

The Ralph M. Brown Act

California's Open Meeting Law

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Background

- Authored by Ralph M. Brown, an Assemblyman from Turlock, CA
- Enacted by the California State Legislature in 1953 in an effort to safeguard the public's ability to obtain access to and participate in local government meetings and deliberations
- Originally a 686 word statute
- Now Contained in California *Government Code* §§54950-54963
- In 2004, Proposition 59 added Section 3 to Article I of the California Constitution to provide that, “The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”



Ralph M. Brown

What is the Purpose of the Brown Act?

- Intended in ensure that deliberations and actions of local agency bodies are open to the public
- Intended to ensure that there is a meaningful public access to the local agency's decision-making process

Legislative Intent

- “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” (*Government Code* Section 54950)

Who is Subject to the Brown Act?

- The governing body of a local agency, such as the Board of Directors
- Subordinate commissions and committees created by formal action of the governing body
- Standing committees with a regular meeting schedule and/or continuing subject matter jurisdiction
- Advisory Committees consisting solely of less than a quorum of the legislative body that do not have continuing subject matter jurisdiction or a fixed meeting schedule are not bodies subject to the Brown Act

What constitutes a meeting?

- Any congregation of a majority of the members of a covered agency to hear, discuss, deliberate, or take action on matters within the agency's jurisdiction
- A series of communications, directly or through intermediaries, that results in a majority of governing body members having conferred on an issue

What is not a meeting?

- Individual contacts between a member of the body and another person
- Majority of the members at a:
 - Conference open to the public
 - Open and publicized community meeting organized by another organization
 - Open and publicized meeting of another body
 - Social or ceremonial event
 - *At such meetings or gatherings, a majority of members may not discuss amongst themselves business within the subject matter jurisdiction of the District.*
- Staff briefing. District staff may have separate conversations with each member of a body (or two at a time) in order to answer questions or provide information regarding District business, so long as staff does not communicate to another member of the body the comments or position of any other director.

Serial Meetings

- Daisy Chain
 - Member A contacts member B and member B contacts member C: as soon as three members, a quorum, are involved a serial meeting has occurred.
- Hub and Spoke
 - Member A sequentially contacts member B and member C: as soon as three members, a quorum, are involved a serial meeting has occurred.

AB 992– Social Media

AB 992 - effective January 1, 2021. Government Code section 54952.2 was amended and clarifies that a member of a legislative body may communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction. But those communications are only allowed if members of the same legislative body do not use a social media platform to discuss official business among themselves. "Discuss among themselves" means making posts, commenting, and even using digital icons that express reactions to communications (i.e., emojis) made by other members of the legislative body.

Social Media Stricter Prohibition

Government Code Section 54952.2(b)(3) also prohibits a member of a legislative body from responding “directly to any communication on an Internet-based social media platform 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.” Therefore, if one Board or Committee or Commission Member posted a comment in response to another Member’s social media post about a District issue, that could be a Brown Act violation.

Email as a Meeting

- Use of email among a majority to discuss or develop collective concurrence is a meeting.
- One-way email to members of a body not a meeting.
- Be careful clicking 'reply all.'

Types of Meetings

- Regular meetings
 - Set date and time
 - Agenda must be posted 72 hours prior to meeting
- Special meetings
 - May be called by the presiding officer (i.e., President, Chair, etc.) or majority of the body.
 - Agenda must be posted 24 hours prior to the meeting
- Emergency meetings
 - May be called immediately for a situation that impairs public health, safety, or both

TRADITIONAL TELECONFERENCING RULES – GOVERNMENT CODE

SECTION 54953(b)

Before AB 361, the Brown Act traditionally allowed a local agency to use teleconferencing for meetings or proceedings, subject to specific agenda posting, physical access and quorum requirements. Generally, local agencies were required to:

- Post agendas at each teleconference location;
- All votes taken during a teleconferenced meeting shall be by rollcall;
- Identify each teleconference location in the notice and agenda of the meeting or proceeding;
- Make each teleconference location accessible to the public;
- Have at least a quorum of the members of the legislative body participate from locations within the boundaries of the applicable local agency's territory; and
- Provide means for the public to address the legislative body at each teleconference location.

AB 2449 – Government Code Section 54953(f) Limited Teleconferencing in Limited Specified Scenarios

Government Code Section 54953(f), effective January 1, 2023, provides a new very limited expectation to the teleconferencing rules and can only be used in cases where “just cause” is met or if “emergency circumstances” exist.

- Under the new teleconference rules, a legislative body may hold a “hybrid” (partial teleconference, partial in-person) meeting without having to comply with certain procedural requirements (e.g., post agendas at teleconference locations, identify teleconference locations in the agenda, make all teleconference locations open to the public) in the following limited circumstances:
 - One or more members of the legislative body (but less than a quorum) have “just cause” for not attending the meeting in person (childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business); or
 - One or more members of the legislative body (but less than a quorum) experience an emergency circumstance (a physical or family medical emergency that prevents in-person attendance).
- In order to participate remotely for “just cause,” a member must notify the legislative body at the earliest possible opportunity — including at the start of a meeting — of their need to participate remotely and provide a general description of the circumstances. Just cause can only be used by a member for two meetings per year.
- To participate remotely under “emergency circumstances,” the member must request that the legislative body allow them to participate in the meeting remotely because of emergency circumstances and the legislative body must take action to approve the request.
- The statute further provides that a member may not participate in meetings remotely under any circumstances for more than three consecutive months or 20% of the agency’s regular meetings within a calendar year. If the legislative body regularly meets less than 10 times a year, a member may not participate remotely for more than two meetings.

AB 2449 – Government Code Section 54953(f) Limited Teleconferencing in Limited Specified Scenarios – Cont’d.

A quorum of the body must still be meeting in-person, and the body must meet the following relaxed remote access rules:

- Provide either a two-way audio-visual system or a two-way phone service in addition to live webcasting;
- Identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored;
- Avoid requiring public comments to be submitted in advance and provide a real-time option for the public to address the body at the meeting; and
- The member shall disclose whether any other individuals 18 years of age or older are present in the room at the remote location, and the general nature of the member’s relationship with any such individuals.

Regular Meeting Agendas

- At least 72 hours before a regular meeting:
 - Prepare and post agenda in freely accessible location.
 - Post agenda on District website.
 - Mail agenda packet to members of the public who have requested it.
 - Provide agenda in appropriate alternative format to disabled persons if requested.

Agenda Contents

- A brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session
 - Description should generally not exceed 20 words
- Date, time, and location of the meeting
- Information regarding how, to whom, and when a request for disability-related modification or accommodation may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting

Special Meetings

- May be called on 24 hours notice by presiding officer or majority of body.
 - Staff cannot call a special meeting.
- Special meeting notice/agenda content requirements similar to regular meeting agenda, except opportunity for public comment on non-agenda items not required.

Public Right to Attend

- The public can attend and cannot be required to register their names or provide other information as a condition of attending
 - Voluntary sign-in is allowed
- The public has a right to review agendas and other writings, which are not confidential, distributed to a majority of the body's members

Matters not on the agenda

- No action or discussion shall take place on any item not appearing on the posted agenda, except that members of the body or staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights with certain exceptions.

Exceptions

- A member of the body may ask a question for clarification, make a brief announcement, or make a brief report on his/her own activities.
- The member may request staff to report back to the body at a subsequent meeting concerning any matter.
- The body may take action to direct staff to place a matter of business on a future agenda.
- If, by majority vote, the body determines that an emergency situation exists.
- If, by 2/3 vote, the body determines there is a need to take immediate action that that the need for action came to the attention of the agency subsequent to the posting of the agenda.

Public Right to Comment

- At regular meetings, the public may comment on any matter within the District's subject matter jurisdiction, even if it is not on the agenda (Citizen's Input).
- The public also must be allowed to comment on each agenda item before action is taken by the body.
- Reasonable regulations, including time limits may be adopted.
- The body must allow criticisms and complaints.
- Member of the public may not cause a disturbance of the meeting.

Government Code Section 54957.95 – Removing Disruptive Meeting Attendees

In 2022 SB 1100 added Government Code Section 54957.95, providing a new tool to address meeting disruptions. The new Brown Act provision prescribes the following process for removal:

The presiding member of a legislative body may have an individual removed for disrupting a meeting of the body.

- Warn the individual that their behavior is disrupting the meeting and their failure to cease their behavior may result in removal.
- Remove the individual if they do not "promptly" cease their disruptive behavior.

The bill defines disruptive behavior as that which disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting. This includes, but is not limited to:

- A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law.
- Engaging in behavior that constitutes the use of force or a true threat of force. "True threat of force" means a threat that a reasonable observer would perceive to be an actual threat to use force by the person making the threat.

Limited Response to Public Comment

- For public comment on items not on the agenda, a member of the body may make a brief response to a statement or question, but no discussion or action is allowed.
- A member of the body may ask the person commenting a question for clarification.
- A member of the body may refer the matter to staff for:
 - Information
 - Request to report back
 - Direct to place matter on a future agenda

Closed Session

- Closed Sessions cannot be conducted unless they are expressly authorized by statute
 - The fact that material may be sensitive, embarrassing or controversial does not justify application of a closed session unless it is authorized by some specific exception.
 - Closed session may involve only the members of the body plus any additional support staff which may be required.
 - Confidential information acquired during a proper closed session cannot be disclosed unless authorized by the legislative body.
 - Confidential Information is a communication made in a closed session specifically related to the basis for which the legislative body is meeting lawfully in closed session.

Authorized Closed Session Items

- Personnel
 - Appointment
 - Employment
 - Evaluation of performance
 - Discipline
 - Dismissal
 - An employee may request and require a public hearing where the purpose of the closed session is to discuss specific charges or complaints against the employee
 - Employee must be given at least 24-hour written notice of any meeting to hear specific charges or complaints.

- Pending Litigation

- The legislative body may meet with legal counsel to discuss pending litigation when discussion in open session would prejudice the agency in that litigation
- Litigation is pending when the following occurs:
 - Formal litigation in which the legislative body is a party has been initiated
 - The legislative body is meeting to decide whether to initiate litigation
 - There is significant exposure to litigation if matters related to specific facts and circumstances are discussed in open session
 - A significant exposure to litigation exists based on specific facts and circumstances

- Real Property Negotiations

- Board may meet to discuss the “price” and “terms of payment” in connection with the purchase, sale, lease, or exchange of property by the District
 - At the conclusion of the Closed Session, the Board must report the approval of an agreement concluding real property negotiations where the Board renders the agreement final
- Prior to the closed session, the Board must identify the real property in question, who will act as its negotiator, and the persons with whom its negotiator may negotiate

- Labor Negotiations
 - The Board may meet in closed session to meet with its negotiator concerning discussions with employee organizations and unrepresented employees regarding salaries and fringe benefits
 - The scope of the closed session is limited to issues concerning salaries, salary schedules, and compensation paid in the form of fringe benefits
 - The Board may discuss consideration of the Board's available funds and funding priorities, so long as the discussions relate to providing instruction to the designated negotiator
 - The term “employee” not only refers to rank and file, but also includes an officer or independent contractor who functions as an officer or employee

- Public Security
 - The body may meet in closed session with the Attorney General, District Attorney, District Counsel, Sheriff, or Chief of Police or his/her deputies or a security consultant on matters posing a threat to the security of public buildings, the security of essential public services, including water, gas, and electric service, or a threat to the public right of access to public services or public facilities
- License Application
 - There are special closed session provisions to consider license applications by persons with criminal records

Violations of the Brown Act

- Civil Actions

- Any interested party may begin action
- The District will have an opportunity to cure and correct actions taken
- With judgment, action is void, with certain exceptions
- Costs and attorney fees may be awarded

- Criminal Penalties

- With intent to deprive public of information
- Guilty of a misdemeanor