

THE BROWN ACT

Office of the Long Beach City Attorney

Equity and Human Relations Commission

July 26, 2023

The Brown Act

CALIFORNIA CONSTITUTIONAL RIGHT

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.

The Brown Act

General Principles



All meetings shall be open and public



Actions and deliberations must be taken openly



All persons shall be permitted to attend and participate in the meetings



Only matters on the agenda can be discussed

The Brown Act Avoiding the Appearance of Impropriety

- ▶ Encourages avoiding the possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation.
- ▶ There are other reasons why Commissioners should avoid giving public testimony or trying to influence the outcome of proceedings before another Commissioner or Council, such as due process



The Brown Act Avoiding the Appearance of Impropriety

- ▶ Means that there is a perception that wrong-doing or misconduct may have occurred
- ▶ Calls into question a Commissioner's ability to carry out their official responsibilities with fairness, impartiality, objectivity, and integrity
- ▶ Appearances of impropriety can undermine the public's faith and trust in government

Who is Subject to the Brown Act?



Applies to “legislative bodies”

City Council

Advisory commissions created by the City Council

Advisory commissions created by the Charter



Applies to subcommittees created by formal action

City Council Standing Committees, such as, the Budget Oversight Committee and Intergovernmental Affairs



Does not apply to temporary ad hoc committees made up solely of Commissioners and constituting less than a quorum

What Constitutes a Meeting?

- ▶ Any congregation of a majority of Commissioners at the same time and place to hear, discuss or deliberate on any item that is within the subject matter jurisdiction of the commission
- ▶ Includes regular and special meetings
- ▶ Majority of Commissioners needed to hold a meeting is also known as a “quorum”



Quorum Examples

Body	Number of Seats	Number for Quorum
City Council	9	5
Police Oversight Commission	7	4
Equity & Human Relations Commission	15	8
Veterans Affairs Commission	9	5

Serial Meeting/Communications Prohibited

- ▶ Serial meetings and communications of a majority of Commissioners outside of a public meeting are prohibited
- ▶ “Serial meetings and communications” means:
 - ▶ Each communication involves less than a quorum of the Commission
 - ▶ BUT the total amount of communications in the series involves a majority of the Commission outside of a public meeting

Types of Contacts to Avoid

Email, text, or social media communications involving a majority of the Council

- Includes making or commenting on social media posts
- Using digital icons that express reactions to communications (i.e., emojis) made by other Commissioners

“Serial” contacts:

Hub-and-Spoke

One Commissioner contacts all or a majority of the other Commissioners.

Daisy Chain

One Commissioner contacts another member, then that Commissioner contacts another Commissioner, then that Commissioner contacts another... and so on.

By Representative

A Commissioner’s representative, agent, or intermediary (e.g., a partner, a messenger, assistant) directly or indirectly contacts communicates with a majority of other Commissioners.

Serial Meeting/Communications Examples

HUB-AND-SPOKE

The Vice Chair contacts all or a majority of the other Commissioners to ensure they vote yes to support an important item

DAISY CHAIN

Commissioner Blue contacts Commissioner Green
Commissioner Green contacts Commissioner Orange
who contacts Commissioner Pink
Commissioner Pink contacts another Commissioner...

BY REPRESENTATIVE

Commissioner Green's partner volunteers at several nonprofits that other Commissioners happen to volunteer at also. Commissioner Green's partner mentions that Green is supporting an important item when they run into the other Commissioners

SOCIAL MEDIA

Commissioner Blue creates a post that is
Liked by Commissioner Green
Shared by Commissioner Orange,
Commented on by Commissioner Pink...

What is Not a Meeting?



Individual contacts between a Commissioner and another person or Commissioner



This exception recognizes the right to confer with constituents, advocates, consultants, reporters, staff and colleagues

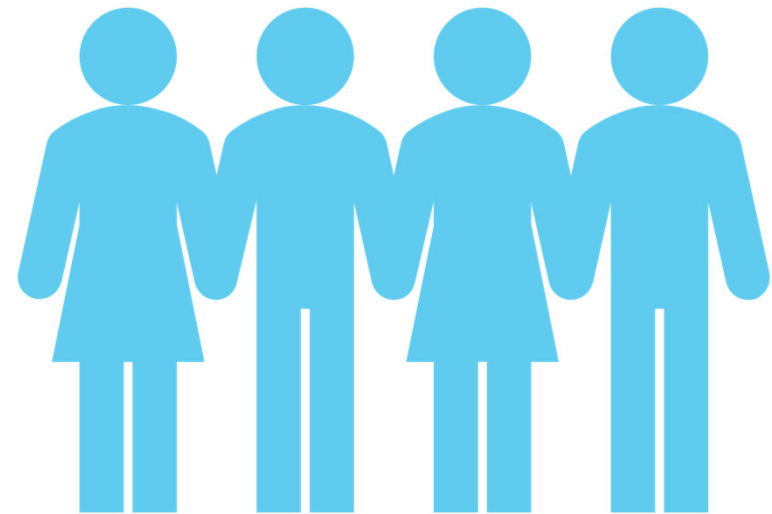


Example

- Commissioner meeting with staff
- Chair and Vice Chair meeting to discuss the next agenda
- Commissioner meeting with community member

What is Not a Meeting?

- ▶ Majority of Commissioners at a:
 - Conference open to the public
 - Local public meeting
 - Open meeting of another body
 - Social or ceremonial event
- ▶ **But Commissioners cannot discuss matters of the body among themselves at these events**



When Can Meetings Be Held?



- ▶ Regular meetings:
 - Agenda posted 72 hours before
- ▶ Special meetings:
 - Called by Chair or majority of Commissioners, agenda posted 24 hours before

Where Can Meetings Be Held?

Within the boundaries of the City, unless a specific exemption applies

Meetings must be accessible under the Americans with Disabilities Act of 1990

Virtually, under certain conditions

Virtual Meetings



“Traditional” Rules



**Just Cause/Personal
Emergency**



**State of emergency
declared by the
governor**

Virtual Meetings

“Traditional” Rules

- ▶ All Commissioners need to notice the locations meeting held.
- ▶ All locations must be made available to the public.
- ▶ Agendas posted at all locations
- ▶ At least a quorum needs to notice their meeting in a location accessible to the public within the City.
- ▶ All locations ADA compliant



Virtual Meetings

Just Cause/Personal Emergency Rules

- ▶ At least a quorum must be present in a singular physical location in the City and ADA compliant
- ▶ Public must be given virtual access to the meeting
- ▶ Traditional rules waived for posting agendas, ID each teleconference location in agenda, and making locations available to the public
- ▶ Just cause
 - ▶ Limited to 2 per year per member
 - ▶ Body does not need to be approved
- ▶ Emergency – must be approved on the record by body



Virtual Meetings

Just Cause/Personal Emergency Rules

JUST CAUSE

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner;
- A contagious illness;
- A need related to a physical or mental disability that is not otherwise accommodated; or
- travel while on official business of the legislative body or another state or local agency.

EMERGENCY CIRCUMSTANCE

- ▶ A physical or family medical emergency that prevents them from attending the public meeting in person.

Virtual Meetings

State of emergency declared by the governor

- ▶ State or local officials must also impose or recommend measures to promote social distancing
- ▶ Whole meeting can be virtual without a physical location available to the public
- ▶ Likely only available if there is another pandemic where the Governor declares a state of emergency.



Agenda Descriptions

Brief general description
of each item

Include the date, time,
and location of the
meeting

Must inform public of
scope of the
Commission's intended
plans so public can
decide whether to
participate

Must be posted in a
location "freely
accessible" to the public

Public Right to Comment

- ▶ Public may comment on any matter within the Commission's subject matter jurisdiction even if not on the agenda (non-agenda public comment)
- ▶ Public also must be allowed to comment on agenda items
- ▶ Reasonable regulations, including time limits, may be adopted



Public Right to Attend



Public has a right to record the meeting with an audio or video tape recorder, or take photographs



Public has a right to review agendas and other writings distributed to a majority of Commissioners



No secret ballots allowed

Disruptions

- ▶ Disrupting a Commission meeting is prohibited by LBMC § 2.03.140, subject to certain conditions
- ▶ “Disruption” or “disrupting” means engaging in behavior during a meeting, that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting
- ▶ Includes, but is not limited to:
 - Failing to comply with reasonable and lawful regulations adopted by the Commission under the Brown Act or any other law
 - Engaging in behavior that constitutes use of force or a true threat of force
 - Engaging in conduct that may interfere with the rights of other speakers
 - Engaging in conduct that prevents the body from accomplishing its business in a reasonably efficient manner
 - Using lewd, vicious, or personal language that actually disturbs or impedes the meeting.
- ▶ "True threat of force" means a threat that has sufficient indicia of intent and seriousness that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

Disruption Procedure

WARN FIRST

- ▶ The presiding officer (e.g., Chair, Vice Chair) must first warn a disruptive person that their behavior is disrupting the meeting and that failure to cease their behavior can result in removal
- ▶ Warnings are not required if a disruptive person uses force or makes a true threat of force

THEN REMOVE

- ▶ Once a warning has been issued, the disruptive person may be removed from the meeting

Closed Sessions

- ▶ Take place in private without the attendance of the public or press
- ▶ Only permitted if expressly authorized by the Brown Act
- ▶ Examples:
 - ▶ Anticipated or pending litigation
 - ▶ Public employment
 - ▶ “Appointment, employment, evaluation of performance, discipline, or dismissal of public employee or to hear complaints or charges brought against the employee”
 - ▶ Public Security

Closed Sessions Agendas and Reporting



Agenda must list the closed session category (e.g., pending litigation, etc.), and the specific statute listed) with a brief description as permitted under law



Report out the actions taken and the vote

Closed Sessions Confidentiality

There may be no unauthorized disclosure of confidential information acquired in a closed session by any person present



Closed Session Authorized Attendees

- ▶ Differs based on the topic of the closed session
- ▶ Could include members of the body, agency counsel, management and support staff, and others needed for consideration of the subject matter of the closed session



Violations of Brown Act

▶ **Civil Actions**

- ▶ Any interested party may begin action to invalidate certain actions that violated Brown Act. However, the Council will have an opportunity to cure and such alleged violation.
- ▶ Any interested party may also file a civil action to prevent future violations.
- ▶ Costs & attorney fees may be awarded to successful party.

▶ **Criminal penalties**

- ▶ With intent to deprive public of information.
- ▶ Punishable as a misdemeanor.