

Measure A Oversight Committee Meeting Minutes – December 2, 2011 – 9am-11:30am

Attendance:

Members Present

1. Suzanne Barba
2. Louis Chicoine
3. Kay Eisenhower (by phone)
4. Beth Pollard
5. Kerry Easthope
6. Mee Ling Tung
7. John Becker
8. Art Chen

Appointees present that have not taken their oath

1. Ursula Rolfe, League of Women Voters
2. Rochelle Elias, Alameda County Mental Health Board
3. Doug Jones, Central Labor Council, SEIU United Healthcare Workers

Members Absent

1. Barbara Anglin – Excused
 2. Olga Borjon-Excused
- “Excused” indicates that member notified HCSA of absence in advance.

Other Attendees

1. Vana Chavez, Health Care Services Agency
2. Jennifer Chan, Health Care Services Agency
3. Ryan Gordon, Health Care Services Agency
4. Pauline Keogh, County Administrator’s Office
5. Kathleen Pacheco, County Counsel
6. Andy Riesenbergs, Resource Development Agency
7. Ryan Wythe, Resource Development Agency

AGENDA

I. Welcome and Introductions

II. Announcements

- Jennifer Chan announced that the Alameda County Board of Supervisor Health Committee meeting focusing on local implementation of the Affordable Care Act will be held on Monday, December 12, 2011; this is part of a year-long series (starting in November 2011) hosted by Supervisors Carson and Chan. Visit Supervisor Chan’s website for more information <http://www.acgov.org/board/district3/hcreform.htm>.
- Vana Chavez, Health Care Services Agency Finance Director, announced that she is retiring the end of March 2012.

III. Review of Minutes

- John Becker moved to approve the minutes for September 23, 2011 and October 28, 2011, Art Chen seconded the motion; motion passed.

IV. Review of Materials

- County Counsel PowerPoint presentations-Measure A Oversight Committee and Basics of the Brown Act
- RDA draft FY 10/11 reporting forms, Version A and B
- Measure A revenue update (updated Dec. 2011); projected total revenue received is \$26 million

V. Q&A Session with County Counsel

- Kathleen Pacheco, Senior Deputy County Counsel, presented two PowerPoint presentations – one on the general role of the Measure A Oversight Committee and the other on the basics of the Brown Act

VI. Resource Development Associates (RDA)

- RDA facilitated discussion on the preparation and planning for review of fiscal year 10/11
- RDA presented revised reporting forms and obtained feedback from the Committee
- RDA will facilitate 2 training sessions for Measure A FY 10/11 fund recipients scheduled for 12/16 at 1pm and 12/19 at 10am
- HCSA staff will work with RDA, Louis Chicoine (chair of the Committee) and John Becker (vice-chair of the Committee) to finalize reporting forms
- The final reporting forms will likely be distributed to FY 10/11 fund recipients in early January

VII. Public Comment

None provided

VIII. Next Meeting– January 27, 2012, 9am

IX. Adjourn

MEASURE A Oversight Committee

(Established by Alameda County Ordinance 2.08.241)

December 1, 2011

Kathleen Pacheco, Senior Deputy County Counsel

Office of the County Counsel, Alameda County

Citizen Oversight Committee

2.08.242 - Citizen oversight committee.

“ A. Upon enactment of this article, the board of supervisors shall establish and appoint a citizen oversight committee.

B. The citizen oversight committee shall annually review the expenditure of the essential health care services tax fund for the prior year and shall report to the board of supervisors on the conformity of such expenditures to the purposes set forth in Section 2.08.241”



Measure A Funds

- Measure A funds are from a tax approved by the voters of Alameda County. The text of Measure A is contained in Alameda County Ordinance 2.08.240.
- The tax was approved for the purpose of providing additional support for emergency medical, hospital inpatient, outpatient, public health mental health substance abuses services to indigent, low-income and uninsured adults, children, families and seniors of Alameda County
- The collected funds are deposited into the county treasury in a special fund entitled "essential health care services tax fund."
- Use of the funds must comply with the requirements of the ordinance establishing the tax.



How the funds may be used



75% of the revenue generated by the tax are to be transferred to the medical center to be used in the discretion of the governing board of the medical center for current and future obligations of ACMC.



These funds may not be used to replace the funding currently provided by the county to ACMC pursuant to the existing indigent care contract between the county and the ACMC

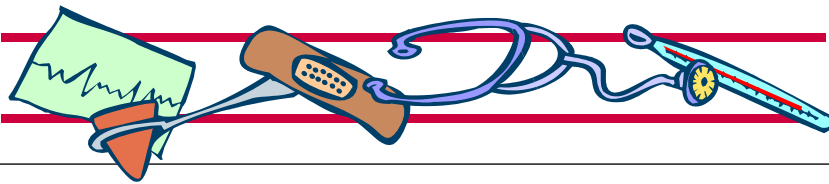
How the funds may be used



25% of revenue from the tax “shall be allocated by the board of supervisors based on the demonstrated need and the county's commitment to a geographically dispersed network of providers, for any of the following purposes:

1. For critical medical services provided by community-based health care providers;
2. To partially offset uncompensated care costs for emergency care and related hospital admissions; or
3. For essential public health, mental health and substance abuse services provided.”

Alameda County Ordinance 2.08.241 (D)



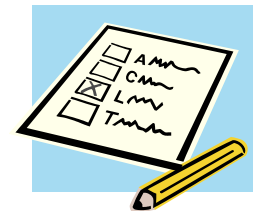
Limited Duration



2.08.257 - Termination of transactions and use tax.

This article shall remain in effect only until June 30, 2019, and as of that date it shall be repealed by operation of this section unless a later ordinance is adopted prior to June 30, 2019 that shall have the effect of deleting or extending the termination date set forth herein.

In California, any tax must be approved by a two thirds majority of voters .



Measure A Oversight Committee

Basics of the The Brown Act



December 2011

Kathleen Pacheco, Senior Deputy County Counsel
Office of the County Counsel for Alameda County

Brown Act – General Overview

- ▶ General Rights of Public Under the Brown Act
- ▶ The Open Meeting Rule
- ▶ Purposes & Public Policies
- ▶ “Legislative Body” defined
- ▶ “Meeting” defined
- ▶ Permissible meeting locations
- ▶ “Electronic meetings”
- ▶ Agendas: timing, placement, content, “off agenda” topics
- ▶ Closed Sessions
- ▶ Sanctions for Brown Act violations



General Rights of the Public

- ▶ To have meetings open and public with few exceptions. (54950, 54953)
- ▶ To have access to all agendas of public meetings and documents distributed to the Legislative Body members
- ▶ To audio/video record the meetings and to inspect any recordings of the meetings made by the agency. (54953.5)
- ▶ To attend without any condition precedent (i.e., need to register or provide any information)
- ▶ To address the Legislative Body at any regular or special meeting on any item on the agenda.
- ▶ Any member of the public may address the Legislative Body at regular meetings on matters not appearing on the agenda, *as long as the matter is within Legislative Body's subject matter jurisdiction.*



The Open Meeting Rule

The Brown Act requires that all meetings of the legislative body of a local agency be open and public, and that all persons shall be permitted to attend any meeting except as otherwise provided.

[Gov. Code. Sec. 54953]

“The people, in delegating their authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. ... The people insist on remaining informed so that they may retain control over the instruments they have created.”



[Gov. Code Sec 54950]

Purposes of the Act

Public commissions and boards “exist to aid in the conduct of the people’s business.”

Balancing 2 legitimate interests

1. Government’s interest in candor and confidentiality
2. Public’s interest in: free and open debate; being informed of its public servants’ activities

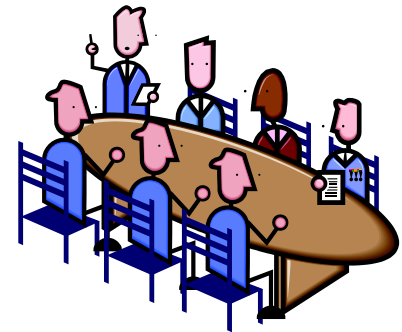
Discourage the notion that all “sensitive” information may be kept from the public



To Whom Does the Act Apply?

The Brown Act applies to all Legislative bodies of a local agency

- ☹ Exceptions are only as specified in the Act, and are to be narrowly construed (in favor of “open government”)
- ☹ Includes cities, counties, school districts, other “districts.”
- ☹ Includes “any board, commission or agency” of a city, county, district, etc.



“Local Agency”

Includes cities, counties, school districts, other “districts”

Includes “any board, commission or agency” of a city, county, district, etc.



“Legislative Body”

The Governing Body of a Local Agency or any other local body created by state or federal statute

Any board, commission, committee or other body of a Legislative Body that is created by formal action of the Legislative Body . . .

. . . Is itself a legislative body that must comply with the Act (open meetings, agendas, etc.) . . .

. . . Regardless of whether the committee is permanent or temporary, advisory or decision-making.



The “Rule”

All *meetings* of the legislative body are open and public.

So, what is a MEETING ?



“Meeting”

Any congregation of a majority of the members of the Legislative Body :

- at the same time and place
- to hear, discuss or deliberate upon any matter that is within the subject matter jurisdiction of the local agency”

These include:

- Face-to-face meetings
 - “Serial meetings”
 - Retreats
- Video teleconferencing

All of these require agenda, public access rights and other features of the Act

Types of “Meetings”



- ▶ Regular Meetings
 - Set by bylaws

- ▶ Special Meetings

- Can be called at any time by presiding officer or by majority of the members of the Legislative Body
- Require at least 24 hours written notice to all members (and to media outlets who have requested notice in writing)
- The notice must specify the business to be conducted.
 - No other business may be conducted
- Notice must be posted at least 24 hours in advance of the meeting.

BUT ALSO ...

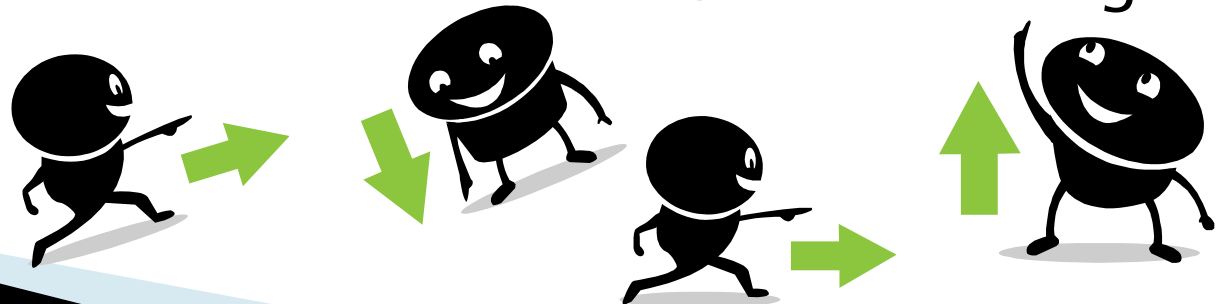
Face-To-Face Meetings

- ▶ Even informal meetings can be a Brown Act Meeting!
 - Deliberations (e.g., issue consideration, analysis, debate) by a majority of Legislative Body members regarding the Legislative Body's business is a Meeting
 - Any vote on the Legislative Body's business is a Meeting
 - The Legislative Body doesn't have to vote or otherwise take formal action to be covered by the Act – discussions alone trigger the Act.



“Serial” Meetings

- ▶ *A series of communications* which collectively result in a meeting of a quorum
 - “Chain” meeting (A to B to C)
 - “Hub” meeting (A to B & A to C)
- ▶ **If** the series of communications is for the hearing, discussion, deliberation or other action on a matter that is within the subject matter jurisdiction of the agency
- ▶ Legislative Body members cannot use technological devices – series of phone calls, emails, text messages, etc. that would create a Serial Meeting.



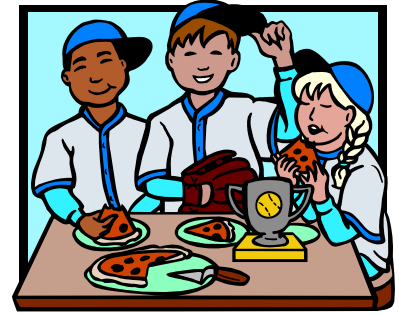


Electronic “Meetings”

- ▶ It is forbidden for a majority of the Legislative Body to use personal intermediaries or technology to develop a concurrence on an action item, except as expressly allowed for by the Act.
- ▶ Specific requirements for electronic/teleconferenced meetings: each location must be noticed and publicly accessible.



Board “Retreats”



- ▶ Covered by the Act when elements of a “meeting” exist.
- ▶ Therefore, Brown Act requirements must be met, including Open Meeting and Agenda requirements apply

The Brown Act Does NOT Apply

- ▶ **Social meetings** (so long as no Legislative Body business discussed by a majority of Legislative Body members)
- ▶ **Conference Attendance, Town Hall Meeting, Ceremony** (or other forum) (so long as no Legislative Body business is discussed by a majority of Legislative Body members)
- ▶ **Individual contacts or conversations** between a member of the Legislative Body and any other person (including other members of the Legislative Body, *so long as no serial meeting is the intended or actual result*)



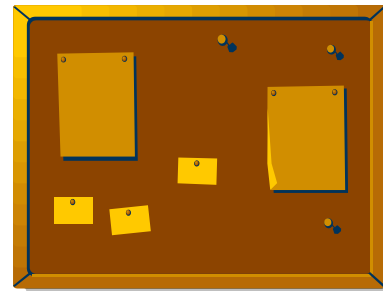
Meeting Locations and Time

- ▶ Must be within the boundaries of the territory over which the Legislative Body exercises jurisdiction (i.e., in Alameda County)
 - Some exceptions (site visits re matter w/in Legislative Body's subject matter jurisdiction)
- ▶ Must occur at a time and location set by ordinance, resolution or bylaws.



Agenda: When & Where

- ▶ Agenda to be “posted” *at least 72 hours prior to the meeting*
- ▶ Post in a location that is freely accessible to the public
 - Often posted on inside of a window or “notice box” visible from the street
- ▶ Post in all locations where a teleconference is derived from



Agenda: Contents



- ▶ State time and location
- ▶ Must contain “brief” description of each item discussed
 - “Brief” = need not exceed 20 words
 - But with enough detail notify the public re all topics being considered
 - Include items for closed session
 - For “closed session” items, the statute is very specific about what has to be included for each type of closed session (real property negotiations, conference with legal counsel, etc).

Discussing Matters Not on the Agenda...

- ▶ Legislative Body members can also briefly respond to statements made or questions posed by the public.
- ▶ In limited instances discussion can occur if there is an emergency, a late development or matters previously on agenda.
- ▶ On own initiative, members may ask a question for clarification, make a brief announcement or brief report on his/her own activities.
- ▶ Refer to staff for information
- ▶ Request of staff for a report back at a future meeting on any matter
- ▶ Direct that a matter be placed on future agenda



Closed vs. Open Session



- ▶ Presumption: “Meetings” are open to the public unless the Act specifically authorizes the Legislative Body to meet in “closed session” (aka Executive Session)
- ▶ Closed sessions are limited to a few specified circumstances and fact specific
- ▶ Standard is NOT whether the subject matter is sensitive, embarrassing or controversial
- ▶ Only the membership of the Legislative Body plus necessary support staff can be present in closed session

Permitted in Closed Sessions

- ▶ Personnel
- ▶ Litigation
- ▶ Labor Negotiations
- ▶ Real Estate Negotiations
- ▶ Medical Quality Assurance Matters



Closed Session Announcements

- ▶ Prior going into closed session, an announcement need be made in open session identifying the items to be discussed
- ▶ Can only discuss those items
- ▶ After session, reconvene into open session and make any necessary disclosures re actions taken in closed session.



Sanctions for Brown Act Violation

- ▶ A member may be held criminally liable (misdemeanor) for intentional deprivation of public information.
- ▶ The D.A. or any interested person may sue to enjoin an agency or board for violations and threatened violations of the Brown Act.
- ▶ Suit to render “action” null and void if cure/correction not made. [See Act’s text for exceptions]
- ▶ A court can order an agency to tape record its future closed sessions so the court can review these actions to determine if the agency is violating the Act. (54960)
- ▶ A court can award attorney fees and costs to petitioners. (54960, 54960.1, 54960.5)



SUMMARY...

- ▶ The Measure A Oversight Committee is a subsidiary legislative body – The Brown Act applies to YOU.
- ▶ Not only your determinations but also your deliberative process must be held in public – don't privately discuss business that may reach a quorum or more.
- ▶ Discussions can be face to face, phone, electronic or serial.
- ▶ Closed session does not pertain to “sensitive” information but to specified exceptions.
- ▶ Required public notice of meetings and brief description of matters on agenda.
- ▶ Meetings are open and accessible to the public for their input, which can be reasonably regulated.