
THE RALPH M. BROWN ACT

Cal. Gov't Code § 54950 *et seq.*

*2021 District Lines Advisory Commission
Office of the County Counsel
August 25, 2021*

The information set forth herein is intended to provide a general outline of issues that arise as a result of the Brown Act and is not intended to be a substitute for legal advice. If you have any questions about situations that may arise in the future, please contact the Office of the County Counsel at 650-363-4250.

Good Government



The Man Behind the Act



Introduction

- Government Code § 54953

“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.”

- Proposition 59 of 2004 – the right of the people to open meetings and public records is now in the State Constitution.
 - ❑ Presumption in favor of access.
 - ❑ Exceptions are narrowly construed.

Six Primary Topics

1. What types of public groups are covered by the Brown Act?
2. What is a meeting?
3. What are the notice and agenda requirements?
4. What are the public's rights?
5. When are closed sessions permissible?
6. What are the consequences for violating the Brown Act?

Groups Subject to the Brown Act

- “Legislative bodies” include governing bodies and their subsidiary bodies
 - Examples: boards, *commissions*, standing committees, committees or other bodies of a local agency that are created by charter, ordinance, or resolution
 - This applies regardless of whether the board or commission is “temporary” v. “permanent,” or “advisory” v. “decision making.”
- Specific exception for “non-standing” (*ad hoc*) advisory committees that are composed *solely* of less than a quorum of the legislative body.

What is a “Meeting?”

- Any congregation of *a majority* of the members of legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction.
 - Can include lunches, social gatherings, board retreats.
 - Watch out for “serial” meetings (“chain communication” and “hub communication”)
 - Serial: $A \rightarrow B \rightarrow C$
 - Hub: $B \leftarrow A \rightarrow C$

What is a “meeting?”

Social Media Concerns

- Social media includes Snapchat, Instagram, Facebook, Twitter, blogs, TikTok, Reddit, etc.
 - Because meetings can be “serial” or “hub”, this possibly includes posts on social networking sites.
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AB 992 (2020)

- Allows conversations/communications on social media to answer questions, provide information to the public, or solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body
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AB 992 (Cont.)

- Prohibits majority using social media to discuss business within the subject matter jurisdiction of the legislative body
 - Cannot respond directly to any communication regarding a matter that is within the subject matter jurisdiction made, posted, or shared by any other member
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What is a “Meeting?”

- Exceptions
 - ❑ Conferences open to the general public which involve issues of interest to the body;
 - ❑ Other public meetings;
 - ❑ Meetings of other bodies under same local agency; or
 - ❑ Social or ceremonial occasion.

Above exceptions apply as long as a majority of the members do not discuss application of specific issues to the legislative body.

Notice and Agenda Requirements

- Regular Meetings
 - Post the agenda 72 hours in advance
 - In a place that is “freely accessible” AND
 - On the internet if the body has a website
 - Agenda must contain an opportunity for public comment (with reasonable time limitations)
- Special Meetings
 - 24 hours notice
 - No other business may be considered except that for which meeting called
- Content of Agenda: must include a brief description of matters to considered in closed and open session

Special Notice Requirements for Commission

- Special notice requirements apply for public hearings and workshops of this Commission
 - Notwithstanding Brown Act requirements:
 - Agenda must be posted online at least five days before the hearing or workshop.
 - Unless there are fewer than 28 days until the deadline to adopt boundaries (currently, December 15, 2021), in which case the agenda must be posted online at least three days before the hearing or workshop.
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Rights of the Public

- Access
 - ❑ Right to be notified of items to be considered;
 - ❑ Right to attend meetings without having to identify oneself;
 - ❑ Right to record the meeting, to have access to documents distributed to members of the body;
 - ❑ Right not to pay for the agency's cost in complying with the Brown Act; and
 - ❑ Right to be free from discrimination

Rights of the Public

- Other “access” issues:
 - Generally, location of meetings = within the County
 - No secret ballots (votes must occur in open session)
 - Right to comment
 - Allowed to criticize the Council, members and even employees
 - Legislative body may adopt reasonable regulations (i.e., limiting total time allocated for public comment on particular issues and for each individual speaker)

Special Rights of the Public for the Commission

- Public shall be allowed to submit testimony or draft maps in writing and electronically
 - Live translation shall be arranged if request for translation is made at least 72 hours before the hearing or workshop (unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop)
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Meetings During COVID

- Executive Order (N-29-20) suspending Brown Act requirements through September 30, 2021
 - All members can appear virtually
 - Public allowed to comment/participate virtually
 - All votes must be by roll-call
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Closed Session

- Allowed to meet without the public to discuss certain matters provided for in the Act
 - Other rules apply (i.e., items discussed in closed session must be properly noticed and agendized).
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Permissible Closed Meetings

- These exceptions to the open meeting requirement are *narrowly* construed
 - Personnel exception
 - Pending litigation or attorney-client privilege
 - Real estate negotiations
 - Labor negotiations
 - Public security
- Cannot disclose “confidential information”

Consequences of Violation

■ Criminal Penalties

- ❑ Member must intend to violate the act
- ❑ Misdemeanor

■ Civil Remedies

- ❑ Declaratory/injunctive relief
 - ❑ Order to void actions
 - ❑ Where substantial compliance with Brown Act, cannot void action
 - ❑ Procedure to follow before filing suit to allow body to cure violation (written demand to cure/correct violation)
 - ❑ Attorneys' fees can be awarded against the public agency
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