Opinion: Brown Act stifles public interaction

By Joe Mathews

California's Ralph M. Brown Act, approved in 1953, has become a civic Frankenstein, a gag rule that threatens the very public participation it was supposed to protect.

The act's requirements of advance notice before local officials conduct a meeting has mutated into strict limitations on their ability to have frank conversations with one another. Brown Act requirements that we, the public, be allowed to weigh in at meetings have been turned against us, by way of a standardized three-minute-per-speaker limit at the microphone that encourages rapid rants and discourages real conversation with local officials.

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In effectively silencing citizens and their representatives, the Brown Act has empowered professionals outside the civic space—lawyers, labor unions and especially developers—to fill the conversation void.

At a UC Irvine conference on the Brown Act in which I participated, speakers discussed how local elected officials and staff members, wary of talking to or even emailing each other and violating the Brown Act rules against unannounced meetings, often communicate through developers, who are much

freer to meet and talk.

This is why proposed reforms to limit the influence of developers—Los Angeles Mayor Eric Garcetti just announced a ban on meetings between city planning commissioners and developers—never work. Under California's Brown Act, developers are often the best conduit for local officials to get information to their colleagues.

The fundamental problem with the Brown Act is not that the law changed. It's that the law has stayed too much the same, while California governance has changed radically.

In the 1950s, when the Brown Act was passed, local governments largely ruled via broadly applied laws, policies, and plans. But in subsequent decades, court decisions, state laws, and ballot initiatives like Proposition 13 have limited the power of governments. So to retain some self-determination, local governments have worked around the law, ignoring plans and policies they once followed, and instead embracing ad-hoc decision-making. The most important tool for today's local governments is not the ordinance or the general plan but rather negotiations, through union contracts and developer agreements.

In this era of government by negotiation, the Brown Act is unhelpful when it's not beside the point. First, the act's limits on meetings end up restricting the ability of elected officials to participate fully in such negotiations. Second, the Brown Act covers only public meetings, and thus doesn't get people into meetings where city officials make decisions behind closed doors. All too often the public hears about negotiations only once deals are done, and brought to a council or a board for approval.

Consulted only at that late stage, California citizens understandably respond by opposing their local politicians fervently and uncompromisingly. In this way, the Brown Act

encourages the worst sort of NIMBYism.

Many ideas have been raised for changes in the law. But the act has created a regime so antithetical to the goal of public participation that it might be better to scrap it and start over—with a framework providing local governments with more flexibility as long as they pursue policies that enhance public participation. The National Civic League has a model participation ordinance that suggests what such a law could look like.

Who could oppose such sensible changes? Answer: Civic and media organizations are suspicious that reform would limit access; they claim local officials are being overly cautious in limiting conversations because of fear of Brown Act violations. But local governments say the caution is well-advised, given how easy it is to sue for violations of the act, and thus block important projects.

While the debate over the Brown Act continues, the everyday reality of California public meetings grows ever more absurd. On a recent Saturday at my local school board, our city's mayor—one of only a handful of people in attendance—rose to ask questions about the board's management of a newly passed school bond, the largest in our small district's history.

The mayor is a public works lawyer with long experience with bonds, and her questions were fair and straightforward. But the board members wouldn't answer them. Instead, they tried to cut her off after just three minutes, noting that's the limit on public comment. When one board member sought to answer the mayor's questions, the school superintendent interrupted to say that any exchange could be a violation of the Brown Act.

Any law that won't let a mayor and a school board talk freely about their city's most important construction project at a public meeting is a bad law. Until our local governments move past the Brown Act, Californians will find it hard to have the

kinds of conversations that local democracy requires.

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