

Ralph M. Brown Act

California's Open Meeting Law

San Diego Historical Resources Board

August 2026

Presented by the Office of the City Attorney

Purpose and Intent

- The Brown Act was adopted in 1953 to ensure that public bodies act and deliberate in a manner open to the public.
- Its introductory language has not changed:
 - “It is the intent of the law that [local government] actions be taken openly and that their deliberations be conducted openly.”
 - “The people . . . do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”
- Summary: All meetings shall be open and public.

Why is the Historical Resources Board Subject to the Brown Act?

- “Legislative bodies” includes a commission, committee, board, or other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body.
- The Historical Resources Board (HRB) was established by the San Diego Charter Section 43.
- Brown Act also applies to any standing subcommittees with continuing subject matter jurisdiction.
- Temporary subcommittees of less than a quorum are not subject to the Brown Act.

Definition of “Meeting”

- “[A]ny congregation of a majority of the members of a legislative body at the same time and location, including teleconference location ... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”
- A majority of the HRB is six members.
- Whenever six or more members meet to discuss HRB business, it is a meeting subject to the Brown Act.

An Accidental Meeting



Serial Meetings: Not Allowed

- The majority of the members shall not, outside a meeting authorized by the Brown Act, do any of the following:
 - Use a series of communications of any kind, directly or through intermediaries
 - To discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the HRB
- Examples of “serial” communications that are not allowed:
 - “A talks to B” and “B talks to C” (“daisy chains” or “telephone trees”)
 - “A talks to B,” and “A talks to C” and “A talks to D” (“hubs-and-spokes”)

Serial Meetings: Not Allowed (cont.)

- “Deliberation” – broadly construed, includes “not only collective discussion, but collective acquisition and exchange of facts preliminary to the ultimate decision”
- No substantive discussions which “advance or clarify a member’s understanding of an issue, or facilitate an agreement or compromise . . . or advance the ultimate resolution” of an issue
- Be careful with social media and blogs.
- Oral or written: no distinction.

Email Meetings: Not Allowed

- Email communication:
 - A majority of the members of the HRB cannot email each other to discuss topics that are within the subject matter jurisdiction of the HRB.
 - Be careful: Do not “reply to all” to emails that include other HRB members.
- But: Staff may separately communicate with HRB members to answer questions or provide information if the member’s comments are not shared with other members.

Email Meetings: Not Allowed (cont.)

- “We thus conclude that a majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Brown Act *even if the e-mails are also to the secretary and chairperson of the agency, the e-mails are posted on the agency’s Internet website, and a printed version of each e-mail is reported at the next public meeting of the board.*”

- 84 Ops. Cal. Atty. Gen. 30 (2001)

A Final Reminder



Social Media

- Social media communications with constituents are allowed.
- But members should not use social media to discuss among themselves or to respond directly to a post made or shared by another member.
- Q. Various social media platforms and websites include forums where agency employees and officials can discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A. Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.

Open & Public VI, Revised 2024, League of CA Cities

Meeting Exceptions: Allowed

The majority of members may attend any of the following:

- Conference open to the public
- Community meeting
- Open meeting of another legislative body or agency
- Social or ceremonial event
- Subcommittee meetings provided that the members who are not members of the standing committee only attend as observers and do not participate in the meeting

But members should avoid serial communications, and a majority of the members may not discuss HRB matters among themselves at these events.

Permissible Contacts

- Individual contacts between a member and another person is not a “meeting”
- If an individual contacts a majority of the HRB, members should not respond outside public meeting – deliberations should occur in public
- One-way transmission of background materials and solitary review by members would not violate the Brown Act
- City employees and officials may communicate with members to answer questions and provide background – but must not disclose position or comments of any other member
- Ex parte communications to members concerning a matter before the board may occur and should be disclosed by the member during the public meeting

Historical Resources Board Member Remote Participation

- Members are required to attend meetings in person unless there is “Just Cause” as defined by State law.
- “Just Cause” is defined as:
 - Childcare or family caregiving needs;
 - Contagious illness that prevents personal attendance;
 - Physical or mental disability need;
 - Travel while on official business of the HRB;
 - Immunocompromised family member that requires the member to participate remotely;
 - Physical or family medical emergency that prevents personal attendance; or
 - Military service obligations that prevent personal attendance.
- Remote participation due to “Just Cause” is limited to two meetings per year for members.
- Minutes need to identify when a member participates remotely and the reasons why.
- At least a quorum of the members participates in person from the location identified on the agenda.

Historical Resources Board Member Participation – “Just Cause” Remote Participation Requirements

- Requirements at the outset of the meeting if using the “just cause” remote participation option:
 - Notify the HRB at the earliest opportunity, including the start of a regular meeting of the need to participate remotely.
 - Provide a general description of the circumstances relating to the need to appear remotely at the meeting.
 - Disclose before any action is taken whether any other individuals 18 years of age or older are present in the room with the member and the general nature of the member’s relationship with the individual.
 - Participation during the meeting must be through both audio and visual technology. Video camera must remain on for the duration of the meeting.
- Please reach out to City staff and the City Attorney’s office for questions and assistance.

Historical Resources Board Member Participation – Reasonable Accommodation for Disability

A member may participate remotely as a reasonable accommodation for a disability subject to certain requirements.

- The member must participate through both audio and visual technology, except that any member with a disability may participate only through audio technology if a physical condition related to their disability results in a need to participate off camera.
- The member shall disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any of those individuals.

“Disability” is defined in Section 12102 of Title 42 of the United States Code (Equal Opportunity for Individuals with Disabilities)

Please reach out to City staff and the City Attorney’s office for questions and assistance.

Public Participation

- Agendas: Written to Inform the Public
 - Date, time, and location of meeting.
 - General description of each item to be discussed.
 - Posted in a public place – at least 72 hours before a regular meeting (24 hours for a special meeting) and on the City's internet website.
 - HRB can only discuss and take action on items noticed on the agenda.
- Public Right to Attend
 - Must be accessible to all members of public, including disabled persons.
 - Cannot require names or other information as a condition of attending meeting, but voluntary sign-in is allowed.
 - If teleconferencing (and a state of emergency has not been proclaimed by the State or a local emergency has not been proclaimed by the City Council), public must have notice of and access to teleconference location. Location must have a posted agenda.

Public Participation (cont.)

- Right to Comment at Meetings
 - Public may comment on any matter within the HRB's subject matter jurisdiction even if not on the agenda (non-agenda public comment)
 - Public may comment on agenda items before action is taken on an item
 - Reasonable regulations, including time limits, may be adopted
 - HRB must allow criticisms and complaints
 - HRB may limit unruly behavior that disrupts or interrupts the Board proceedings and business of the meeting.

Public Participation (cont.)

- No discussion of non-agenda items raised during public comment
 - May provide a brief response to statements or questions, but no discussion or action permitted
 - May ask questions for clarification
 - May refer the matter to staff for follow-up or to report back
 - May direct that the matter be placed on a future agenda
- Public has a right to record the meeting.
- Recordings made by City are subject to public inspection.

Public Right to Documents

- Public has a right to review agendas and other writings distributed to a majority of members
 - If documents are provided after the agenda and backup documents are made public, they should be made available to the public at the same time they are made available to the HRB.
- HRB records and communications shall be available for public inspection and copies provided for a reasonable fee
 - Public Records Act: Remember that your emails to HRB staff, members of the public concerning HRB business, and to each other in conducting HRB business, are public records subject to disclosure.

Violations of the Brown Act

- Invalidation Lawsuit (Civil action against the City)
 - Before a lawsuit can be filed, the HRB will have an opportunity to “cure or correct” any actions allegedly taken in violation of the Brown Act
 - If City does not correct the violation, any interested person may file lawsuit
 - If a court decides against City, the action taken by the HRB may be void
 - Costs and attorney’s fees may be awarded
- Misdemeanor Conviction (Criminal action against HRB members)
 - If you:
 - Attend a meeting in which action is taken in violation of the Brown Act, and
 - You intend to deprive the public of information to which it is entitled,
 - You may be found guilty of a misdemeanor

Quasi-Judicial vs. Legislative

Quasi-Judicial

- Affects a particular property
- Current situation
- Apply law to facts
- Required findings
- Determines what *is*
- Due process

Legislative

- Affects many or all properties
- Future situations
- Draft the law
- No required findings
- Determines what *should be*
- No due process

Quasi-Judicial Actions

- Quasi-judicial actions include actions when the HRB considers designation items
- Consider only the information provided to you (staff report, staff responses to questions, public comments)
- Disclose contacts with interested parties (“ex parte” contacts)
- Apply the law to the facts; property rights are at stake
- Abstain if you have potential bias or conflict of interest
 - Abstention applies to discussion and voting

Quasi Judicial Actions Require Due Process



Summary

- All HRB meetings must be open and public.
- Subcommittees of the HRB must also be open and public.
- Discussions, actions, deliberations must take place in open meetings.
- The public must be able to attend and participate in meetings.
- The public may review all documents pertaining to HRB business.
- Courts favor open meetings; exceptions are narrowly construed.
- Provide due process. Apply the existing law to the specific facts.

Helpful City References, and Resources

City References

- *City of San Diego Brown Act Overview Video:*
https://www.youtube.com/watch?v=o_4copyoRCg
- *Charter section 216.1: Access to Government Information*
- *Council Policy 000-06: Open Meetings*
- *City of San Diego Office of the City Attorney Memorandum MS-2025-8, Legal Update: Comprehensive Amendments to and Reorganization of the Ralph M. Brown Act: [MS-2025-8.pdf](#)*

Resources

- *Open & Public VI: A Guide to the Ralph M. Brown Act*, (January 2024) League of California Cities:
https://www.calcities.org/docs/default-source/advocacy/open-public-vi-revised-2024.pdf?sfvrsn=2f412f0d_3
- *The Brown Act, Open Meetings for Local Legislative Bodies*, (2003) California Attorney General's Office
<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/brownAct2003.pdf>