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The Ralph M. Brown Act



Purpose of the Brown Act

Public business must take place in public meetings.

“All **meetings** 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, except as otherwise provided in this chapter.”

California Government Code section 54953



Purpose of the Brown Act

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. **It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.**”

The Brown Act applies to all “meetings”

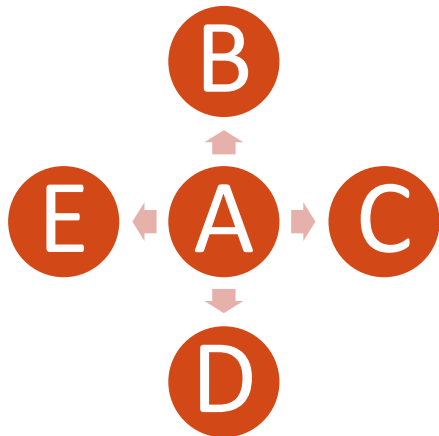
“Meeting” under the Brown Act means “Any congregation of a **majority** of the members of the legislative **body at the same time and place** to hear, discuss, or deliberate on **any matters within its jurisdiction.**”

What this means: Any time a majority of board members gather to discuss commission business, that is a “meeting” under the Brown Act. This includes in-person and electronic gatherings.

A Brown Act meeting must be public, have an agenda, follow that agenda, provide opportunity for public comment, and meet other requirements.

Brown Act Traps – accidental meetings

- ❖ “Reply All” emails or shared documents that allow all commissioners to share their opinions
- ❖ “Serial” meetings
 - ❖ Member A → Member B → Member C → Member D → Member E
- ❖ “Hub and spoke” meetings



Bottom Line: If you want to know what most of your co-commissioners think about something, you need to ask for it to go on the agenda for your next meeting.

When *doesn't* the Brown Act apply?

Board/Commission members can gather, without triggering Brown Act requirements, for:

- ❖ Conferences open to the public*
- ❖ Social or ceremonial occasions*
- ❖ Public meeting of another agency*
- ❖ Individual meetings between members

**As long as members do not discuss commission business amongst themselves.*

Remote meeting attendance - then

Before COVID-19 pandemic (Brown Act default rules):

- Meetings must take place in person.
- A member may join by teleconference, but only if the teleconference location is included on the agenda, and the public must be allowed to participate at that location.

During COVID-19 pandemic (State of Emergency, AB 361):

- California suspended Brown Act default rules to allow fully remote meetings to prevent the spread of disease.

Remote meeting attendance - now

Since March 1, 2023: We are back to in-person meetings.

- ❖ Members can appear remotely using the old teleconferencing rules, making their remote location public.
- ❖ In limited circumstances, individual members can join remotely *without* making their location public.
 - Circumstances include caregiving needs, contagious illness, disability, traveling on official business for a government agency, personal emergency.
 - Can only be used twice per calendar year per member.
 - You must provide an option for the public to participate remotely, too.
 - Quorum of board must be present in-person.

The Brown Act & Social Media (AB 992)

DO use social media to communicate with *the public* about board business.

- ❖ Answer questions
- ❖ Provide information and updates
- ❖ Solicit information/feedback

DO NOT use social media to communicate with *other members* about board business.

- ❖ Comment on another member's post
- ❖ Like another member's post
- ❖ Share another member's post

Brown Act Agenda Requirements

Effective notice is essential for an open and public meeting.

- ❖ Regular meeting: agenda posted 72 hours prior
- ❖ Special meeting: agenda posted 24 hours prior
- ❖ With few exceptions that rarely apply, meeting is limited to items on the agenda
- ❖ Agenda must contain brief description of every item to be discussed
- ❖ Must include time for public comment

The Public's Rights Under the Brown Act

- ❖ Right to be notified of items on agenda
- ❖ Right to attend without identifying oneself
- ❖ Right to record the meeting
- ❖ Right to speak before or during consideration of an item
- ❖ Right to see Board materials
- ❖ Right to say anything, even if unrelated to agency business

The public is only excluded from a meeting when the board is in “closed session,” which is only allowed for specific purposes (for example, personnel matters, real property negotiations, discussion with legal counsel about litigation)

Responding to Public Comments (or not!)

- ❖ You may not discuss or act on a topic raised by public comment that *is not* on the agenda. You may only briefly respond to:
 - Give information or correct misinformation
 - Refer the matter to staff for follow-up
 - Ask that matter be agendaized for a future meeting
- ❖ When a member of the public comments on an item that *is* on the agenda, you can discuss that comment. But you are not required to. You do not have to respond at all to public comment or treat it like a conversation.
- ❖ It is up to the Chair to set the tone for how the commission engages with public comment.

Consequences for Brown Act violations

Rare, but possible:

- ❖ Lawsuits
- ❖ Decision is reversed if not fixed
- ❖ Criminal penalties for intentional violations (up to 6 months in jail/\$1,000 fine)

More common:

- ❖ Media & political scrutiny



A brief note on the Public Records Act...

“[A]ccess to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code, section 6250.)

Government records shall be disclosed, upon request, unless a PRA exemption applies.

What this means: When creating any writing related to public business (email, text message, word doc, etc.), be mindful that the writing is likely a public record subject to disclosure.



A brief note on the Public Records Act...

Call me or your staff liaison if you receive a request from the public for records!

No “magic words” required: Requester does not have to invoke the PRA specifically. Any request for documents falls under the PRA.