

The Brown Act

Purpose



In a Nutshell–

- To ensure that business of the legislative body is conducted in an open and publicized meeting.
- To allow the public to participate in meetings

The Legislature has established
a presumption in favor of
public access



Does the Brown Act apply to you ?

YES

The Requirements of the Brown Act apply to All meetings of the **legislative body** of a local agency.

WHAT IS A LEGISLATIVE BODY?

What Is A “Legislative Body” ?

- The governing body of a local agency or any other local body created by state or federal statute. --and--
- Subsidiary bodies of the agency, created by the governing body:
 - This includes almost ALL boards, commissions, and committees, whether decision-making or advisory, standing or ad hoc, and their respective subcommittees.

“Legislative body (cont.)”

- Exception:

Ad hoc committees comprised of **less than a quorum** of the members of the legislative body which created it, do not constitute a legislative body.

But exception does not apply if it is a standing committee. Must be single subject, short duration –E.G. Less than a quorum committee to study purchase of new touchless thermometers.

“Legislative body (cont.)”

- Standing Committees—even if less than a quorum of the body which created it—are subject to the Brown Act.
- Rules of Thumb:
 - Does the legislative body have some “continuing subject matter jurisdiction”?
 - Does the legislative body have a meeting schedule fixed by formal action?
 - If Yes, then it is subject to the Brown Act

WHAT IS A MEETING?



What Is a “Meeting ?”

Definition:

“Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the local agency.”

Section 54952.2(a)

In other words:

- A meeting is any gathering of a majority of members to hear or discuss any item of the government body's business or potential business.
- This definition covers most gatherings of a majority of Board members.

There are 6 Exceptions (Gatherings that are NOT subject to the Brown Act)

1. The Individual Contact Exception.

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting.

However, Beware of “Serial Meetings”.

If the individual also makes a series of contacts with other members of the legislative body for the purpose of developing a collective concurrence—a serial meeting has occurred.

2. The Seminar and Conference Exception

- Attendance by a majority of members at a seminar or conference or similar educational gathering is also generally exempted from the Brown Act.
 - Must be open to the public, and
 - Limited to issues of general interest to the public
 - as long as a majority of the members do not discuss issues specific to the legislative body

3. The Community Meeting Exception

- Members may attend town hall forums, neighborhood meetings, chamber of commerce lunches, etc., sponsored by an organization other than the Redistricting Commission at which issues of local interest are discussed.
 - Gathering must be open and publicized, and
 - A majority of members may not discuss amongst themselves items of Commission business.

4. The Other Legislative Body Exception

- This exception allows a majority of members of any legislative body to attend meetings of other legislative bodies without treating such attendance as a meeting of the body.
 - Again—the members are prohibited from discussing Commission business among themselves except as part of the scheduled meeting.

5. The Social or Ceremonial Occasion Exception

- Brown Act does NOT apply to attendance of a majority of members at a purely social or ceremonial occasion.
-provided....that a majority of members do not discuss among themselves matters of public business.

6. The Standing Committee Exception

- Members of a legislative body, who are not members of a standing committee of that body, may attend open and noticed meetings of the standing committee without making it a meeting of the full legislative body itself.
 - If their attendance establishes a quorum of the parent body, the visiting member may only attend as observers.
 - That means they may not speak, sit at their usual seat, or otherwise participate



“Serial” Meetings

- A serial meeting is a series of meetings or communications between individuals in which ideas are exchanged among a majority of a legislative body...
- Through either 1 or more persons acting as intermediaries or through use of a technological device...
- Even though a majority of members never gather in a room at the same time.

Example 1: Hub Serial Meeting

- A staff member, board member, or other person individually contacts a majority of members of a body and shares ideas among the majority:
- A → B
- A → C
- A → D
- “I’ve talked to Board Member B and C and they will vote yes. Will you?”

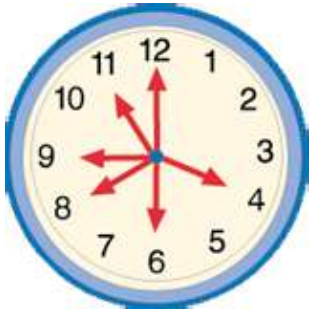
Example 2: Chain Serial Meeting

- Without the involvement of a third person, member A calls member B when then calls member C, and so on, until a majority of the body has discussed the matter.
- $A \rightarrow B \rightarrow C$
- "Concurrence as to action to be taken" includes substantive matters that are or are likely to be on board's agenda, but does not include purely housekeeping matters (e.g., times, dates and locations of upcoming meetings.)

Avoiding Serial Meetings Via Constituents

- To avoid serial meetings via constituent conversations:
- State the ground rules up front. Ask if the constituent has or intends to talk with other members of the body about the same subject. If so, make it clear that the constituent should not disclose the views of other members during the conversation.
- Explain that you will not make a final decision on the matter prior to the meeting.
- Do more listening and asking questions than expressing opinions.
- If you disclose your thoughts on a matter, counsel the constituent not to share them with other members of the legislative body.

NOTICE & AGENDA REQUIREMENTS



Notice & Agenda Requirements

- Legislative bodies (except advisory committees and standing committees) are required to establish a time and place for holding regular meetings.
- Meeting agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting.
- Each agenda must be posted in a place that is freely accessible to the public.

Notice & Agenda Requirements

- Regular Meeting—Agenda must be posted 72 hours in advance
- Special Meeting—Agenda must be posted 24 hours in advance.
 - Each member of the legislative body must have personally received written notice of the special meeting (by any means, including fax and email).

Notice & Agenda Requirements

- The Board may NOT take Action or Discuss any item that does not appear on the posted Agenda.

UNLESS.....

Notice & Agenda Requirements

- Items MAY be added to the agenda at a REGULAR meeting IF:
 - It is an Emergency Item
 - Work stoppage, crippling disaster, terrorist act, etc.
 - Requires a majority vote
 - Urgent Item
 - The Board must find that “there is a need to take immediate action and that the need for action came to the attention of the local body subsequent to the agenda being posted.

- There are also a few limited exceptions to the no discussion of non-agenda item rule. Those are:
 - Members of the Board or Staff may briefly respond to statements made or questions posed by the public during public comment,
 - Members of the Board or Staff may ask questions for clarification and provide a reference to staff or other resources for factual information,
 - Members of the Board or staff may make a brief announcement, ask a question or make a brief report on his or her own activities,
 - Members of the Board may, subject to rules and procedures, take action to direct staff to place a matter of business on a future agenda.
- Comments **MUST** be brief!

- No additions to the Agenda are allowed at Special or Emergency Meetings.

PUBLIC PARTICIPATION

Public Participation

- Agendas for **regular meetings** must allow for 2 types of public comment periods:
 - General audience comment period: the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency, and
 - Specific comment period pertaining to items on the agenda.
 - Prior to or during discussion of the item.

Public Participation

- At Special Meetings, the Board does not have to allow public comment on any non-agenda matter.

Public Participation

- The Board may reasonably limit the amount of time allocated to each person for public testimony.
 - (Typical: 3-5 minutes)

Public Participation

- The Board may not prohibit public criticism of the policies, procedures, programs or services of the agency or the acts or omissions of the Board.

Public Participation

- However, a speaker can be cut off if his/her comments are not within the subject matter jurisdiction of the Board.
- The Board may order individuals removed who are willfully disrupting a meeting.

RECORDINGS

- The Public Has a right to videotape or record a meeting—as long as it does not cause a disruption.

RECORDINGS

- Any audio or video recording made of the meeting, by or at the direction of the agency, is a public record and is subject to the Public Records Act.
- The agency may not destroy the records for 30 days following the date of the recording.

CLOSED SESSIONS

Exceptions to the open meeting rule

- Personnel matters
- Pending litigation
- Labor negotiations
- Real estate negotiations
- Others



Sanctions for Violations of the Brown Act

A board member may be held criminally liable (misdemeanor) for intentional violations of the act. (54959)

A member of the public may sue to enjoin an agency or board for violations and threatened violations of the brown act.

A court can order an agency to tape record its closed sessions so the court can review these actions to determine if the agency is violating the act. (54960)

A court can award attorney fees and costs to petitioners. (54960, 54960.1, 54960.5)

A Word About Robert's Rules

- Not in Brown Act
- Parliamentary Procedure
- Helpful for the orderly running of the meeting
- The Chairman runs the meeting/keeps order