

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)

Exceptions to Legislative Body



- A committee created by and advisory to a single officer of the local agency
- Ad Hoc Committees
 - Composed solely of less than a quorum of the body
 - Advisory only
 - Limited scope and duration
 - No formally-adopted meeting schedule
 - Disband upon completion of assigned task

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)
 - This can occur through email or text message communications – do not use reply all!

Social Media



- It is ordinarily not a violation of the Brown Act for a member of a legislative body to participate in social media.
- Members may not, however, respond directly to any social media post by other members of the same legislative body regarding a matter within the jurisdiction of the legislative body. This includes using digital icons (such as “like”).

Permissible Gatherings



- Individual board member discussions with constituents, staff, etc.
- Purely social or ceremonial occasions
- Conferences, 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., Planning Commission attending BOS meeting) or of a legislative body of another agency (e.g., BOS attending a city council meeting)
- Attending a public meeting of a standing committee of the body, provided the board members creating a quorum of the full body attend only as observers

Agendas



- The agenda must contain a brief general description of *each item of business*
 - Although the Brown Act states that this description “need not exceed 20 words,” a more robust description is preferred in order to give the public a fair chance to participate in matters of particular or general concern
 - The description should provide more than mere clues from which the public must then guess or surmise the essential nature of the business to be considered by the local agency
 - Any CEQA actions must be included in the agenda description
- If requested, the agenda must be made available in alternative format for disabled person and describe procedure for accommodations
- Must be posted in a location freely accessible to members of the public and on the agency’s internet website

Rules for Meetings



- Must be open and public
- 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 (see below)

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
 - Separate public comment item
- **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
 - Cannot discuss local agency executive compensation

Rules for Meetings



- **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

Teleconferencing



- **Traditional Teleconferencing**
 - Agenda must identify all teleconference locations
 - Agenda must be posted at each teleconference location
 - Each teleconference location must be accessible to the public
- **New Teleconferencing (AB2449)**
 - Allowed only for “just cause” or “emergency circumstances”
 - Must notify body at earliest opportunity of need to participate remotely due to “just cause,” which can only be invoked twice in a calendar year
 - Must obtain prior approval of remote participation due to “emergency circumstances”
 - Must participate through both audio and visual technology

Items Not on the Agenda



- No discussion or decision on items not on the posted 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 – e.g., an emergency situation

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

Public Comment



- The Chair may remove or cause the removal of an individual for disrupting the meeting (SB 1100, 2022).
 - Disruption means an actual disruption to the orderly conduct of the meeting or engaging in behavior that is a true threat of force
- In public meetings, “[c]itizens have an enormous first amendment interest in directing speech about public issues to those who govern their city.” (White v. City of Norwalk (9th Cir. 1990) 900 F.2d 1421.)

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**



Questions?