



THE BROWN ACT

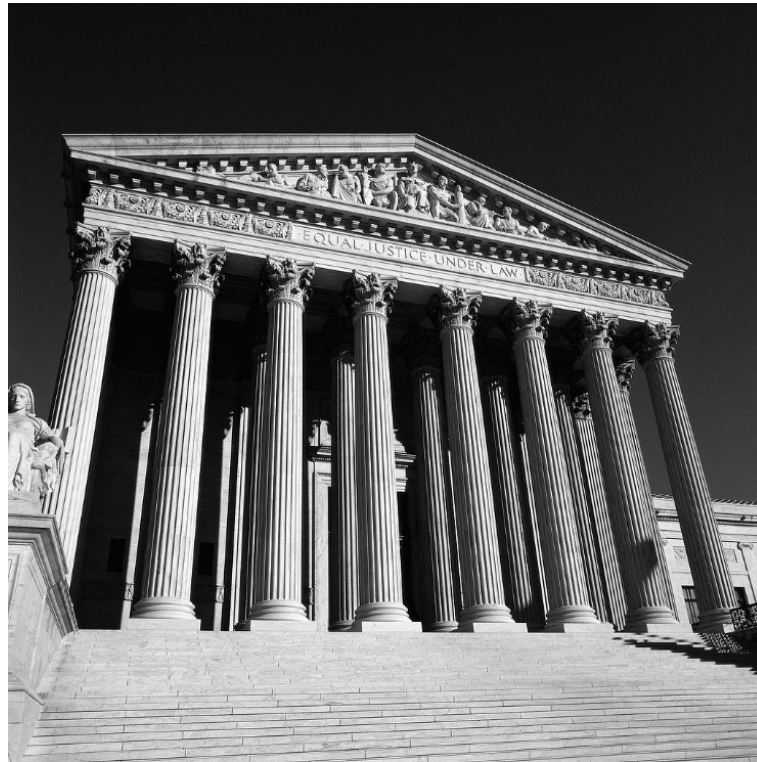
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Running a Meeting

- Governing procedures for meetings:
 1. Ralph M. Brown Act and
 2. Robert's Rules of Order
- Members should use parliamentary procedures as guidelines when conducting a public meeting.
- The presentation only provides some general meeting and voting guidelines.

Robert's Rules of Order and Parliamentary Procedure



Overview of the Robert's Rules of Order and Parliamentary Procedure

- It is a set of rules for conduct at meeting
- It allows everyone to be heard
- It allows decisions to be made without confusion

Quorum & Voting

- Membership: 9 members
- Quorum: A simple majority (5 members) of the members shall constitute a quorum for the transaction of business at any meeting of members.
- Voting: Decisions shall be reached through majority voting which is defined as a majority of the quorum members present.
 - Ex. 10 members present would require a vote of 6 for a motion to carry

Quorum & Voting

- Late arrivals: Members will count towards the quorum upon their arrival and should be noted as such in the meeting minutes.
- Absence of quorum at the start of a meeting: The secretary may take steps to try to secure a quorum or may adjourn the meeting.
- Absence of quorum during the meeting: If the body loses a quorum, then the meeting must be adjourned.
- Only actions you can take in the absence of a quorum:
 - (1) Take measures necessary to obtain a quorum;
 - (2) Fix the date and time to which to adjourn;
 - (3) Adjourn or take a recess; and/or,
 - (4) Continue the entire agenda to the next meeting.

Conflicts of Interest

- Members are required to comply with all conflict of interest laws including, but not limited to, general conflicts of interest, the doctrine of incompatible offices, self-interested contracts, predetermination/implicit bias, and the California Political Reform Act.
- Determining a general conflict of interest: if you, your spouse or dependent children (including your property, business, or financial interests) will benefit financially in the action/discussion
- Procedure:
 - a. Publicly state the nature of the conflict in sufficient detail to be understood by the public;
 - b. Recuse themselves from discussing and voting on the item;
 - c. Leave the room until the item is concluded.
- **Members declaring a conflict shall not be counted towards determining a quorum for that particular action item

The Brown Act

Open and Public

The People's Business

Purpose of the Brown Act: Open and Public

To ensure that almost all aspects of the decision-making process of legislative bodies of local agencies are conducted in public and open to public scrutiny.

“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.” (Gov’t Code §54953)

Key Principles of Brown Act

- It's the public's business.
- The people only trust a process they can see.
- Conduct the people's business in open and publicized meetings.
- Allow the people (the public) to participate in the meetings.

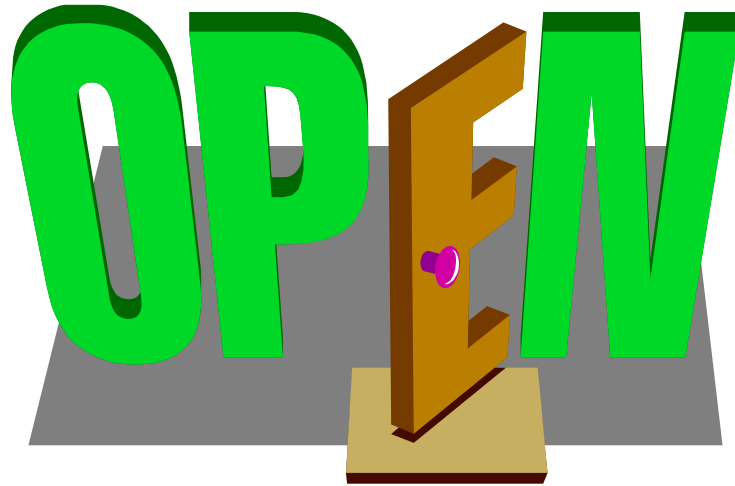


Brown Act - Legislative Bodies

The Brown Act applies only to legislative bodies:

1. Governing body of the agency (Board of Supervisors/ Children and Families First Commission)
2. Subordinate boards or commissions created by formal action of the governing body Standing committees with regular meeting schedule and continuing subject matter jurisdiction
3. Any board of directors for a private entity, if the governing body of the agency created it and delegated some authority to it.
4. Persons elected to legislative bodies, even prior to assuming office.

Brown Act - Meetings



All meetings of the Legislative Body of a Local Agency shall be open and public and all persons shall be permitted to attend

- Government Code §54953

Brown Act Meeting



What is a meeting?

- Any congregation of a majority of the members at the same time and location to hear, discuss, deliberate, or take action upon any matter under their jurisdiction.
- No action needs to be taken for a meeting to occur; conversations or deliberations about issues confronting their agency is sufficient.
- Includes “workshops,” “study sessions,” and retreats.

Brown Act – Meeting Exceptions

When is a meeting not a meeting?

(1) Individual contacts

be careful of serial meetings & social media

(2) Conferences and seminars - open to the public on issues of general interest to the public or public agencies

(3) Community Meetings - Town meetings or similar gatherings which are open, noticed and originated by a person or organization other than the local agency

(4) Purely social or ceremonial occasions

*Be careful and remember appearances matter.

Brown Act – Meeting Exceptions

(Continued) When is a meeting not a meeting?

- (4) Attendance at a standing committee meeting
(observation only)

- (5) Attendance at meetings with other legislative bodies
 - A majority of the body may attend an open and noticed meeting of another legislative body as long as they do not discuss among themselves, other than part of the scheduled meeting, issues under their jurisdiction.

Brown Act – Meeting Prohibited Serial Meetings

Serial meetings are expressly prohibited and illegal

Serial meetings are:

- A series of communications, direct or indirect, each of which involves less than a quorum of the legislative body, but when taken as a whole, involves a majority of the members and develops concurrence on a topic.
- “Concurrence” includes the following:
 - Advances or clarifies understanding of an issue
 - Facilitates agreement or compromise among members
 - Advances ultimate resolution of an issue

Brown Act – Meeting Prohibited Serial Meetings

How does a serial meeting arise?

- The members discuss, deliberate, or take action on an issue through personal intermediaries, emails phone calls, letters, written proposals, or other method.
- This also includes social media interaction or use of other group or chatting apps.

Brown Act – Meeting Prohibited Serial Meetings

Types of Serial Meetings

Hub and spoke



Telephone, email, social media



* Individual briefings are permitted but members should avoid making inquiries about what other members thought or said.

Brown Act – Meeting

Prohibited Serial Meetings

Hub and spoke

- Member A (hub) contacts Member B (a spoke); Member A (hub) contacts Member C (a spoke); and so on until quorum of spokes have been contacted regarding discussion, deliberation, decision of a issue
- Staff member or other intermediary can serve as hub
- Briefing of members prior to formal meeting and in that process information about individual views are revealed

Daisy chain

- Member A > Member B > Member C > etc until a quorum has discussed, deliberated or decided a issue

Brown Act – Meeting

Prohibited Serial Meetings -

Emails

- **Email communication is considered a “technological device” within the meaning of “meetings” under the Brown Act**
- **An email violates the Brown Act when:**
 - It is used by a majority of the members to discuss, deliberate, or take action on any upcoming agenda item or anything that would be an item of business

*Beware of potential for serial meetings via “reply all” or email chains.

Brown Act – Meeting Prohibited Serial Meetings - Emails

Opinion of the Attorney General:

A majority of the members may not e-mail each other to develop a collective concurrence as to action to be taken

- Even if the e-mails are sent to the secretary and the agency chair
- Even if the e-mails are posted on the agency website and printed versions are reported at the next public meeting

Reason: Such e-mails deprive the public of the opportunity to attend and comment on the proposed action.

Brown Act – Meeting Prohibited Serial Meetings – Social Media

AB 992 (2020):

- Members may communicate on social media to answer questions and provide information to the public or to solicit information
- Members cannot post, comment, share or use digital icons to react to communications made by other members of a legislative body.
- Single contact between members of the same legislative body on social media is prohibited.

Brown Act – Meeting

Tips To Avoid Serial Meetings

Tips for Members:

- Do not take a position or make a commitment on public matters yet to be decided.
- Do not use people or technology as a “go between” to transmit collective concurrence on a public matter.
- Be careful with social media and refrain from responding to any posts within the scope of official business.
- Only e-mail the entire to provide information. Do not request a response.
- Refrain from replying to an e-mail directed to a majority of the members concerning a public discussions or deliberations.
- Use e-mail as a means of passively receiving information.

Brown Act – Meeting Tips To Avoid Serial Meetings

Tips for Members:

- Remember: e-mails and social media posts can be forwarded without your knowledge, including to the local newspaper
- Develop and institute policies and regular trainings to ensure the use of e-mails and other emerging technologies comply with the law.

Brown Act – Meetings

Location

- No meeting can be held in a facility that prohibits attendance based on race, religion color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled.
- No meeting can be held where the public must make a payment or purchase in order to be present. This does not mean however that the public is entitled to free entry to a conference attended by a majority of the legislative body.

Brown Act – Meetings

Location

- General rule: Must be held within the jurisdiction of the body
 - Exceptions: (Gov't Code §54954)
 - Inspection of real property
 - Pursuant to federal law or court order
 - Participation in meetings with multi-agencies after proper notice is given
- **Teleconferencing (next few slides)**

Brown Act - Meeting Location - Teleconference

Normal Teleconferencing requirements:

- At least a quorum of the members must to participate within the area of jurisdiction.
- Votes by roll call (i.e., each member state name and vote, one by one)
- Each teleconference location specifically identified in the notice and agenda, including a full address and room number, as may be applicable.
- Post the agenda at each teleconference location per Brown Act rules - 72 hours prior to the meeting in a spot that is available for viewing (i.e. window or glass case outside) 24 hours a day, free of charge.
- Each teleconference location must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate.
- Opportunity for members of the public to address the legislative body directly at each teleconference location.

Brown Act – Meeting Location - Teleconference

AB 2449 (2022)/SB 707 (2026) Teleconferencing/Virtual Meetings:

5 exceptions:

1. State of emergency (AB 361 rules) – remote or hybrid
2. “Just Cause” – hybrid with quorum in person
3. “Emergency circumstances” – hybrid with quorum in person
4. “Health Authority”
5. ADA Accommodation

Brown Act – Meeting Location - Teleconference

AB 2449 Requirements for “Just Cause” & “Emergency Circumstances”

From January 1, 2023 through January 1, 2026, Brown Act bodies may conduct hybrid meetings (member participation both in-person and virtual) under the following circumstances:

1. At least a quorum of the members must participate from a physical location within the jurisdiction; and
2. Reason for a member’s remote participation = “just cause” or “emergency circumstances”.

Brown Act – Meeting

Location - Teleconference

“Just Cause”

Qualifying Reasons:

1. Childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse or domestic partner;
2. Contagious illness;
3. Need related to a physical or mental disability; or
4. Travel while on official business of the legislative body or another state or local agency.

Number of Instances Permitted: limited to 2 instances per calendar year.

Request Procedure:

1. Notify the legislative body at the earliest opportunity possible (including, at the start of the meeting) of the “just cause” and provide a general description of the circumstances.
2. The member may then participate remotely. No formal action needs to be taken.

Brown Act – Meeting Location - Teleconference

“Emergency Circumstances”

Qualifying Reasons: Member has a physical or family medical emergency.

Request Procedure:

1. Make a request to the legislative body of the “emergency circumstances” and provide a general description. Personal medical information does not have to be disclosed.
2. Legislative body takes formal action to allow the member to participate remotely.

Brown Act – Meeting Location - Teleconference

Additional Requirements

- Number of Instances Permitted (Combined Participation of “Just Cause” & “Emergency Circumstances”)
 - Not more than 3 consecutive months or 20 percent of the regular meetings within a calendar year.
 - Limited to 2 instances per calendar year, if there are only 10 meetings.
- Member Disclosure.
 - Before any action is taken, identify whether any other individuals at least 18 years of age are present in the room with the member and the relationship with any such individuals.
- Member Participation.
 - Remote participation through both audio and visual technology.

Brown Act – Meeting

Location - Teleconference

Additional Requirements (continued)

- Public Access/Notice/Agenda.
 - Notify on the agenda and allow the public to participate in-person and either via a two-way audiovisual platform (e.g. Zoom, Teams) or a two-way telephonic service (i.e. conference call line) and live webcasting.
- No action taken during disruption of broadcasting of the meeting.
 - Actions taken during this type of disruption may be challenged and, if successful, be declared null and void.
- No requirement to submit public comment in advance.
 - Must allow the public the opportunity to address the legislative body in real time.
- AB 557 signed by Governor in October 2023
 - Effective 1/1/24
 - Allows teleconferencing with a Declaration of Emergency is active.

Brown Act – Meeting

Agenda for Regular Meetings

Agenda Rules for Regular Meetings:

- Posted 72 hours prior to the meeting
 - Physically post in a location “freely accessible to the public” 24 hours per day and on website, if agency has website.
 - Include the time and location of the meeting
- Brief general description of each item to be discussed or addressed – including closed session.
- Publicly accessible and distributed in advance to those that request copies. A fee may be charged to recover the cost.

Brown Act – Meeting

Agenda for Regular Meetings

Agenda Rules for Regular Meetings:

- List the location (with address) where the public is able to inspect public documents related to an agenda item when such documents were distributed less than 72 hours prior to the meeting.
- If requested, the agenda must be made available in appropriate alternative formats to persons with a disability.
- The agenda must include information regarding how, to whom, and when a request for disability-related modification or accommodation may be made in order to participate in the public meeting.
- Tip: put the meeting dates at the bottom of the agenda for the members and public.

Brown Act – Meeting

Agenda for Special Meetings

Agenda Rules for Special Meetings:

- Special Meetings: meetings called by the presiding officer or a quorum of the members for a time that is not a regularly scheduled time to discuss discrete agenda items. **Special meetings are not the norm.**
- Agenda contains: time, location, brief general description of each item
- Posted no later than 24 hours prior to the meeting in same manner as regular posting

Brown Act – Meeting Member Participation

- Meetings shall not begin before the publicly noticed meeting time
- Follow the agenda – only speak on those items.
- Action by secret ballot, whether preliminary or final, is flatly prohibited.
- Teleconferencing is allowed under specified circumstances. **Votes are by roll-call. (For both, virtual meeting and regular teleconference.)**

Brown Act – Meeting Member Participation

Members can only discuss items that are on the publicly noticed agenda

Exceptions:

- Adding items by majority vote for emergency situation.
- Adding items by 2/3 vote of the members of the members present at the meeting (or a unanimous vote if less than 2/3 of the members are present) because of need for immediate action that came to the attention after the agenda is posted.
- Item continued to another meeting within 5 calendar days.

Brown Act – Meeting Member Participation

(Continued...)

More exceptions:

- Brief response to statement or question from public.
- Questions to staff for clarification of a matter based upon public comment.
- Brief announcement or report on member's or staff's own activities.
- Provide reference or information to staff.
- Ask staff to report back at a future meeting on any matter.

Brown Act – Meeting Public Participation: Regular Meetings

The Public's Right to Comment at Regular Meetings:

- At every **regular** meeting, members of the public have the right to directly address the body on **any item of public interest if that item is under the jurisdiction of the body.**
- For agenda items, the public must be given an opportunity to comment **before or during** the body's consideration of the item.

Brown Act – Meeting Public Participation

SB 1100 (2022):

- Authorizes the presiding member of the legislative body conducting a meeting or their designee to remove, or the cause the removal of, an individual for disrupting the meeting
- Procedure:
 1. Individual disrupts the meeting
 2. Presiding member (or their designee) warns the individual that their behavior is disruptive & failure to cease the disruption may result in removal
 3. Individual fails to cease disruptive behavior
 4. Presiding member (or their designee) may have the individual removed

Brown Act – Meeting Public Participation

Public Participation Guidelines:

- Can speak on any item in subject matter jurisdiction
- Can criticize the policies, procedures, programs, services, or omissions of the body
- Cannot be unruly
- Not required to register
- Speaker cards are not a prerequisite
- Time limits and prohibiting disruptive conduct okay
- Rules of decorum and reasonable restrictions upon public comment are permitted, if not too broad and do not constitute “prior restraints” – Ex. 3 minute limitation is ok
- Recording permitted
- If the body reviews documents, copies of those documents must be provided without delay when requested

Brown Act – Meeting Public Participation Virtual Meeting

Conducting a teleconference/virtual meeting:

Duties of Chairperson or designee:

- Read public comments into the record or introduce public speaker before comment.
- Open phone line for individual public speakers.
- Remind each speaker how many minutes they have to provide public comment.
- Alert each speaker when their time is up. You can give them a few extra seconds, if you wish, but be fair with everyone.
- Close phone line for individual public speakers when their time ends.

Brown Act - Closed Session

Limited exceptions for closed session for matters requiring confidentiality:

- Must be expressly authorized by statute.
- Must be narrowly construed.
- Examples: real property negotiations, existing or anticipated litigation, labor negotiations, public employee issues (appointment, employment, evaluation, discipline, dismissal or release).

Brown Act – Violation and Consequences

Civil violation and consequences:

- A civil suit to have the action declared “null and void”
- Need to be given chance to cure and correct the problem (Government Code section 54960.1)
- Repeated violations: injunction prohibiting future violations
- A civil violation does not require that the members actually vote or take action on an item.
- Court fees and attorneys costs are recoverable.

Criminal violation and consequences:

- A member takes action, intending to deprive the public of information to which the public is entitled.
- Guilty of a misdemeanor
- Criminal sanctions (up to 6 months in jail; \$1,000 fine)

Brown Act

Summary of Key Points

- A majority may not consult outside of a noticed meeting.
- Meetings include any communication among a majority to hear, discuss, or deliberate on public business (e-mail, telephone calls, serial meetings etc.).
- Legislative Body includes committees, commissions and advisory boards (except ad hoc committees of less than a quorum).
- Attendance of quorum at other events not a violation as long as no business of the Committee is discussed (conferences & seminars, community meetings, another body of agency, social or ceremonial events).
- Assume all information is public or will become public.
- APPEARANCES MATTER.