

California's Sunshine Law: The Ralph M. Brown Act

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ALAMEDA
Workforce Development Board
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The Brown Act

The Brown Act was enacted in 1953 after a 10-part exposé in the *San Francisco Chronicle* on the lack of transparency in local government, entitled “Your Secret Government”

San Francisco Chronicle
NORTHERN CALIFORNIA'S LARGEST NEWSPAPER

The Guiding Principle

The Public's business must be conducted in *public*, with ample opportunity for public participation



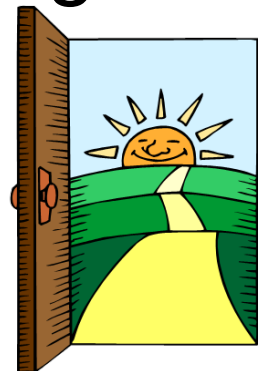
Who is Subject to the Brown Act?

- Any board, commission, committee or other body created by a charter, ordinance, resolution or other formal action of the Board of Supervisors
- Exception: ad hoc committees (other than standing committees) made up of less than a quorum of the legislative body

The Open Meeting Rule

THE RULE is that meetings are OPEN to the public; exceptions to the rule are narrowly construed:

“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.”



What is a “Meeting?”

A meeting occurs whenever a majority of the members of the commission or committee come together at the same time or place



Meetings May Be:

- Formal or informal
- Involve only discussion or action, or both
- In person, or through technology



Meetings Can Include:

- Retreats
- Site visits
- Social gatherings or “networking” before or after a noticed meeting



Unlawful Meetings

- “Pre-meetings” and “Post-meetings” held without notice to the public
- Serial meetings



Types of Serial Meetings

- “Chain” meetings: Member A talks to member B, who talks to Member C...



- “Hub-and-Spoke” meetings: A talks to B, then C, then D...



How Serial Meetings Occur

- Through technology:
 - Text
 - Email
 - Phones, etc.



- Through staff



Discussions With Staff

Staff may ***answer questions*** or ***provide information*** to individual Board members ***so long as*** any views or positions expressed by the member are ***not communicated*** to other members of the Board



What ISN'T a Meeting?

- Attendance of majority at
 - regional/state/national conference
 - local meeting open to the public
 - social, recreational, ceremonial event not sponsored by or for the body
- Are okay *PROVIDED* no collective discussion of Committee business

What about Social Media?

- Gov't Code § 54952.2(b)(3)(AB 992, 2021) applies to internet-based Social Media (*e.g.*, Twitter, Facebook, Instagram, Reddit)
- *Meeting does not include* “engaging in separate conversations or communications on [Social Media] to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body...”
- Special rules apply to internet-based platforms

...still...

- **No** “discuss[ion] among [members about] business of a specific nature that is within the subject matter jurisdiction of the legislative body”
- **No** “responding directly to any communication...regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body”
 - Government Code § 54952.2

Meetings: Locations and Time

- Meetings must be held within the County of Alameda
- Meetings must occur at a time and location set by ordinance, resolution, or bylaws



“Teleconference”

- “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”
- “Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.”

Traditional Teleconference Rules

- Each teleconference location must be identified in the notice and agenda
- Agenda must be posted at each location
- Each location must have public access
- Public must have opportunity to speak at each location
- A quorum must be within the County
- All votes must be taken by roll call



Teleconference cont.

- The body must “conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency”



AB 2449

- Does not require a state of emergency, *but...*
- At least a quorum must meet in person at one place within the body's jurisdiction
- Members can participate via teleconference a limited number of times **if** either "just cause" or "emergency circumstances" exist
 - Notification/request process to participate via teleconference
 - Must attend using both video AND audio
 - Must announce if there is anyone 18 years or older with the member and identify that person and their relationship to the member
- Effective January 1, 2023
- Expires January 1, 2026

“Just Cause”

- Defined as:
 - (1) childcare or caregiving for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation;
 - (2) a contagious illness that prevents the member from attending in person;
 - (3) a need related to a disability not otherwise accommodated; or
 - (4) travel while on official business of the legislative body or a state or local agency.
- No more than two meetings in a calendar year
- Approval by the legislative body is not required
- The reason for teleconferencing must be disclosed on the record
- The request must be made “at the earliest opportunity”

“Emergency Circumstance”

- Defined as a physical or family medical emergency that prevents a member from attending in person
- No specific limit on the number of times an “emergency circumstance” can be used, but the annual cap (described below) generally limits its use
- Remote participation due to “emergency circumstance” **must be specifically approved** by legislative body as an action item
- A request can be added to an agenda at beginning of meeting if needed, and must be acted on at the beginning of the meeting
- Member must provide a general description of the emergency
- The description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information exempt under existing law

AB 2449 (cont.)

- **Annual Cap: no more than three consecutive months of teleconferencing and no more than 20% of the meetings per calendar year.** If the legislative body holds fewer than 10 meetings per calendar year, then a member may only teleconference twice per calendar year.
- Agendas do not need to be posted at a member's remote location.
- The published agenda must list the means by which the public may access the meeting and offer comment.
- Local agencies must provide at least one of the following:
 - A two-way audiovisual platform; **and/or**
 - A two-way telephonic service and live webcasting of the meeting
- The public must still be able to attend in person

Notice & Agenda Requirements

- Regular meeting agendas must be posted 72 hours in advance of the meeting
- Special meeting agendas require only 24 hours advance notice
- Agendas must describe each item to be considered in enough detail that a person of ordinary intelligence could determine whether the item is of interest



AB 2647

- Writings related to an open session agenda item of a regular meeting that are “**distributed to all, or a majority of all**” of the members less than 72 hours before the meeting must be made available for public inspection “at the time” of distribution to all or a majority of all members
- Options to make “writings” available for public inspection include internet posting and physical copies available at a designated office (with the location noted on the agenda)
- There is an exception for staff reports or similar documents made available 72 hours prior to the meeting by internet posting/office availability

AB 2647 (cont.)

- If a writing (that is a public record) is distributed during the meeting and it was prepared by staff or members of the body, it must be made available at the meeting
- If it was prepared by some other person, it must be made available after the meeting

Why Does It Matter?

A body subject to the Brown Act *may not discuss* and *may not act* on items not on the agenda or that are beyond the reasonable scope of the agenda description



Very Limited Exceptions

- Public health/safety emergency
 - Immediate need to avoid serious injury to public interest



- An item continued from previous agenda *and* that last meeting was within the last 5 days

These Don't Need to be On the Agenda

- Commendations
- Announcements
- Request to agendize future items
- Limited follow-up to general public comment, to provide information or direction to staff



Rights of the Public

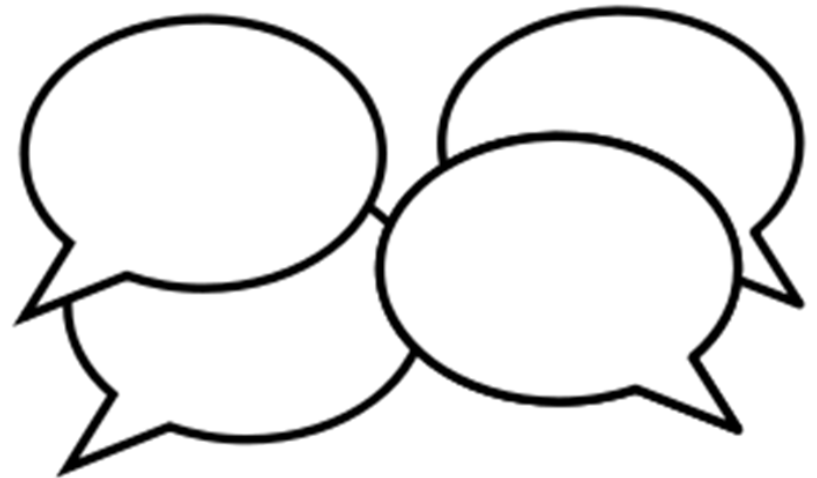
ACCESS TO MEETINGS

- To have meetings open and public with limited exceptions
- To have access to all agendas of public meetings and documents distributed to the Legislative Body members
- To audio/video record the meetings and to inspect any recordings of the meetings made by the agency.
- To attend without any condition precedent (e.g., cannot mandate that attendees register)



Types of Public Comment

- Specific: Concerning an item on the agenda, at the time of consideration
- General: Any item within the Board's subject-jurisdiction



Specific Public Comment

- Any agenda item – discussion or action
- Must occur before
 - conclusion of consideration of item (discussion item); or
 - action taken (action item)

1. =

2. =



General Public Comment

- May occur at any time in the meeting, at the discretion of the Chair/Committee majority
- Is limited to matters within scope of Committee's jurisdiction, even if not on the agenda
- Members may not discuss or respond substantively
- Not required at special meetings

Rights of the Speaker

- Right to equal time
- Right to criticize policy body, its members, and its staff
- Note, however, the County's Abusive Conduct Policy protects staff from "abusive" behavior



Limits on Public Comment

- “Up to” a reasonable amount of time per speaker (e.g., two or three minutes) on an item
- Reasonable limit on total public comment time on an item “before or during” its consideration
- No right to a response from the body, its members, or staff



Controlling Unruly Speakers

- Board Chair can impose reasonable time, place, and manner restrictions on public participation
- Unruly speakers may be excluded from the forum if necessary to allow business to continue
- Gov't Code § 54957.95 (SB 1100, 2022)



SB 1100

- Codifies a 2013 case allowing removal of individuals for disrupting the meeting
- Prior to removal a warning must be given that the behavior is disruptive and failure to stop may result in removal
- Disrupting means behavior that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting

Closed Session

Meetings must be open to the public *unless* the Brown Act specifically authorizes the Board to meet in “closed session”

It is unlikely that any commission or committee will ever have any closed session matters; any plans to hold a closed session should be discussed with the Office of the County Counsel prior to being placed on an agenda.

Example Topics:

- Personnel
- Litigation
- Labor Negotiations
- Real Estate Negotiations
- Threats to Public Safety



Closed Sessions



- Closed sessions are limited to a few specified circumstances and fact specific
- Standard is NOT whether the subject matter is sensitive, embarrassing, controversial or 'private'
- Only Committee members and necessary support staff can be present in closed session

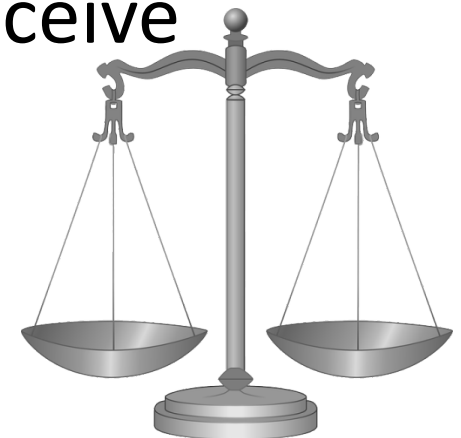
Criminal Penalties

- Disclosure of closed session discussion
- Willful violation of Brown Act
 - Action taken in violation of Brown Act
 - Member intends to deprive the public of information to which the public is entitled



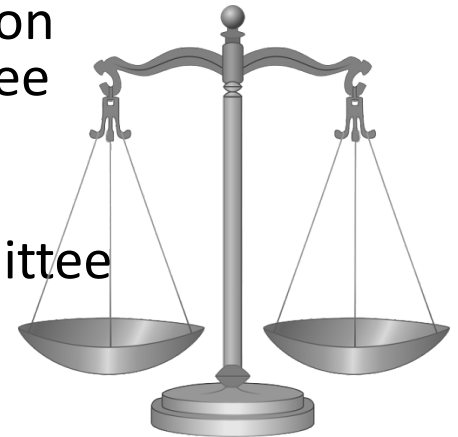
Additional Penalties

- Voiding of action taken in violation of Brown Act
- Injunction or declaratory relief to stop or prevent violations of Brown Act
- Prevailing plaintiff may receive attorneys' fees and costs



Public Records Act

- Counterpart to Brown Act governing public's right to public records
- Public record is any writing with content related to people's business which is prepared by or owned, used or retained by any state or local agency.
- Includes emails/texts/chats retained on personal device if related to committee business
- Reminder that your emails, texts, voicemails, writings relating to committee business are public records
- County Counsel may review for exemptions



QUESTIONS?

