

BROWN ACT

[California Government Code 54950-54963 – 1953]

PREAMBLE - *Public Commissions, boards, councils and other legislative bodies of local government agencies exist to aid in the conduct of the people's business. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created.*



PURPOSE - The purpose of the Brown act is to maximize public access to the deliberative processes of the governing boards of local public agencies.

BASIC RULE - Meetings of a local “legislative body” must be open and public. Legislative bodies must deliberate and act on the public’s business openly. Exceptions to this rule are few and narrowly construed.

WHAT IS A LEGISLATIVE BODY? - Governing boards, such as a board of supervisors, a city council or a special district board of directors, are legislative bodies. **Advisory commissions and committees created by formal action of a legislative body are also ‘legislative bodies’,** except than an **ad hoc committee** composed solely of members and less than a quorum of the members of the legislative body is not subject to the Brown Act, **(but this exception does not apply to ‘standing committees’).**

WHAT IS A MEETING? - A meeting takes place when a **majority of members** are present at the same time and place and “hear, discuss or deliberate” on the entity’s business. In addition, a “**serial meeting**” occurs whenever a quorum or more of the board uses an intermediary to sequentially discuss a matter within the jurisdiction of the board. **The intermediary can be a board member or agency employee.** The communications can be in person or by telephone or email or by any other means of communication. Serial meetings are illegal, but the act does not prohibit a member of the public from contacting more than a quorum of the board.

WHAT IS NOT A MEETING? - A majority of members may attend social occasions, conferences, and community forums so long as they do not discuss board business. They may also attend committee meetings or the meetings of other agencies if they attend only as observers.

ILLEGAL MEETINGS - In addition to serial meetings, any meetings that are not noticed and agendized are illegal.

OPEN AND PUBLIC MEETINGS - Meetings must be noticed (posted) and held in a place that is freely accessible to all members of the public, including persons with disabilities (ADA accessible).

FOLLOWING THE AGENDA - With limited exceptions (e.g., responses to statements or questions during a public comment session, or referrals to staff) **only items that are on the posted agenda may be discussed or acted upon.** The order of the agenda may be changed at the discretion of the body. However, agenda items may be added upon the board’s finding of an “emergency” or “urgency”.

AGENDA CONTENTS - Agendas must contain a brief description of every item to be discussed, including closed session items, even if no action is proposed. Each agenda item description must be **clear and accurate**, not vague or misleading. It should state the cost, if any, of the proposed action. Agendas must include time for public comment (see RIGHTS OF THE PUBLIC, below).

NOTICE - Agendas for regular meetings must be posted in a freely accessible location 72 hours before the meeting (24 hours for special meetings), including at teleconference sites, and mailed to persons who request notice. Weekend hours count in these timeframes. If the entity has a website, the agenda must be posted there as well. Emergency meetings can be called under very limited circumstances upon telephone notice to the members.

RIGHTS OF THE PUBLIC -The public has the right to address the legislative body on agenda items and **to comment on matters not on the agenda that are within the body’s jurisdiction – General Public Comment. Public comment on an agenda item must be permitted before or during the body’s consideration of that item, but prior to a vote.** The body may adopt reasonable regulations, including limiting the amount of time for comment on each issue and for each speaker. **All speakers on a particular agenda item must be allowed the same amount of time.** The body may not prohibit public criticism of the policies, procedures or services of the agency or the board, even if the comment is defamatory. A member of the public **is not required** to provide their name or any information.

RULES OF ORDER - The chair has the power to maintain order at meetings and to manage the legislative body’s business under established rules of procedure, subject to majority consensus. *Robert’s Rules of Order* may, but need not, be adopted.

WRITINGS - Materials distributed to a quorum of the legislative body either before the meeting (the “agenda packet”) or during the meeting, except privileged items, are public records and must be made available for inspection and copying without delay. (Public Records Act)

CLOSED SESSIONS - The fact that a topic may be sensitive, embarrassing or controversial is not in itself a justification for holding a closed session. Closed sessions may be held only for the reasons specified in the Brown Act. Most commonly, closed sessions are held to (1) discuss **pending litigation** with the board’s attorney; (2) discuss the appointment, evaluation, discipline, or discharge of a **non-elective public employee**; (3) meet with the board’s agents to discuss specific **collective bargaining negotiations**; and (4) give direction to the board’s negotiator regarding the price and terms for the purchase, sale, exchange, or lease of **real property**. Closed sessions must be properly agendized.

Final actions taken by the board in closed session must be disclosed (reported out) afterwards, either immediately at the same meeting in most cases, or later upon request after further action is taken by another party (as when another party needs to sign off on a settlement agreement). The rules for wording the agenda description for closed sessions, conducting closed sessions, and “reporting out” certain actions taken in closed session are strictly construed. If no final action was taken in closed session, that ‘fact’ must be reported out.

BREACH OF CLOSED SESSION CONFIDENTIALITY - A person who takes part in an authorized closed session must maintain its secrecy unless authorized by the board to disclose information. A breach can result in an injunction, disciplinary action (if the person is an elected official), or referral to the grand jury.

CIVIL AND CRIMINAL REMEDIES – Violations of the Brown Act may be enjoined by the court. Some actions taken in violation of the act, if not cured, may be declared void. **To “cure” means to take the action again, but this time in full compliance with the act.** A violation may be prosecuted as a misdemeanor if the board member attends an illegal meeting “with wrongful intent to deprive the public of information.”