

Date: November 10, 2021

To: Honorable Members of the Ethics Commission

From: Rebecca Guzman Garner, Administrative Deputy City Manager *R. Garner*

Subject: **Revisiting Ad Hoc Committees Structure**

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On September 14, 2021, the Office of the City Attorney transmitted a memo regarding Ad Hoc and Standing Committees under the Brown Act.

Please review the attached memo to discuss the existing Ad Hoc Committees structure and to consider alternative approaches to the current structure that address Brown Act concerns and provide additional benefits to the work of the Ethics Commission.

If you have any questions, please contact Julian Cernuda, Special Projects Officer, at (562) 570-6154.

ATTACHMENT

CC: APRIL WALKER, ADMINISTRATIVE DEPUTY CITY MANAGER  
JULIAN CERNUDA, SPECIAL PROJECTS OFFICER  
AMY R. WEBBER, DEPUTY CITY ATTORNEY  
JONATHAN NAGAYAMA, CITY CLERK ANALYST



## City of Long Beach

*Working Together to Serve*

### Office of the City Attorney

## Memorandum

**DATE:** September 14, 2021

**To:** Ethics Commissioners

**FROM:** Amy R. Webber, Deputy City Attorney

**SUBJECT:** Ad Hoc and Standing Committees under the Brown Act

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You have asked how the Ethics Commission ("Commission") and its use of Ad Hoc committees will work as the Brown Act COVID-19 exemptions expire. The purpose of this memo is to address those concerns.

### **Background**

The Ralph M. Brown Act (California Government Code 54950 et seq.) establishes rules for open and public meetings of legislative bodies, including local government advisory commissions. Agendas for regular meetings are required to be posted in advance, and meetings are required to be held in accessible facilities, among other requirements. During the COVID-19 pandemic, in order to facilitate participation at meetings of local legislative bodies, Governor Newsom issued Executive Order N-08-21 suspending some Brown Act requirements during the pandemic. This order will expire on September 30, 2021, unless extended, and the usual Brown Act requirements will resume. Please see attached memo dated August 19, 2021, for more specific information on these requirements.

### **Standing Committees or Ad Hoc Committees**

The expiration of the Executive Order will not affect Ad Hoc committees. An Ad Hoc committee is created for a limited time or to consider a particular issue, and consists of less than a quorum of the Commission. They are not subject to Brown Act notice and posting requirements.

By contrast, standing committees of a legislative body, irrespective of their composition, have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by City Charter, Ordinance, Resolution, or formal action of a legislative body. Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, function controls over form. For example, a statement by the legislative body that "the advisory committee shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.

It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary (Ad Hoc) committee. If a committee is created to explore a topic of limited scope and duration, is it an exempt temporary committee or a non-exempt standing committee?

The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

If the Ad Hoc committees over time and practice have become standing committees, they are subject to the usual Brown Act notice and posting rules which will resume October 1, 2021. If the committees remain Ad Hoc with limited scope and duration, they are not affected by the expiration of the Executive Order, as they are composed of less than a quorum of the Commission.

### **Staffing**

The Brown Act is silent on staffing of meetings. It is largely a function of budget, and availability of staff and facilities. For regular Commission meetings and standing committees, which require preparation of agendas and supporting documents, keeping of minutes and public comment, coordination of facilities and equipment, staff is generally needed. Long Beach Municipal Code Section 2.18.040 requires that "Within the limits dictated by fiscal constraints, the City will endeavor to provide reasonable staff support to advisory bodies in order to permit them to perform their functions in an effective manner."

Ad Hoc committee meetings are supposed to be informal meetings to address specific issues, and provide some flexibility for less than a quorum of Commission members. If staff is included in these informal meetings, there may be a perception the Ad Hoc committee is operating more like a standing committee, which would be subject to the Brown Act.

### **Conclusion**

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.

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cc: Rebecca Garner, Administrative Deputy City Manager  
Julian Cernuda, City manager's Office  
JT Nagayama, City Clerk Analyst