



Care First, Jails Last

Frequently Asked Questions (FAQs) Brown Act Compliance for CFJL Taskforce

Date: Monday, July 25, 2022

TO: CFJL Task Force Members

FROM: Alameda County

Summary: The following Frequently Asked Questions (FAQs) have been developed to support the activities of the Care First, Jails Last Taskforce. This document seeks to inform and educate Taskforce Membership about requirements related to Brown Act compliance and protocols. Future versions of this document will be provided if additional items require an update or if amendments are needed.

SUBCOMMITTEES

1. What are the rules for how ad hoc subcommittees are administered?

The Brown Act does not use the term “ad hoc.” Usually, this term is used informally to describe a body that is not subject to the Brown Act’s open meeting requirements (hereinafter referred to as “temporary ad hoc subcommittee”).

Temporary ad hoc subcommittees must be composed *solely* of the members of the legislative body (in this case the Taskforce or Taskforce standing subcommittee) AND are *less than a quorum* of the legislative body (Taskforce). In addition, any temporary ad hoc subcommittee must be charged with accomplishing a *particular task* in a *short period of time*.

By definition: a “quorum” is the minimum number of members (or in this case the Taskforce or Taskforce standing subcommittee) that must be present at any of its meetings to make the proceedings of that meeting, valid.

- a. Minute Keeping

The Brown Act does not require the drafting of minutes. If the Taskforce creates and maintains meeting minutes, such records are public records under the Public Records Act. If minutes are maintained, they must be made available if requested.

- b. Recording - available to the public?

Recording of a meeting is a public record under the Public Records Act. Such a recording must be made available if requested.



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c. Elections

The Brown Act imposes open meeting requirements on local agencies. The Brown Act does not otherwise determine how local agencies conduct elections. Rules on elections for the Taskforce (e.g., when held, officer terms, filling vacancies) may be established by the Taskforce at its discretion, so long as it is not inconsistent with the Board of Supervisors Resolution No. 2021-292 (Board Resolution).

2. What are the compliance requirements for subcommittees? Please provide a clear list of compliance rules and/or steps to help guide the subcommittees.

The Brown Act applies to the Taskforce, as well as standing subcommittees of the Taskforce. For example, this means agenda, notice, and public participation requirements apply. The response to Question 1 addresses the concept of temporary ad hoc subcommittees, which are not subject to the Brown Act's open meeting requirements.

3. Ad Hoc Subcommittees

a. Are they restricted to members only? Why?

This question is interpreted to ask whether members of the public may attend a temporary ad hoc subcommittee meeting. Answer: Yes. This question is *not* interpreted to ask about the composition of a temporary ad hoc subcommittee. Temporary ad hoc subcommittees must be composed solely of Taskforce members.

b. If members are included, will the meeting be Brown Acted?

The composition requirements of the Taskforce are set forth in the Board Resolution. Please see the explanation above in response to Question 1 (regarding a temporary ad hoc subcommittee) for an example of when the Brown Act's open meeting requirements do not apply.

c. What are the requirements?

Please see the response to Question 1, which addresses the concept of temporary ad hoc subcommittee. A temporary ad hoc subcommittee is not a legislative body under the Brown Act. Importantly, a body is not a temporary ad hoc subcommittee merely by calling it that.

d. Do we have to record minutes?

Please see the response to Question 1.a.

e. What about recording? – will it be available to the public?

Please see the response to Question 1.b.



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- f. Is that the election of the ad hoc?
This question is interpreted to ask whether the Taskforce may record a temporary ad hoc subcommittee meeting (which is understood as its desire), and whether such a recording must be made available to the public. Yes, the Taskforce may record a temporary ad hoc subcommittee meeting. Please see the response to Question 1.b.
- g. Are there any rules from the Brown Act regarding how an ad hoc is supposed to be administered?
The Brown Act does not impose any special rules for the composition or functioning of a temporary ad hoc subcommittee, other than what is explained in the answer to Question 1. The concept of a temporary ad hoc subcommittee is relevant simply to determine whether a particular subcommittee is exempt from the Brown Act's open meeting requirements.

TASKFORCE MEMBER COMMUNICATION

4. Can Taskforce members communicate with one another regarding Taskforce topics between meetings?

This question touches upon two topics, including the definition of "meeting," and the concept known as serial meetings. The critical issue then is what constitutes a "meeting" under the Brown Act, which thus triggers open meeting requirements such as agenda, notice, and public participation requirements.

A Taskforce member should regularly assess whether they are participating in a *meeting* (as defined in the Brown Act), outside of a "formal" meeting, and is therefore subject to the Brown Act regarding that meeting. Taskforce members may inadvertently attend a meeting (without giving required notice or allowing public participation) between "formal" meetings.

Take the following as an example: between "formal" meetings, if a majority of the Taskforce or a subcommittee attends the Alameda County Fair and discusses a subject matter under its purview, such discussion constitutes a meeting, and Brown Act requirements apply even if the discussion is not perceived as a "formal" meeting. In that example, that would be a communication taking place between "formal" meetings, that is itself a meeting, that may only occur if Brown Act requirements are followed (e.g., agenda, meeting notice, open to the public).

Taskforce members may communicate with one another regarding Taskforce topics between "formal" meetings only if the communication (in any form) is between Taskforce members consisting of less than a majority of the Taskforce or subcommittee. Note that a series of conversations (in any form) taking place at different times and different locations, and taking place even through intermediaries, may collectively



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constitute what is informally referred to as serial meetings if a majority of the Taskforce or subcommittee participates. Serial meetings are not allowed.

5. How can Taskforce members communicate?

This question is similar to Question 4 above. Please see the response to Question 4.

6. Please provide clarity regarding what kind of communication is allowable, both written and verbal, between members outside of the public meetings.

This question is similar to Question 4 above. Please see the response to Question 4. Additional special rule for social media that is open and accessible to the public: Taskforce members may not respond directly to any communication on a social media platform that is open and accessible to the public regarding a matter within the subject matter jurisdiction of the Taskforce that is made, posted, or shared by another Taskforce member (this includes likes, emojis, and other forms of responses).

- a. Are there different restrictions based on written vs verbal communication?

Please see the response to Question 4 above regarding communications in any form.

7. Are we not permitted to discuss with anybody anything on topic with another member besides during meetings?

This question is similar to Question 4 above. Please see the response to Question 4.

PUBLIC COMMENTS

8. What are the requirements of managing the public comments? For example, before every vote, are we able to take a vote in the same meeting the issue was discussed, or do we have to wait until the subsequent meeting?

It is appropriate for the Taskforce or subcommittee to vote on a matter during the meeting in which the matter is discussed. The public must be allowed to speak on any particular item before or during the Taskforce's or subcommittee's consideration of the item. This means if there is going to be a vote on an item, the Taskforce or subcommittee must allow the public to speak on that item before the vote.

In addition, for a regular meeting, the public must be allowed to speak on any subject within the subject matter jurisdiction of the Taskforce or subcommittee. However, Taskforce members should keep in mind that if a member of the public exercises their public comment rights to speak on a subject within the subject matter jurisdiction of the Taskforce or subcommittee, and the subject is not on the meeting agenda, Taskforce members may only briefly respond (only if desired; the Brown Act does not require the



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Taskforce or subcommittee to respond to public comment). No discussion or action may otherwise be taken on that subject that is not on the agenda.

9. **How can we discuss things then vote on it to be “compliant?”**

The public must be allowed to speak on any particular item before or during the Taskforce's or subcommittee's consideration of the item. As a point of reference, the Board of Supervisors allows 3 minutes per speaker for its meetings (allotted time required to be doubled if there is a translator).

GENERAL

10. What are the instances when the Brown Act does not apply? (Members need to know how they can freely navigate this 2-year process)

This is not a specific question for which a specific response may be provided. “Formal” meetings will occur regularly; therefore, it is anticipated that the Taskforce will develop a rhythm and level of comfort regarding Brown Act compliance at such meetings. This question is therefore interpreted as an expression of concern regarding what Taskforce members may do between “formal” meetings. The topics of an inadvertent meeting between “formal” meetings, communications between “formal” meetings, series of conversations, and social media communications are addressed in the responses to Questions 4 – 6.