



MEMORANDUM

TO: Mayor Sally Meadows and the Los Altos City Council
FROM: Jolie Houston, City Attorney
RE: City Commissions and Committees Brown Act Concerns
CC: Gabriel Engeland, City Manager
DATE: August 17, 2023

The City of Los Altos (“City”) has numerous legislative bodies such as commissions, committees, subcommittees, standing committees, and ad hoc committees that may have similar or overlapping subject matter jurisdiction and membership. Moreover, many of the members (public officials) on these various legislative bodies are actively involved with related private nonprofit organizations in varying capacities. As a result, there are many opportunities for potential Brown Act violations to arise. This memo anticipates some of the possible Brown Act violations that may arise due to individuals serving on multiple legislative bodies that have similar or overlapping subject matter jurisdiction.

Standing Committees

Government Code section 54952 states that a “legislative body” includes “the governing body of a local agency ... a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that *standing committees of a legislative body, irrespective of their composition, which have [1] a continuing subject matter jurisdiction, or [2] a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.*” Courts have defined “formal action” by a legislative body to also include authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.¹

Standing committees comprised of less than a quorum of the legislative body are still subject to the Brown Act. Thus, if a legislative body creates a long-term committee on a single subject, that standing committee would be subject to the Brown Act. Additionally, the California Attorney General has opined that “function over form” is used to analyze whether a standing committee is a legislative body under the Brown Act.² In other words, a statement by the legislative body that an advisory committee “shall not exercise continuing subject matter

¹ See *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793.

² 79 Ops.Cal.Atty.Gen. 69 (1996).

jurisdiction” or the sole fact that a committee does not have a fixed meeting schedule because it meets on the calls of its chair or members is not determinative.³

A majority of the legislative body that created a standing committee is allowed to attend a meeting of the standing committee, as long as the members of the legislative body who are not also members of the standing committee do not participate in the meeting. The Brown Act defines a meeting as “any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body.”⁴ However, the Brown Act creates six statutory exceptions to this definition of “meeting”.⁵ One exception authorizes the “attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers.”⁶ As a result, if a legislative body establishes a standing committee of two of its five members, which meets monthly, a third member of the legislative body may attend these meetings as an observer; however, they may not participate in the meetings.⁷

Temporary Advisory Committee

Temporary advisory committees “composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies”, if they serve a limited or single purpose and will be dissolved once its limited or single purpose is completed.⁸ Such temporary advisory committees are commonly also called “ad hoc committees”, although this term not used in the Brown Act. Examples of temporary advisory committees include “an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion”.⁹

In order to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary advisory committee, factors such as “how meeting schedules are determined, the scope of the committee’s charge, or whether the committee exists long enough to have ‘continuing jurisdiction’” must be analyzed.¹⁰

The League of California Cities’ Guide to the Ralph M. Brown Act notes that advisory groups for a single decision-maker are not covered, because the Brown Act applies only to committees created by formal action of the legislative body. For instance, a committee advising a school district superintendent would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.¹¹ As a result, the

³ *Id.*

⁴ California Government Code section 54952.2(a).

⁵ California Government Code section 54952.2(c).

⁶ California Government Code section 54952.2(c)(6).

⁷ See Open & Public V: A Guide to the Ralph M. Brown Act, League of California Cities (Revised 2016), page 20.

⁸ California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

⁹ *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129; see also Open & Public V: A Guide to the Ralph M. Brown Act, League of California Cities (Revised 2016), page 16.

¹⁰ See Open & Public V: A Guide to the Ralph M. Brown Act, League of California Cities (Revised 2016), page 13.

¹¹ 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973).

Brown Act would not apply to an informal committee of five residents advising a member of a legislative body. Alternatively, if a city council directs the city manager, during a meeting, to form an advisory committee of residents to develop recommendations for a new ordinance, that committee would be subject to the Brown Act.¹²

Appointed Bodies

All appointed bodies, “whether permanent or temporary, decision-making or advisory,” created by formal action of the governing body are legislative bodies.¹³ These include “planning commissions, civil service commissions and other subsidiary committees, boards, and bodies”, in addition to “volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies.”¹⁴ If members of different legislative bodies are appointed to serve on a separate advisory group together, that advisory group may also be subject to the Brown Act. For example, in a case where a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations back to the city council, the court held that their joint mission made them a legislative body subject to the Brown Act.¹⁵ Had there been two separate committees and had they met only to exchange information and report back to their respective boards and not jointly to the city council, then they would have been exempt from the Brown Act.

Private Organizations

The governing body of a private or nonprofit organization will be subject to the Brown Act if it (1) “[was] *created by a legislative body* in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity”; or (2) “[received] *funds from a local agency* and the membership of whose governing body *includes a member of the legislative body of the local agency appointed to that governing body* as a full voting member by the legislative body of the local agency.”¹⁶ A private or nonprofit organization that receives government funding will not automatically have its governing body subject to the Brown Act. The Brown Act will also not apply to such an organization only because a non-appointed member of a legislative body sits on its board.¹⁷

¹² See Open & Public V: A Guide to the Ralph M. Brown Act, League of California Cities (Revised 2016), page 14.

¹³ See Open & Public V: A Guide to the Ralph M. Brown Act, League of California Cities (Revised 2016), page 12.

¹⁴ See *id.*

¹⁵ *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805.

¹⁶ California Government Code section 54952(c)(1).

¹⁷ See Open & Public V: A Guide to the Ralph M. Brown Act, League of California Cities (Revised 2016), page 13.

Attachment 3

Incompatible Activities and Perceived Conflict of Interest

Incompatible Activities

A non-elected local agency officer (public official) or employee may not engage in any employment, activity, or enterprise for compensation that is inconsistent, incompatible, or in conflict with their duties as a local agency officer or employee. Govt. Code§1126(a),(b). A local agency has the power to adopt rules on incompatible activities and include provisions to give notice of the determination of prohibited activities, of any disciplinary action to be taken for engaging in prohibited activities, and for the appeal of such determination and application. Govt. Code§1126(c).

Perceived Conflict of Interest

A perceived conflict of interest for a Commissioner may arise from personal relationships, financial interests, serving on bodies or boards that have shared or overlapping subject matter jurisdiction as those under the jurisdiction of the Commission, or when it appears that the Commissioner's private interests impact the official duties of the Commissioner, or influence his/her decision-making.