future BPAC agenda item) outside a BPAC meeting and correspondence from that collaboration is forwarded to the BPAC Chair, could that result in a violation of the Brown Act?

WHAT IF THERE'S A VIOLATION?

- Call your staff liaison and ask to consult our office
- May result in reversal of the decision made using an improper process
- Requires that a demand be made, giving you the opportunity to correct your process
- Serious violations involving intentional conduct may result in criminal prosecutions

QUESTIONS?
