



A Tradition of Stewardship  
A Commitment to Service

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## MEMORANDUM

To: Napa County Fire Services Advisory Committee	From: Shana A. Bagley, Deputy County Counsel
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Date: November 29, 2018	Re: Brown Act Presentation Recap
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This memorandum is a recapitulation of my Brown Act presentation before FSAC on November 8, 2018.

### I. THE RALPH M. BROWN ACT

The Ralph M. Brown Act (Government Code sections 54950-54963) requires the legislative body of public agencies, including advisory committees, to conduct their business in open and public meetings and that all persons be permitted to attend any meeting. Most importantly, ALL actions and deliberations by public agencies must be open.

Transparency is a foundational value for ethical government practices. There can be no secret meetings or secret ballots.

The Brown Act applies to the Napa County Fire Services Advisory Committee (FSAC).

### II. WHAT IS A MEETING?

For FSAC purposes, a meeting is a congregation of a majority (6) of the members (10) of the Committee (on keeping with the spirit of the Brown Act, a meeting is *also* a congregation of a majority (4) of the voting members):

at the same time and place  
to hear, discuss, deliberate, or take action on  
agency business

“Deliberation” includes collective decision-making and also the collective acquisition and exchange of facts preliminary to the ultimate decision.

“Action taken” is a collective decision or actual vote by a majority of the members.

Informal gatherings can constitute a meeting if committee issues are discussed or decided by the members of the committee. Under the Brown Act, to constitute a meeting, the event does not have to be face to face, it can be by email, text, or telephone. It does not have to occur at a government building, it can also be at a coffee shop.

### **III. SERIAL MEETINGS ARE PROHIBITED**

A majority of members are prohibited from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on business within its subject matter jurisdiction outside of a noticed, agendaized meeting.

Serial meetings occur through direct communications, personal intermediaries, technological devices (email, text), or social media for the purpose of developing an agreement as to action to be taken. A serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but when taken as a whole, involve a majority of the body's members.

Prohibited communications are those used to develop an agreement as to the action to be taken, such as:

- Conversations among members concerning an agenda item prior to a public meeting.
- Conversations that advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members.

Beware of "daisy chain" contacts: A to B and B to C can lead to a collective concurrence.

Beware of "hub & spoke" contacts: one person is the hub who then feeds and receives information to and from other members.

A majority of members may not email each other to develop a collective concurrence as to action to be taken by the committee. This applies to personal and work emails.

A series of text messages that lead to a collective concurrence violates the Brown Act. Text messages sent to committee members during an open meeting are secretive because members of the public are not privy to the content of the text message. If a group text message or a series of text messages include a majority of the committee members and relate to the deliberations at hand, then the committee has violated the Brown Act.

Avoid commenting, liking, sharing, tweeting, retweeting, or posting on social media sites regarding topics within the jurisdiction of FSAC. Avoid online personal comments and opinions, especially with fellow committee members on matters that relate to FSAC business.

#### **IV. WHAT IS ALLOWED**

Individual contacts between a member of the committee and any other person is permitted. Committee members have the right to confer with constituents, advocates, consultants, or a colleague. However, as discussed above, individual contacts cannot be done in stages for what would be prohibited in one step.

Attendance is allowed at conferences open to the public or social events. However, do not discuss FSAC business at these gatherings.

Attendance is allowed at open and public meetings of another body of FSAC or of another local agency. Again, the majority of the committee members cannot discuss among themselves the business of FSAC. To avoid the appearance of a violation, the members should not sit together at other meetings.

Participation is allowed in ad hoc committees of FSAC when less than a quorum (6) of the total members or a quorum (4) of voting members are in attendance.

#### **V. AGENDA REQUIREMENTS**

FSAC meeting agendas must state:

- The time and place of the meeting.
- A brief general description of each item of business to be transacted or discussed.
- Language regarding how an individual with a disability may access the meeting and related materials.
- The address where non-confidential materials given to committee members less than 72 hours prior to a regular meeting may be obtained.
- An opportunity for the public to address the committee on items of interest.

Sample compliant language was provided to the FSAC secretary for future agendas.

The agenda must be published 72 hours in advance of a regular meeting and written in a way that informs the public of the business to be conducted at the meeting. The agenda must be posted in a location that is freely accessible to members of the public.

Generally, committee members may only discuss and act on items addressed in the published agenda. For items not on the agenda, NO action can be taken... except:

- The majority decides there is an emergency situation pursuant to Government Code section 54956.5.
- 2/3 of the members present (or all members if less than 2/3 are present) vote that immediate action is needed and the need came to the committee's attention after the agenda was posted (*regular meetings only*).

## **VI. AFTER THE MEETING**

All components of minutes shall be for the primary purpose of memorializing decisions made by FSAC. Minutes should provide a record of: (a) when and where a meeting took place and who was present (including member absences, late arrivals, departures, adjournment time); (b) type of meeting (Regular/Special/Adjourned Regular); (c) what was considered, decided, and any agreed upon follow-up action. Minutes must report any action taken and the vote or abstention on that action of each member present.

The Government Code does not require verbatim minutes. Appropriate styles are action minutes or brief summary minutes. However, the FSAC Bylaws state that the secretary may take (1) action minutes and electronically record the meeting or (2) verbatim minutes. The format of the minutes is at the discretion of the secretary.

Verbatim minutes are detailed, but they need not to be a transcription of every word that is spoken. They should report who spoke and a description of the statement (i.e. "Member Jones disagreed with the recommended course of action" and "Member Smith read the document aloud.").

Action minutes exclude any component of the meeting that does not relate to decisions made by the Committee. Therefore, comments made by individual body members and members of the public would be excluded.

The public is entitled to non-sensitive materials distributed at FSAC meetings. If prepared by the member of the Committee or County staff, materials distributed to a majority of all of the Committee members at the meeting shall be made available for public inspection at the public meeting and after the public meeting. If prepared by some other person, the materials shall be made available after the meeting.

Availability of materials relating to agenda items for public inspection does not include materials which are exempt from public disclosure under the Government Code (sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, and 6254.22). Please be cognizant of the public nature of documents distributed at FSAC meetings and avoid the discussion or distribution of sensitive materials. Please consult with County Counsel should you have any questions regarding this subject.

FSAC may charge a fee for the copying of the meeting materials requested.

## **VII. CONSEQUENCES OF VIOLATIONS**

Violations of the Brown Act may result in the following:

- Nullification of decisions not made in accordance with the Act;
- Criminal sanctions (misdemeanor conviction, jail time, and/or fines);
- Civil Injunction;
- and/or
- Attorney's Fees and Costs may be awarded in addition to other remedies.