



Brown Act and Conflicts of Interest

Clean Energy Alliance – Community Advisory Committee

December 3,
2020

Presented by: **Greg Stepanicich, General Counsel**

Ralph M. Brown Act

Purpose of the Brown Act

- Promote transparency and public participation in local government
- Move decision making into the public eye



Meetings

- **Elements:**
 - Congregation of a majority
 - Same time and location (including teleconference location)
 - To hear, discuss, deliberate, or take action on any item
 - Subject matter jurisdiction



Regular Meeting



- Agenda must be posted 72 hours in advance
- Brief description of items of business
- Posted agenda must be freely accessible to public
- Only 24 hours' notice required for special meetings

Teleconferencing

- Meetings can be conducted by teleconference (audio or video connection)
- Quorum must participate from locations within the jurisdiction (**Suspended due to COVID-19**)
- Agenda must identify each teleconference location (**Suspended due to COVID-19**)



Serial Meetings Are Illegal

What is an illegal serial meeting?

- Direct or indirect communication
- Employed by a majority
- To discuss, deliberate, or take action on any item of business or potential business

Serial Meetings Are Illegal



- Don't hit "Reply All"
- Remember the discussion must occur publicly on dais not via email or texts among members

2 Types of Serial Meetings

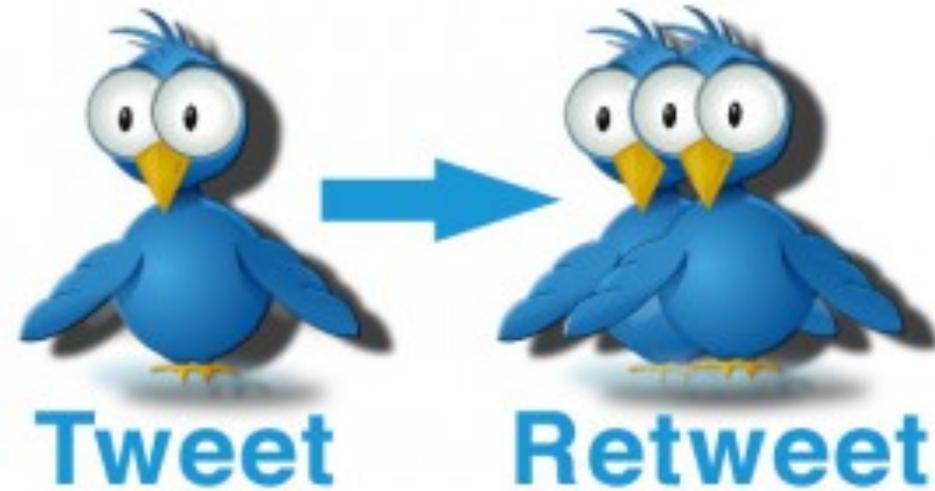
Chain



Hub and Spoke

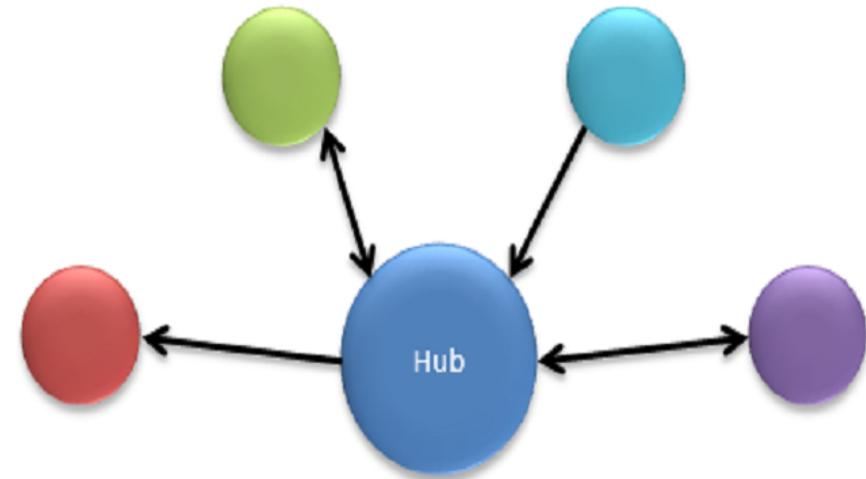


Serial Meetings: Chain



Serial Meetings: Hub and Spoke

- One person serves as the central hub
- Receives and disseminates information to multiple spokes



Individual Briefings Are Allowed

- **Individual briefings are permitted**
 - “Unidirectional”
 - Don’t describe views of any other members
 - Don’t ask member’s views

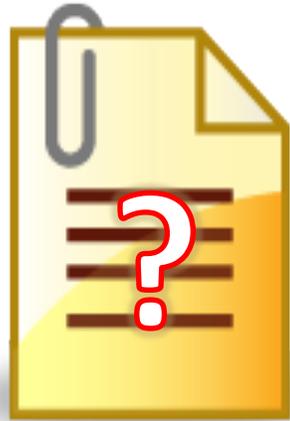


Meeting Exceptions

- **When is a meeting not a “meeting?”**
 - Individual contacts
 - Conferences and seminars
 - Community meetings
 - Another body of the agency when it is an open and noticed meeting of that body



Items not posted on agenda?



- **No discussion or decision on items not on the posted agenda**
 - Limited exceptions

Members Must Stick to Items on Agenda, Except...

Brief response to comments / questions

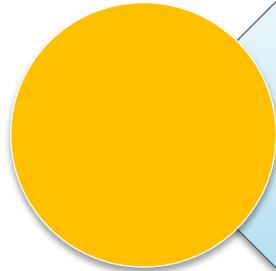
Clarification / reference to staff

Brief announcements / report on activities

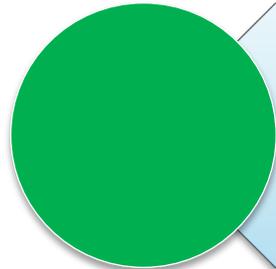
Requests for future report

Placement of items on future agenda

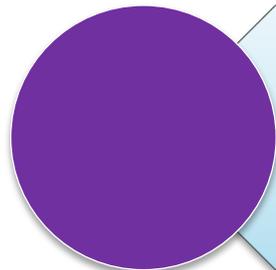
Public Comments at Meetings



Public agencies may not prohibit public criticism of the agency or the legislative body

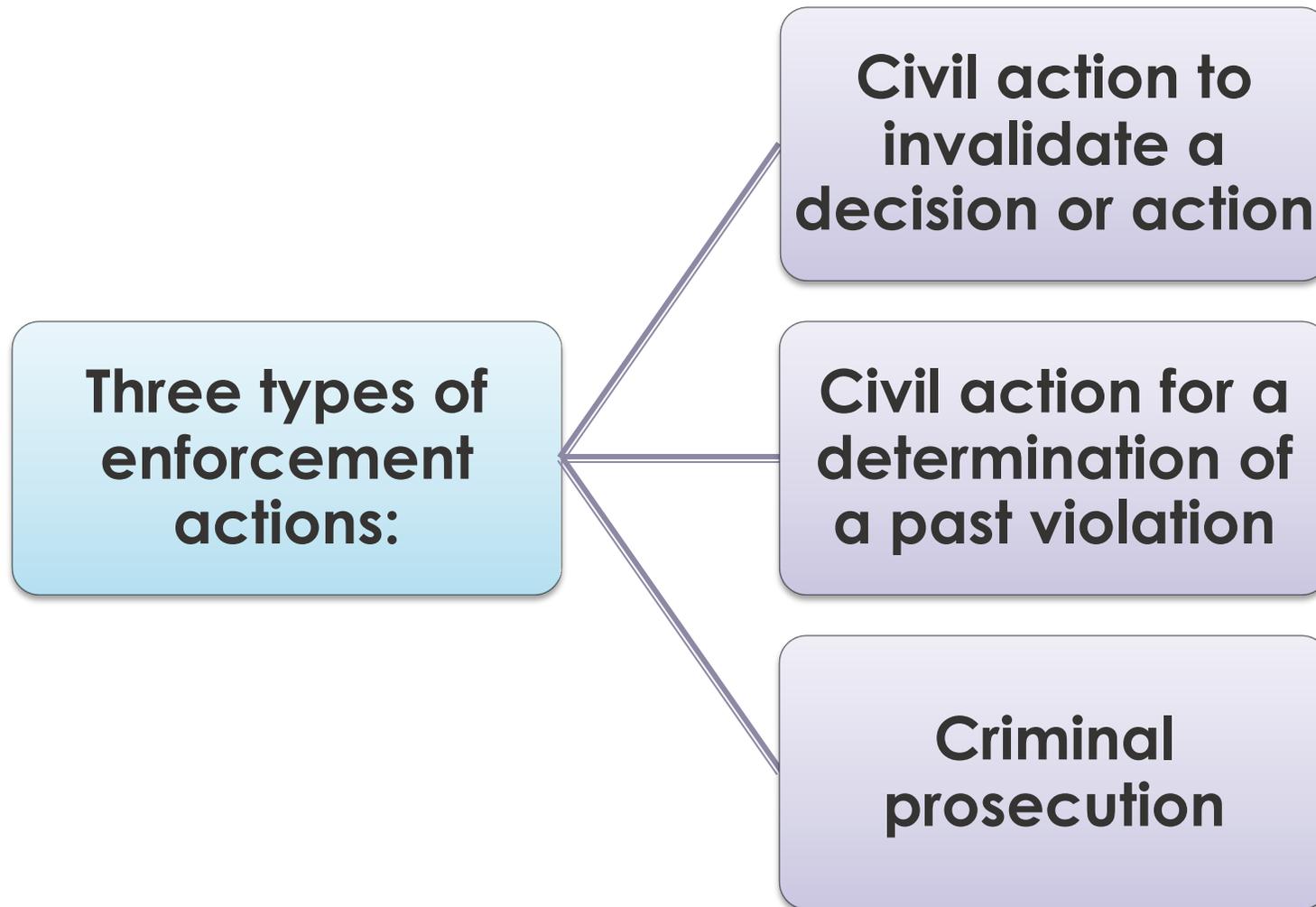


Members of the public may comment on anything with the Committee's subject matter jurisdiction



This includes items NOT on the agenda

Enforcement & Consequences



Conflicts of Interest



The Political Reform Act

■ The Basic Rule - Section 87100

- No public official at any level of state or local government,
- Shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision,
- In which he or she knows or has reason to know that he or she has a financial interest

CEA Conflict of Interest Code

- **CEA adopted a Conflict of Interest Code**
 - Applies to Community Advisory Committee
- **Members of Community Advisory Committee must report interests specified in the Code on Form 700**



Form 700

- **All Members of the Community Advisory Committee must fill out a Statement of Economic Interests (Form 700)**
 - Penalties for late filing / failure to file
 - Accurate reporting prevents conflicts & increases public confidence
 - Failure to report an interest will almost always make the FPPC, public and press more suspicious
- **The CEA Conflict of Interest Code requires you to include the following interests on Form 700:**
 - Real Property within jurisdiction of CEA (excluding personal residence)
 - Income (if source plans to contract or has contracted in the last 2 years with CEA)
 - Business Interests and Investments (if related to an entity that plans to contract or has contracted in the last 2 years with CEA)

When to File Form 700

- **Within 30 days of taking office**
- **Annual Statements**
 - Covers January 1st through December 31st of previous year
 - Report all changes in reported interests during this time period
 - Must file by April 1st
- **Within 30 days of leaving office**
 - Include the same information as in your annual statements
 - Covers all changes since last annual statement

Real Property

- **Real property interests worth at least \$2,000**
 - Owned by you
 - Owned by your spouse separately
 - Your dependent child's property
 - Your interest as a tenant in real property (except month-to-month tenancy)



Income

- Sources of income of \$500 or more in the last 12 months
 - Your own income such as salary from a private employer
 - Promised income
 - Dependent child's income
 - Loans
 - Spouse / partner income
 - Commission income



Business Interests and Investments

■ Investments

- Investments worth \$2,000 or more
- Mutual Fund exception

■ Business Interests

- Management or employment
- “Related” business entities
- Property interests of businesses

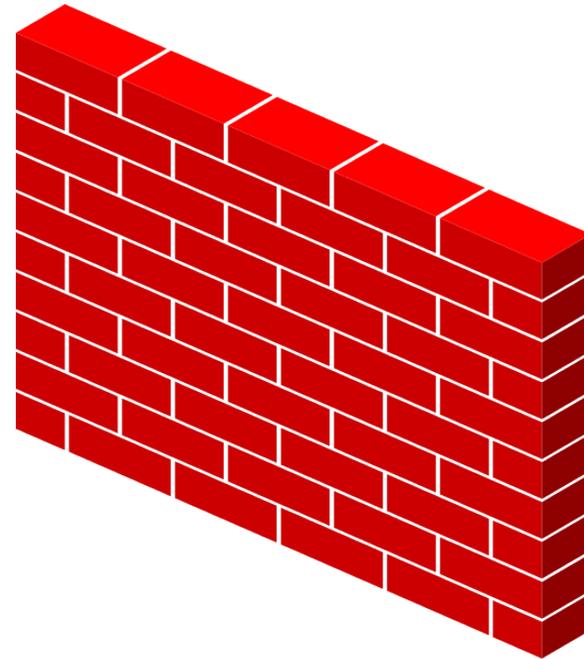


Do I Have a Conflict?

- Step 1:** Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?
- Step 2:** Will the reasonably foreseeable financial effect be material?
- Step 3:** *Affirmative Defense:* Can the public official demonstrate that the material financial effect on his financial interest is indistinguishable from its effect on the public generally?
- Step 4:** *Prohibition:* If Three-Step analysis establishes a conflict, the official may not make, participate in making or attempt to use his official position to influence a governmental decision.

If You Are Disqualified

- You cannot make, participate in the making, or use or attempt to use your position to influence the decision
- Do not discuss or influence (staff or colleagues)
- Do not participate in public meeting or provide recommendation



When You Recuse

- **Disclose your interest on the record**
- **Leave the room**

PRA Penalties



- **Invalidation of decision**
- **Misdemeanor (could result in loss of office)**
- **Fines**
- **Attorney's fees (yours and others)**
- **Embarrassment (personal / political)**



**THANK YOU FOR YOUR
PARTICIPATION!**

QUESTIONS?

Greg Stepanicich

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