

BROWN ACT

[Government Code 54950-54963]

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. **(This exception does not apply to 'standing committees'.)** Finally, the act also covers the governing board of a private corporation which (1) was created by an elected governing body to exercise part of the body's authority or (2) is funded by a local agency and has a member of the agency's board on its board.

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 use 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 agendaized 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. 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.

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. 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.

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.

Participants 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.