

Brown Act & the CPGs

CPCI, Planning and Urban Form Division

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Training Topics

- History & Intent of Brown Act
- Brown Act Basics
- Committees and Ad Hoc Committees
- 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.



Intent of the Brown Act

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



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.

- **Serial meeting & series of communications**
 - **Beware of e-mail communications.** A majority cannot e-mail each other to discuss a matter within the board's subject matter jurisdiction.

 - **Beware of "serial" contacts.** "A to B" and "B to C" can lead to a "collective concurrence."



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?



Do these violate the Brown Act?

- Member publishes letter to the editor?
- Applicant meets with all members individually to explain project and identify potential issues?
- Applicant passes information and opinions among the members to resolve potential issues of concern?
- Resident asks about member's opinion in the grocery store?
- Two members talk about a project on the phone?
- One member emails "project information" to a majority?
- Two members vote on project as board members of a non profit?
- Majority meets with all Council members to discuss a new policy?
- Majority attends meeting of another CPG to testify on an issue?
- Majority of two CPGs meet to discuss an issue?



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. Not within the purview of CPGs.



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.



Project Review Ideas

- Establish Project Review Subcommittee
- Create a Temporary Ad Hoc Committee
- Hold a Special Meeting
- Start a Regular, Noticed 2nd Monthly Meeting Just to Deliberate.



Where Can Meetings Be Held?

- A meeting facility **within the boundaries** of the CPG planning area, or if none, the closest one to the planning area.
- Sample Exceptions: To attend multi-agency meetings. To meet with elected officials.
- 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”**



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.



Back Up Materials

- Agenda means agenda packet too.
- Project materials go in agenda packet if:
 - If provided by City to CPG.
 - If provided to Chair for distribution.
 - 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?



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



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.



- 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

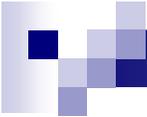
- **Right to record** the meeting with an audio or video tape recorder, or take photographs.
- **Public cannot be required to register** their names to attend a meeting - But voluntary sign-in is allowed.



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.



Standing Committees & Ad Hoc Committees

Standing Committees

- Ongoing
- Specific issue area
- Subject to Brown Act notice and meeting requirements

Ad Hoc Committee

- Focused issue area
- For a finite time
- Council Policy applies Brown Act to all committees



Committees

- Meetings noticed same as a CPG meeting.
- Agenda requirements same as a CPG meeting.
- 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.



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 meets so as to make the orderly conduct of the meeting infeasible, the planning group may cause their removal.

If that is unsuccessful, CGP may order the room cleared and continue the session except that the media may remain. And may readmit 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 by laws of Policy 600-24, CPGs 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.
- California First Amendment Coalition www.cfac.org