

Clarifying Brown Act Exemptions in Alameda's Sunshine Ordinance

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Broad Interpretation

The Sunshine Ordinance can be broader than the Brown Act, but it cannot be more restrictive than the Brown Act.

Ralph M. Brown Act

Sec 54952 (b): “Legislative body” means (emphasis added):

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 a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

Legislative body activity requires:

Published agendas, minutes, public comment and participation.

Alameda Sunshine Ordinance

The following was added by City Council on 2/4/20 (emphasis added):

Sec 2-91.1 (d)(6)

“Policy Body” shall not include an **ad hoc committee** or a committee which consists solely of employees of the City of Alameda, unless such committee was established by Charter or by ordinance or resolution of the City Council.

Issues: Ad hoc has no clear definition. Committees which include non-quorum members (e.g. members of the public) would appear to be legislative bodies per Brown Act.

How a Legislative Body comes to be

Do differences restrict or enhance Brown Act coverage?

Created By	Brown Act	Sunshine Ordinance
City Charter	x	?
Ordinance	x	x (2-91.1(d)(3))
Resolution	x	x (2-91.1(d)(3))
Formal Action	x	? ("initiative of a policy body as a whole"- (2-91.1(d)(4)))

Two key questions

1. Does modification of the word “created” in Sunshine Ordinance Sec. 2-91.91(d)(3) and (4) expand upon, or limit, the Brown Act definition in Sec. 54952(b), as it relates to when the Brown Act is applicable?
 - If it is limiting, should we recommend to revert back to Brown Act’s use of “formal action of a legislative body” in the Ordinance text?
2. What is the definition of an “ad hoc committee” in Sunshine Ordinance Sec. 2-91.91(d)(6), and why should it deserve exemption from the Brown Act?
 - Should we recommend to remove or amend this exemption from the Sunshine Ordinance?

Appendix: Examples from Case Law

Frazer v. Dixon Unified School District, 18 Cal.App.4th 781. 1993.

“The Brown Act applies to a wide variety of boards, councils, commissions, committees that govern California’s cities, counties, school districts and other local agencies.”

Public Participation in All Phases of Local Government

Epstein v. Hollywood Entertainment District II Business Improvement District, et al.
87 Cal.App.4th 862. 2001 (emphasis added):

“In answering this question, we are mindful, as we noted in *International Longshoremen’s*, that the Brown Act is a remedial statute that must be construed **liberally** so as to accomplish its purpose.”

[“civil statutes for the protection of the public are, generally, **broadly construed** in favor of that protective purpose.] *International Longshoremen’s* supra, 69 Cal.App.4th at p. 294, 81 Cal.Rptr.2d 456; see *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 313, 58 Cal.Rptr.2d 855, 926 P.2d 1042

Subcommittees “created” by formal action

Californians Aware et al., v Joint Labor/Management Benefits Committee et al.

“The Attorney General further stated, “To ‘create’ means among other things, ‘to bring into existence,’ or ‘to produce or bring about by course of action into behavior.’”