

THE BROWN ACT



El Dorado County Counsel

Purpose of the Brown Act



- To facilitate public participation in local government
- To curb misuse of the democratic process by secret legislation

To Whom Does the Brown Act Apply?



- 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
- Subject local agencies include a county, city, general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency

What is a Legislative Body?



- The governing body of a local agency or any other local body created by state or federal statute
- A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body (e.g., advisory committees and standing committees)
- The Airport Advisory Committee is subject to the Brown Act.

What is a Meeting?



- Any congregation of a **majority** of the members of a legislative body at the same time and location ... to **hear, discuss, deliberate, or take action** on any item that is within the **subject matter jurisdiction** of the legislative body
- The legislative body does not need to take action in order for it to be considered a meeting

Serial Meetings



- A majority of members of a legislative body shall not, outside of an open and public meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business within the subject matter jurisdiction of the legislative body.
- Commonly referred to as a serial meeting
 - Daisy Chain (Member A to Member B and Member B to Member C)
 - Hub and Spoke (Member A to Member B and Member A to Member C)

Permissible Gatherings



- Individual board member discussions with constituents, staff, etc.
- Attending a purely social or ceremonial occasion
- Attending a conference, provided the conference is not by invitation only (must be open to the public, who may be required to pay to attend)

Permissible Gatherings (cont.)



- Attending an open and publicized meeting organized by another person or organization to address a topic of local community concern
- Attending a properly noticed public meeting of another legislative body of the same agency (e.g., Airport Advisory Committee Member attending BOS meeting) or of a legislative body of another agency (e.g., BOS attending a city council meeting)

Rules for Meetings



- Must be open and public
- Items generally should be heard in the order they appear in the Agenda
- Must comply with the Americans with Disabilities Act
- Cannot require a member of the public to register his or her name or provide other information as a condition to attendance (an attendance list must indicate that signing is voluntary)
- The public has the right to record and broadcast the meeting
- Teleconferencing permitted subject to certain requirements

Rules for Meetings



- **Regular Meetings (Gov. Code §§ 54954, 54954.2)**
 - Time and place specified in an ordinance, resolution, or bylaws (advisory or standing committees can meet “as needed”)
 - Post the agenda 72 hours in advance
 - Brief general description of each item of business
 - Separate public comment item (open forum)
 - If requested, must be made available in alternative format for disabled person and describe procedure for accommodations

Rules for Meetings



- **Special Meetings (Gov. Code §54956)**
 - Can be called at anytime by the chair or majority of body
 - Post the agenda 24 hours in advance
 - Items cannot be added to the agenda at the meeting
 - Separate public comment item not required
- **Emergency Meeting (Gov. Code §54956.5)**
 - Only when prompt action is necessary due to disruption or threatened disruption of public facilities
 - 1 hour notice unless dire emergency
 - Only allowable closed session is for public security
 - Special rules for reports and minutes

Items Not on the Agenda



- No discussion or decision on items not on the posted agenda
- If during public comment a member of the public does comment on an item not on the agenda, Members or staff may respond briefly to questions posed by the public
- Members may ask staff a question, make a brief announcement, or make a brief report on his/her own activities
- Members may ask staff to report back on an item at a later meeting or place a matter on a future agenda
- Additional items can be added only in certain circumstances

Public Comment



- Every regular meeting agenda must allow the public to speak on any item of interest within the subject area of the legislative body
- Public must be allowed to speak on specific item of business before or during the consideration of the item
- May adopt reasonable regulations for public comment (e.g. time limits)
- May not prohibit criticism of policies, procedures, programs or services, or of the acts or omissions of the legislative body

Voting



- No action may be taken by secret ballot
- The legislative body shall publicly report any action taken and the vote or abstention of each member present
- Votes taken during meetings held via teleconference must be by roll call

Closed Sessions



- Narrow exceptions to the open meeting rule, such as for the following:
 - Personnel (§ 54957(b))
 - Labor negotiations (§ 54957.6)
 - Pending litigation (§ 54956.9)
 - Real property negotiations (§ 54956.8)
 - Public security (§ 54957(a))
- Discussion must stay within the parameters of the exception
- Discussion is confidential

Brown Act Violations



- Any individual or the DA may file a civil lawsuit for injunctive relief or to void an action taken in violation of the Brown Act
 - Attorney's fees are available to plaintiff
- Any member who attends a meeting where action is taken in violation of the Brown Act where the member intends to deprive the public of information the members knows or should know the public is entitled to, is guilty of a misdemeanor.