



The Brown Act: **Local Government Transparency** **in California**

The Brown Act

The Brown Act was enacted in 1953 after a 10-part exposé in the *San Francisco Chronicle* on the lack of transparency in local government, entitled “Your Secret Government”



Overview

Brown Act Basics

- ▶ Who Does it Cover?
- ▶ When Does it Apply?
- ▶ Notice & Agenda Requirements
- ▶ Public Participation

What's New in the Brown Act

- ▶ Teleconferencing/Remote Participation

The Big Picture

The Public's business must be conducted in *public*, with significant opportunity for public participation



Who is Subject to the Brown Act?

- ▶ Any board, commission, committee or other body created by a charter, ordinance, resolution or other formal action of the Board of Supervisors
 - ▶ Includes standing committees of boards/commissions that have continuing jurisdiction over a particular subject matter (e.g., budget advisory committee, etc.)
- ▶ Exception: ad hoc committees (other than standing committees) made up of less than a quorum of the body

The Open Meeting Rule

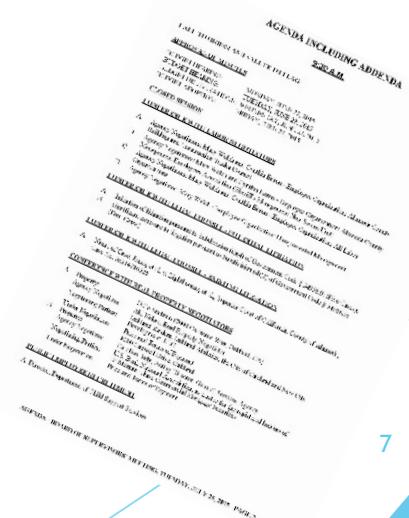
“all meetings [with a quorum/majority of the members] of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency.”

A “meeting” is any gathering of the members of a legislative body at the same time and location to hear, discuss, deliberate, or take action on any item within the subject matter jurisdiction of the legislative body.

Notice & Agenda Requirements*

- ▶ Regular meeting agendas must be posted 72 hours in advance of the meeting
- ▶ Special meeting agendas require only 24 hours advance notice
- ▶ Agendas must describe each item to be considered in enough detail that a person can determine whether the item is of interest
- ▶ Agenda items must concern matters within the board or commission's jurisdiction and authority

**Does not apply to ad hoc committees*



The Purpose of Advance Notice/Agenda

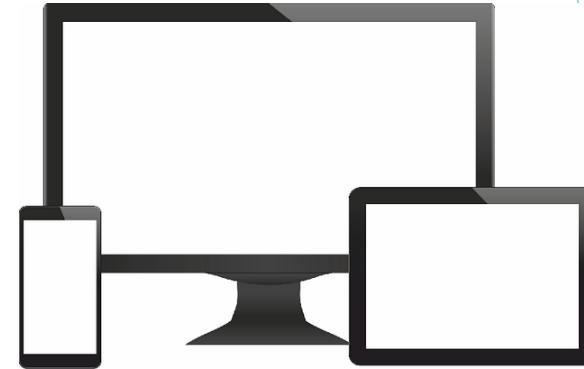
A body subject to the Brown Act *may not discuss* and *may not act* on items not on the agenda or that are beyond the reasonable scope of the agenda description



Unlawful Meetings

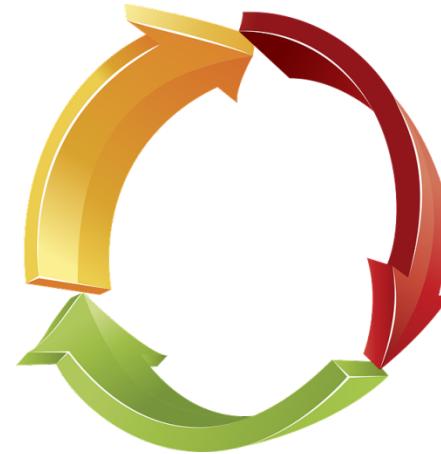


- ▶ “Pre-meetings” and “Post-meetings” held without notice to the public
- ▶ Serial meetings
 - A serial meeting is a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on business within the subject matter jurisdiction of the legislative body
 - Members should not communicate their position or make a commitment on a pending matter to a majority of the body
 - Members should not solicit responses from other members when forwarding information or emails or using social media



Types of Serial Meetings

- “Chain” meetings:
Member A talks to
member B, who talks to
Member C...
- “Hub-and-Spoke”
meetings: A talks to
B, then C, then D...



Rights of the Public

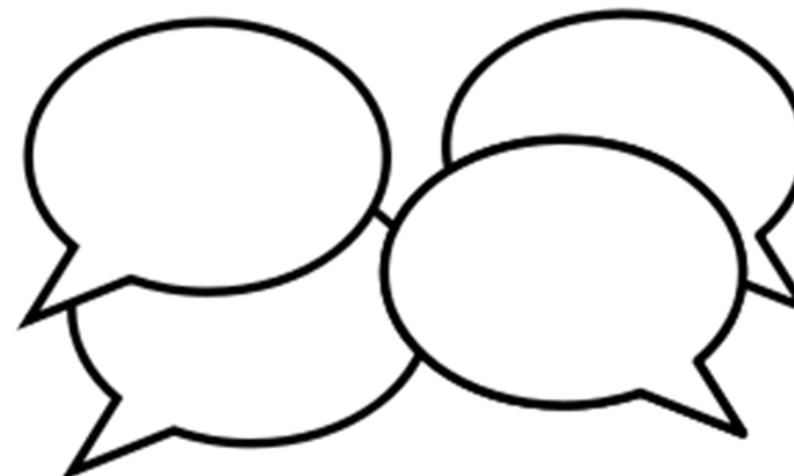
PARTICIPATION IN MEETINGS

The public has the right to address the Commission at any regular or special meeting on any item on the agenda, *before conclusion of the discussion or the Commission takes action*



Types of Public Comment*

- ▶ Specific:
Concerning an item
on the agenda, at
the time of
consideration
- ▶ General: Any item
within the Board's
subject-jurisdiction



*Can be written or verbal
(within speaker time limits
provided)

Teleconferencing/Remote Participation

- ▶ Traditional Teleconferencing (Gov. Code § 54953(b))
 - ▶ Agendas posted at and public access to “all teleconference locations”
 - ▶ At least a quorum of the members shall participate from locations within jurisdiction
- ▶ Individual Remote Participation as Reasonable Accommodation (Gov. Code § 54953(c)) *(Effective 1/1/26)*
 - ▶ For these limited circumstances, the individual’s remote participation is treated as in-person attendance for quorum
 - ▶ Members must appear using audio and video technology, unless their physical condition due to the disability results in a need to participate through audio technology only
 - ▶ Members must disclose at the meeting whether any other individuals 18 or older are present in the room and describe their relationship

Teleconferencing/Remote Participation

- ▶ Individual Remote Participation for Just Cause (Gov. Code § 54953.8.3) (*Effective 1/1/26*)
 - ▶ “Just cause” includes childcare/caregiving needs, contagious illness, needs related to physical or mental conditions not otherwise reasonably accommodated, travel on official business of a state/local agency, physical or family medical emergencies, and military service obligations that prevent attendance in person
 - ▶ Members must notify the body at the earliest opportunity possible and provide a general description of the circumstances relating to their need to appear remotely
 - ▶ Members must appear using audio and video technology
 - ▶ Members must disclose at the meeting whether any other individuals 18 or older are present in the room and describe their relationship
 - ▶ *Members can remotely participate in up to 2 meetings per year,* if the legislative body meets once per month or less*

Teleconferencing/Remote Participation

- ▶ Approved Teleconferencing by Governing Body (Gov. Code § 54953.8.6)
 - ▶ Governing Body/Board of Supervisors (BOS) must make certain findings by majority vote before an eligible subsidiary body implements and BOS must approve every six months thereafter
 - ▶ “Eligible subsidiary body” includes a local board/commission that serves in an advisory capacity, unless the local board/commission has primary subject matter jurisdiction that focuses on elections, budgets, privacy, police oversight, taxes, or public library material restriction
 - ▶ Allows members to participate remotely (on camera with audio capability)
 - ▶ Members must disclose at the meeting whether any other individuals 18 or older are present in the room and describe their relationship
 - ▶ Allows eligible subsidiary body to designate one physical meeting location within jurisdictional boundaries with at least one staff person present
 - ▶ Agenda must be posted at the physical meeting site, but posting at each remote location is not required

Disrupting Behavior and the Brown Act

- ▶ Gov. Code § 54954.3 allows a legislative body to set limits for speakers
 - ▶ A legislative body cannot prohibit criticism of the acts or omissions of the body
- ▶ “Disrupting” is behavior that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting, including but not limited to:
 - ▶ Failure to comply with reasonable regulations adopted by the body
 - ▶ Engaging in behavior that constitutes use of force or a true threat of force (reasonable observer would perceive)

Disrupting Behavior and the Brown Act

- ▶ The presiding member of a legislative body may cause the removal of an individual disrupting the meeting (includes teleconferenced meeting) after warning that the behavior is disrupting and that failure to cease may result in removal (Gov. Code § 54957.95)
- ▶ A legislative body may clear the meeting room (except press) if a meeting is willfully interrupted and order cannot be restored (Gov. Code § 54957.9)
- ▶ Gov. Code § 54957.96 (*Effective 1/1/26*) adds that the existing authority of legislative bodies regarding maintaining orderly conduct and disrupting behavior applies to members of the public participating remotely

Other Areas of Interest

- ▶ Copies of Brown Act (*Effective 1/1/26*)
 - ▶ Each person appointed to serve as a member of a legislative body must be provided a copy of the Brown Act
- ▶ Reasonable Accommodations
 - ▶ The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility
 - ▶ In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation
- ▶ Voting
 - ▶ All votes must be made publicly (no secret ballots)
 - ▶ Mandatory vs Voluntary Abstention

Resources

- ▶ The Brown Act at Gov. Code Sections 54950-54963

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5