



The Brown Act

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Training Topics

- History & Intent of Brown Act
- Who is Subject to the Brown Act
- What Constitutes a Meeting Covered by the Act
- Individual Contacts with Members
- What is Collective Concurrence
- The Use of E-mail to Review Projects
- Agendas Content, Mailing and Internet Posting
- Project Review and Back Up Materials
- Public Rights
- Disorderly Conduct
- Substantial Compliance
- Additional Resources

History

- Authored by Ralph Milton Brown (1908-1966) a Central Valley assemblyman, the Brown Act was passed in 1953, to safeguard the public's right to access and participate in government meetings within the State.
- The Brown Act is found at California Government Code Sections 54950-54963.
- Guidelines are found at Title 14 California Code of Regulations Section 15000, et seq.

Intent of the Brown Act

- To ensure that deliberations and actions of legislative bodies are **open and public**.
- To ensure **meaningful public access** to local government decisions.
- Meetings must be **open to the public**, held on a regular schedule, follow a noticed agenda.
- No secret **ballots**.

Who Is Subject to the Brown Act?

- The Act applies to the meetings of “legislative bodies” of local agencies.
- **Governing bodies**
 - i.e., the City Council
- **Subsidiary bodies**
 - Any board, commission, committee, or other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body is itself a legislative body.
- Private nonprofit corporations and other entities under specified circumstances

Committees

- Notice and agenda requirements are the same as the parent body.
- **Must be less than a quorum.**
- Other members can attend but only as passive, neutral observers.
 - No wincing, frowning, smiling, thumbs up.
 - Must be neutral in expression and body language.
 - No questions or comments.

Standing Committees & Ad Hoc Committees

	Internal Committee	External Committee
Ad Hoc	Not Subject to the Act ***However, Council Policy applies the Act to <u>all committees</u>	Subject to the Act
Standing	Subject to the Act	Subject to the Act

- Internal - Subquorum of members only
- External - Includes non-members
- Ad Hoc - Finite duration and subject matter to be investigated and reported back to parent body
- Standing - Continuing subject matter jurisdiction and indefinite or perennial existence

What Is a Meeting?

- **Any congregation of a majority** of the members at the same time and place to hear, discuss, or deliberate on any item that is within the subject matter jurisdiction of the board or commission.
- **Direct communication, personal intermediaries or technological devices** employed by a majority of the members of the legislative body to develop a "collective concurrence" as to action to be taken.
- **Serial meetings & series of communications**
 - **Hub and spokes communications.** "A to B," "A to C," and "A to D" can lead to a collective concurrence
 - **Chain communications.** "A to B" and "B to C" can lead to a "collective concurrence."
 - **Beware of e-mail communications.** A majority cannot e-mail each other to discuss a matter within the board's subject matter jurisdiction.

What is Not a Meeting?

- **Individual contacts** between a board member and another person do not constitute a meeting.
- **Majority of the board members at a:**
 - Conference open to the public
 - Local public meeting
 - Open meeting of another body
 - Social or ceremonial event**But, cannot discuss board matters among themselves.**



Collective Concurrence

- Substantive conversations
- Advancing or Clarifying Understanding
- Facilitating Agreement or Compromise
- Advancing a Motion or Resolution
- Debating
- Briefing or Informational Sessions

Applies to all issues, projects, and action items.

Public Contacts

- Communication with **member** of the public OK.
- If individual contacts a quorum of the board, the board members may not respond collectively - **deliberations should occur in public.**
- One-way transmission of **background materials** and solitary review by board members OK. **Review by less than a quorum also OK.**



The Use of e-mail

Email may not be used by a majority to develop a collective concurrence, even with certain safeguards are built in.

- How do you know if a quorum is not being copied?
- How do you know who is reading it? discussing it?

When Can Meetings Be Held?

■ Regular meetings:

- Agenda posted 72 hours before.

■ Special meetings:

- Called by chair or majority of board members.
- 24 hours before meeting: Post agenda. Notify board members in writing. Notice to requesting newspapers.

■ Emergency meetings:

- For health and safety emergencies.

Where Can Meetings Be Held?

- A meeting facility **within the boundaries** of the territory over which the legislative body has jurisdiction, or if none, the closest one to the territory.
- Sample Exceptions: To attend multi-agency meetings; To meet with elected officials; To comply with the law or court order; etc.
- Meetings must be accessible under the Americans with Disabilities Act of 1990.

Agenda Descriptions

- Brief description of each item - 20 words unless complex.
- Include the date, time and location of the meeting.
- Must inform public of scope of the intended plans so public can decide whether to participate.
 - **Information item**
 - **Action item**
- Must be posted in a location:
 - “freely accessible to members of the public”**



Public Right to Review Agenda

Public has a right **to review agendas** and other writings distributed to a majority of the board.

- Maintain materials at library.
- Place materials in meeting room.
- Internet site may supplement these.

Agendas by Mail

- Required upon request. Includes back up materials.
- Must occur when an agenda is posted or upon distribution to a majority, whichever occurs first.
- Annual requests okay but a cost recovery fee allowed for copying but not labor.

Internet Posting of Agendas.

- **Brown Act:** "... Shall be posted in a location that is freely accessible to members of the public."
- OK to use **internet as an supplemental location** to post agendas.
- **State Attorney General Opinion on 24 hour public kiosk:**
" An agenda may be posted on a **touch-screen electronic kiosk** accessible without charge to the public 24 hours a day, 7 days a week, in lieu of posting a paper copy of the agenda on a bulletin board."

"Compared to a typical bulletin board, an electronic kiosk offers **greater readability, better lighting, increased access for disabled persons, and reduced vandalism.**"

Opinion **did not** reach the issue of internet posting of agendas.

Back Up Materials

- Agenda means agenda packet too.
- Project materials go in agenda packet if:
 - If provided by the City.
 - If provided to Chair for distribution.
 - If distributed to majority.
 - If reviewed by a Committee.
- Ideas on dealing with large packets:
 - Arrange a place at library for project materials - bulletin board, three-ring binder, on a shelf near the agenda.
 - Will some board members agree to receive by e-mail?
 - Will other board members agree to receive the executive summaries and go to the library?

Public Comment

■ Regular meeting.

- May comment on any matter within the board's subject matter jurisdiction -- even if not on the agenda (called "non-agenda public comment")
- Must be allowed to comment on agenda items.
- Reasonable regulations, including time limits may be adopted, but must be fair.

Limited Response to Public Comment on Items Not on Agenda

- Brief response to statements or questions permitted.
- But no discussion, debate, or action.
- Briefly announce or report on member's own activities.
- May ask questions for clarification.
- Refer to staff for:
 - Information
 - Request to report back
 - Direct to place matter on a future agenda



■ Special meeting.

- Comments must be allowed on agenda items.
- Board may allow non-agenda comment, but not required.

■ Board must allow criticisms and complaints - *even if bitter* - so long as not disruptive and testimony rules followed.

■ Public comment must be made before action is taken.

Other Public Rights

- **Right to record** the meeting with an audio or video tape recorder, or take photographs.
- **Public cannot be required to register** their names to attend a meeting - But voluntary sign-in is allowed.



Records Retention

- Records must be retained for public review.
- City will establish schedule for records collection and storage.

Disorderly Conduct

If a person willfully interrupts the meeting so as to make the orderly conduct of the meeting infeasible, the planning group may cause their removal.

If that is unsuccessful, CPG may order the room cleared and continue the session except that the media may remain. And may re-admit persons who were not responsible for the disruption.

Violations of Brown Act

■ Civil Actions

- Any interested party may begin an action.
- The board would have chance to cure and correct actions.
- With judgment, action is void.
- Costs & attorney fees may be awarded.

■ Criminal penalties

- With intent to deprive public of information.
- Guilty of a misdemeanor.

Substantial Compliance

By implementing and operating under the bylaws of Policy 600-24, a legislative body will be considered to be in "substantial compliance" with the Brown Act.

Resources

- The Brown Act, Cal. Gov't Code 54950
- California Attorney General's Office publication, "The Brown Act," 2003, ~ 50 pages.
- Foley & Lardner, LLP, publication, "The Ralph M. Brown Act and Related Statutes," 2007, ~ 50 pages.
- Californians Aware www.calaware.org
- California First Amendment Coalition www.cfac.org