

BROWN ACT SUMMARY

I. OVERVIEW OF THE BROWN ACT

A. Introduction.

The Brown Act (which is found at Government Code Section 54950 *et seq.*) seeks to ensure that the deliberations and actions of local governmental entities are taken openly in a public meeting where all persons are permitted to attend.

The Brown Act was originally enacted in 1953.

B. Basic Rule and Purpose.

1. Legislative Declaration:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. ***It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.***”

2. Basic Rule:

“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.”

3. Key components of the Brown Act:

Compliance with the Brown Act involves an understanding or the meaning and application of the following key terms:

- a. Legislative Body
- b. Meetings
- c. Open and Public
- d. All Persons Permitted to Attend

II. AGENCIES AND ORGANIZATIONS COVERED/LEGISLATIVE BODIES

A. What Is a Legislative Body?

The Act applies to the “**legislative bodies**” of all **local agencies** in California, e.g., councils, boards, commissions and committees. The Act does not apply to individual decision makers who are not elected or appointed members of legislative bodies such as agency or department heads when they meet with staff, advisors, colleagues or anyone else. **Local agencies** include all cities, counties, school districts, and special districts. State agencies are covered by a similar, but separate, law, the Bagley-Keene Act.

The **governing body** of a local agency is the most basic type of “legislative body” covered by the Act. In addition, **subsidiary bodies** created by the governing body are also covered in most instances. As a general rule, any board, commission, committee or other body created by charter, ordinance, resolution or formal action of a legislative body is itself a “legislative body”, whether permanent or temporary, advisory or decision-making.

1. *Ad hoc* v. Standing Committees

A “**standing committee**” has either “continuing subject matter jurisdiction” or a regular meeting time and is comprised solely of less than a quorum of members of the body. It is covered by the Act. At VTA, the four Board standing committees (plus a fifth being developed), and each advisory committee, constitutes a “standing committee” under the Act.

An “*ad hoc*” committee has a specific task or assignment and the Committee does not survive completion of the task and is comprised solely of less than a quorum of the members of the body. An *ad hoc* committee is not subject to the Act.

III. MEETINGS COVERED

A. Definition of Meeting.

A “meeting” includes a gathering of a **majority** of the **members** of a legislative body to **hear, discuss, deliberate or take action** upon any item which is within its **subject matter jurisdiction**. (§ 54952.2(a)) As defined, the term meeting is not limited to gatherings at which action is taken but also includes deliberative gatherings as well.

B. Means of Communication.

Serial meetings. Members of the body do not need to congregate at the same time and place to “meet.” The Brown Act prohibits a majority of a body from meeting serially outside of a meeting to discuss and deliberate on issues coming before the body, or that are even within the jurisdiction of the legislative body.

Therefore, under the Act, a meeting includes any use of *direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body to discuss or deliberate on issues within its jurisdiction.

1. A serial meeting can occur in two ways:
 - a. Chain: If member A contacts member B, and B contacts member C, and C contacts member D, and so on, until a quorum has been involved.
 - b. Hub-and-spoke: An intermediary, such as the agency manager or attorney, contacts at least a quorum of the members of the legislative body to discuss, develop a collective concurrence, or communicate each member’s respective positions on an issue within the body’s jurisdiction.

C. What Is Not A Meeting?

1. The six exceptions:
 - a. Individual contacts or conversations
 - b. Conference or seminar
 - c. Other organization or community group’s open & publicized meeting
 - d. Other legislative body’s meeting
 - e. Purely social or ceremonial
 - f. Attendance as observers of a standing committee

IV. NOTICE, AGENDA AND MEETING REQUIREMENTS

A. Categories of Meetings Subject to the Brown Act.

1. Regular Meetings: Regular meetings of the legislative body, excluding advisory committees and standing committees, must be held at the time and place set by ordinance, resolution, or bylaws. (§ 54954(a).)

2. Special Meetings:

- a. The presiding officer or a majority of the legislative body may call a special meeting at any time.
- b. Written notice must be delivered to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and to each radio or television station which has requested such notice in writing at least 24 hours before the time of the meeting.
- c. Only the business set forth in the notice may be considered at the meeting.

B. Exceptions to Open Meetings: Closed Sessions.

1. Basis for closed sessions—must be express statutory authority
 - a. Litigation (pending or anticipated)
 - b. Personnel (evaluations, discipline, and labor negotiations)
 - c. Real estate negotiations (price and terms of payment)
1. Who may attend?
Negotiators, agency attorney, other personnel with an essential role— never adverse party
2. Must minutes be taken?
No – but some record of the actions taken in closed session good idea, and a court may order closed session recorded under certain circumstances
3. Reporting from closed sessions
Only certain actions are “reportable” under the Act
4. Information shared in closed session is confidential and may not be divulged—remedies include injunctive relief, disciplinary action

C. Location of Meetings.

Regular and special meetings of a legislative body must generally be held *within the boundaries* of the agency’s jurisdiction. Exceptions include attendance at multi-agency meetings or discussions. Teleconferencing of less than a quorum of members allowed with special notices and posting.

D. Agenda Requirements.

1. General Rules:

- a. A written agenda must be prepared for each regular, special or adjourned meeting of the legislative body.
- b. The agenda must be posted at least 72 hours in advance of a regular meeting and 24 hours before a special meeting.
- c. Each item of business to be transacted or discussed, including items to be discussed in closed session, must be the subject of a brief general description, which generally need not exceed 20 words. Descriptions should be sufficient for an average citizen to decide whether he or she is interested in attending the meeting.
- d. Closed session items are listed using the safe harbor language contained in the Act.
- e. The agenda listing of the action to be taken must be followed, and designation of an “Information” (rather than an “Action”) item controls, i.e. body cannot take action on an item designated as informational only.

[Reported case: Agenda listing of “(high) school site change” allowed decision to change site but did not allow action to discontinue elementary school education at new site or transfer of students to another elementary school (closure actions)—inadequate notice and misleading to public.]

2. Non-Agenda Items:

Action or discussion on any item not appearing on the posted agenda is prohibited except that members may briefly respond to statements made or questions posed by the public. In addition, members may:

- a. Ask a question for clarification;
- b. Make a brief announcement;
- c. Make a brief report on activities;
- d. Provide a reference to staff or other sources for factual information;

- e. Request staff to report back to the legislative body in a subsequent meeting; or
 - f. Direct staff to place a matter of business on a future agenda.
3. Adding to the Agenda:
- a. Need to take action before next regular meeting and matter came to the attention of the agency after posting of the agenda. Best practice is to amend posted agenda if there is time. A 2/3 vote of the legislative body is required to add an item to an agenda under this rule.
 - b. Emergencies – An emergency is defined as work stoppage affecting public health or safety or a crippling disaster (flood, fire, earthquake, etc.). A majority vote is required to add an item involving an emergency to an agenda.

V. RIGHTS OF THE PUBLIC AT MEETINGS

A. Attendance.

“All persons shall be permitted to attend...” (§54953.)

- 1. Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise fulfill any condition precedent to attending. If an attendance list, register, questionnaire or similar document is circulated to persons present during the meeting, it must state that the signing, registering or completion of the document is voluntary. (§54953.3)
- 2. Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings. (§54953.5)

B. Meeting Records.

- 1. The public has the right to review agendas and other writings distributed to a majority of the legislative body (except for privileged documents). A fee or deposit may be charged for a copy of a public record.
- 2. Writings must be made available to the public at the time of distribution to a majority of the legislative body meeting.

C. Participation.

1. A regular meeting agenda must allow an opportunity for members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body.
2. The public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.

VI. ADJOURNMENTS AND CONTINUANCES

A. Adjournments.

The legislative body may adjourn any regular or special meeting to a time and place specified in the order of adjournment. Written notice of the adjournment must be posted on or near the door of the place where the meeting was held within 24 hours of the adjournment. If the subsequent meeting is held within 5 days, matters on the original agenda may be acted upon at the subsequent meeting. If the subsequent meeting is more than 5 days later, a new agenda must be prepared and posted.

B. Continuances.

A duly noticed hearing may also be continued in the same manner as adjourned meetings. However, if the hearing is continued to a meeting that will occur in less than 24 hours, a copy of a notice of continuance must be posted immediately following the meeting at which the continuance was adopted.

Revised: 2/7/12