

THE BROWN ACT

Presented by the
Long Beach City Attorney's Office
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What is the Brown Act?

- California Government Code section 54950:
- 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

Who is subject to the Brown Act?

- Applies to “legislative bodies” including commissions or committees created by formal action of the City Council
- Includes business improvement districts and parking and business improvement areas (“P-BIDs” and “PBIAs”) (see *Epstein v. H’wd Entertainment Dist. II BID* (2001) 87 Cal. App. 4th 862; Cal. Sts. & H’wys. Code § 36612)
- Applies to standing subcommittees created by formal action
 - But not temporary ad hoc advisory committees made up solely of Board members and constituting less than a quorum

What constitutes a meeting?

- Any congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on any item that is within the subject matter jurisdiction of the Board
- Also known as a quorum, a “majority” is defined as 50% + 1 of seats
- A quorum of members is required for all purposes except to adjourn the meeting and to take action to seek a quorum
- The quorum requirement is “protection against totally unrepresentative action in the name of the body.”

Closed Sessions

- Very limited: only for litigation; real estate negotiations; public employee evaluations; labor negotiations
- Brown Act provides “safe harbor” only for enumerated exceptions
- Narrowly construed; not enough that the subject is embarrassing, sensitive or controversial
- “Secrecy breeds distrust”

Pitfalls: Serial Meetings/Series Communications

- Beware of email communications
 - A majority cannot email each other to discuss topics before the Board for the purpose of developing a “collective concurrence” on an issue or topic.
- Beware of “serial” contacts -- “A to B” and “B to C” can lead to a “collective concurrence.” Applies to staff as well.
- Beware of “Hub & Spoke” contacts – central point provides information to obtain a concurrence

What is not a meeting?

- Individual contacts between a Board member and another person
- Majority of the members at a:
 - Conference open to the public
 - Local public meeting that is publicly noticed and open to all
 - Open meeting of another government body
 - Social or ceremonial events

But cannot discuss Board matters among themselves at these events

When can meetings be held?

- Regular meetings:
 - Agenda must be posted 72 hours before meeting
- Special meetings:
 - Called by Chair or majority of Board members, agenda must be posted 24 hours before the meeting

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
- “Special accommodations” such as interpreters or assistive listening devices should be listed as available upon advance request on the agenda

Agenda Requirements

- Must state meeting time and place and be posted in a location “freely accessible” to the public
- Must contain a “brief general description of each item of business to be transacted or discussed at the meeting”
- Bad Example: “Consideration of contract with ABC Consulting” – not adequate
- Good example: “Consideration of a contract with ABC Consulting in the amount of \$10,000 for traffic study in Bixby Knolls”
- Director’s report: brief report on notable topics of interest, not listed on the agenda – permissible as long as it does not result in extended discussion or action by the board

Public Right to Comment

- Regular meeting
 - Public may comment on any matter within the Board's subject matter jurisdiction even if not on the agenda (non-agenda public comment)
 - Public must also be allowed to comment on agenda items
 - Reasonable regulations, including time limits, may be adopted
 - Immediate response to comment by board is not required or advisable

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 the board members
- No secret ballots allowed
- Results of vote must be announced

Violations of the Brown Act

- Civil Actions
 - Any interested party may begin action
 - The Board will have an opportunity to cure and correct actions taken
 - With judgment, action is void, with certain exceptions
 - Costs & attorney fees may be awarded
- Criminal penalties
 - With intent to deprive public of information
 - Guilty of a misdemeanor