




CHARTER REVIEW COMMITTEE

Overview of the Brown Act, Rules of Procedure, Public Records Act, and Roles and Responsibilities

August 10, 2023

Presented By: **Elizabeth Klotz**
Assistant City Attorney
Cynthia Bojorquez
Assistant City Manager

1



City of Santa Clara
The Center of What's Possible

The Brown Act

- State law, passed by the State Legislature in 1953
- Incorporated into the State Constitution in 2004
- Intended to:
 - Provide openness and transparency
 - Ensure that the public has meaningful access to its agencies
 - Provide the public with the means to provide input

2



Core Tenet of the Brown Act:

“All meetings of the **legislative body** of a **local agency** shall be **open and public**, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” California Government Code § 54953(a)

- Is Santa Clara a “Local Agency?” **YES**
- Is the Charter Review Committee a “legislative body”? **YES**

3

3



What Constitutes a “Meeting”? (GC § 54942.2)

- Congregation of a majority of the Committee (quorum)
- In the same location at the same time (teleconference included)
- To *hear, discuss, deliberate, or take action* on any item
- Within the Committee’s subject matter jurisdiction

4

4



What is Not Considered a “Meeting”?

1. Gatherings of/Communications among less than a majority
2. Qualified “Ad Hoc” Subcommittees
3. Exceptions: Certain other gatherings so long as Committee business is not discussed
 - Conferences
 - Community meetings
 - Attending an open/noticed meeting of another local agency legislative body
 - Social/ceremonial event

5

5



“Serial” Meetings Prohibited

- Serial meetings are:
 - A series of communications of any kind (including any type of electronic means), either directly or through intermediaries
 - Involving a majority of the body
 - To discuss, deliberate, or take action
 - On an issue within the body’s subject matter jurisdiction

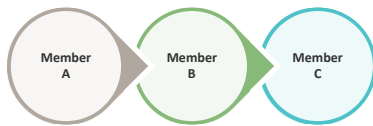
6

6



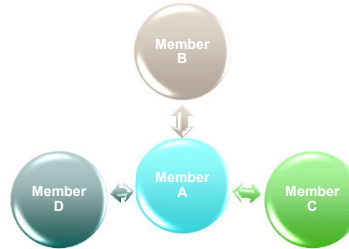
Serial Meeting Examples

Daisy Chain



A chain of communications (via phone, email, in person, etc.) involving contact from Member A to Member B, who then communicates with Member C would constitute a serial meeting in the case of a five-person body.

Hub & Spoke



When a person acts as the hub of a wheel (Member A) and communicates individually with the various spokes (Members B and C) regarding a matter under the jurisdiction of the board/commission a serial meeting may have occurred.

7

7



What About Social Media?

- Had been a gray area
- AB 922 effective January 1, 2021
- Provides some guidance on what's allowed and what's not

8

8



Can Use Social Media to Do the Following:

- provide information to the public,
 - solicit information from the public
 - answer questions
- ...regarding a matter that is within your subject matter jurisdiction

9

9



Cannot Use Social Media to Have Discussions Among Committee Members

- New, bright-line prohibition on responding to social media posts of other Committee Members:
 - No Comments
 - No Retweets
 - No Emojis
 - No *Likes*

10

10



Conduct of Meetings: Open and Public

- Notice Requirements
 - 24 hrs. notice for special meetings
 - 72 hrs. notice for regular meetings
- Can only discuss what's posted on the agenda
 - Otherwise, must refer item to a future agenda

11

11



Conduct of Meetings: Open and Public cont.

- Public input must be allowed
 - Can impose reasonable time limits
- Quorum required to meet
- Majority vote required to act

12

12



Consequences of Brown Act Violation

- Invalidation of Actions Taken
- Personal Liability in Extreme Cases
- Loss of Public's Trust

13

13



Remote Attendance

A legislative body may meet by teleconference for the benefit of the public and the agency, so long as the meeting and remote attendee meet additional requirements. Two ways to attend a meeting remotely:

1. Notable Requirements for Standard Remote Attendance:
 - Remote location must be published on agenda
 - Public access must be allowed at remote location
 - Advance notice
2. AB 2449 Remote Attendance ("Just Cause" and "Emergency Circumstances") requirements:
 - No more than 20% of meetings per calendar year (min. 2)
 - Limited justifications such as a family caregiving need or a physical medical emergency

14

14



Practice Tips

- Don't gather and discuss committee business in groups outside of formal meetings
- Do not direct or cc emails to a quorum or more of your Committee, or "reply all" on committee business
- Avoid posting or responding on Social Media regarding matters before the Committee
- Don't discuss items not on agenda; instead, refer them to staff for future discussions with consensus of your Committee
- If unclear, seek advice from City Attorney's office-in advance whenever possible

15

15



Rules of Procedure

- City Code § 2.10.020 requires that City Council meetings be conducted pursuant to "Robert's Rules of Order"
- Boards and Commissions follow this requirement as well
- The purpose of such rules is to promote orderly conduct, clarity, and protect the rights of the minority by facilitating discussion
- Other City standards and practices should also apply

16

16



“Quorum” Required to Meet and Act

Quorum:

- Majority of the entire membership of the body
 - For this 7-member Committee, a quorum is **4 members**
 - If only 4 members are present, the meeting may continue, but all votes must be unanimous to take formal action

17

17



Process for Consideration and Action for Each Agenda Item:

1. Chair reads the agenda item description
2. Chair asks for staff report/presentation
3. Committee can ask questions of staff or presenters
4. Chair invites public comment on the item
5. Chair invites Committee discussion or further questions
6. Chair invites a motion and second
7. Chair asks Members to discuss motion
8. Vote is taken

18

18



Role of Chair and Vice-Chair

- Chair is “presiding officer” responsible for conducting meeting
- Vice-Chair serves in absence of Chair
- Chair typically spokesperson for the Committee
- Other procedural rules may be developed by majority vote of the Committee

19

19



Public Records Act (PRA)

- Enacted in 1968, modeled on Freedom of Information Act (FOIA)
- Was incorporated into the California Constitution
- Basic Tenet: Public records shall be disclosed to the public, upon request, unless there is a legal basis not to do so (exemptions)
- As a legislative body of the City, the work of the Committee is subject to the PRA

20

20



What is a Public Record?

The PRA defines “public records” as “***any writing*** containing information relating to the ***conduct of the public’s business prepared, owned, used, or retained*** by any state or local agency regardless of physical form or characteristics.”

- Committee business conducted on private devices or accounts is subject to the PRA and such records must be kept and disclosed upon request
- Records must be retained for 2 years
- Penalties/Enforcement

21

21



Practice Tips

- Be prepared to promptly disclose records if requested
- Communicate carefully, especially in emails
- To avoid PRAs on your personal devices, it is best to avoid online communications related to Committee business.

22

22

Charter Review Committee

Role & Responsibilities



**City of
Santa Clara**
The Center of What's Possible

23

Role & Responsibility

- Advisory Body to the City Council
- Purpose:
 - Recommend to City Council what, if any, changes should be made to the Charter provisions providing for an elected Chief of Police and/or an elected City Clerk

24

24



Role & Responsibility

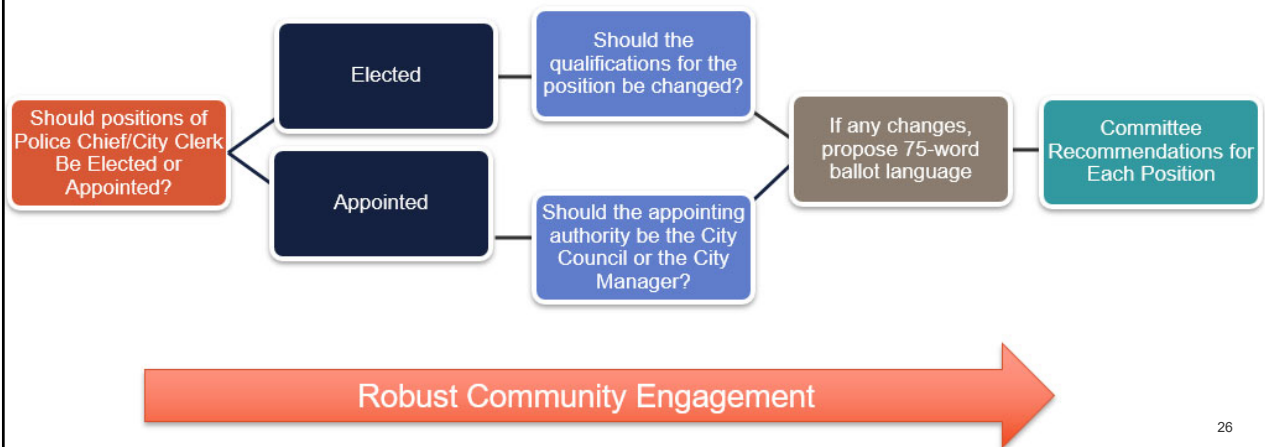
- If recommendation is to maintain an elected police chief and/or city clerk, the Committee may provide input on qualifications and eligibility
- If recommendation is to amend the Charter so that the position(s) are appointed, provide input on the appropriate appointing authority
- If any change to Charter, recommend to Council a draft 75-word ballot measure
- Strive to engage and receive community input in the process and present recommendations to Council by November 2023

25

25



Expected Outcomes



26

26