



CITY OF PETALUMA

CITY ATTORNEY'S OFFICE

BROWN ACT OVERVIEW

A. GENERAL RULE

The Brown Act is codified in Government Code Sections 54950-54960 and is California's open meeting law. First enacted in 1953, the Brown Act requires that

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 of a local agency except as otherwise provided . . . (Gov. Code § 54953(a).)

B. COVERED LEGISLATIVE BODIES

1. City bodies
 - a. City Council.
 - b. City boards and commissions, including all City commissions and standing committees – permanent or temporary, decision making or advisory, created by charter, ordinance, resolution or formal action
 - c. Ad hoc committee exception – advisory committees, composed solely of members of the legislative body, and comprising less than a quorum of the legislative body, without continuing subject matter jurisdiction, and without a fixed meeting schedule, are not legislative bodies subject to the Brown Act.
2. Certain non-profits
 - a. Non-profit corporations created by the City to exercise delegated authority.
 - b. Non-profit corporations that receive City funding and to whose board the City appoints at least one member.

(Gov. Code § 54952)

C. MEETING DEFINED

A “meeting” is any congregation of a majority of the members of a legislative body (or other body covered in B above) at the same time and place to hear, discuss or deliberate on any item that is within the subject matter jurisdiction of the legislative body. (Gov. Code § 54952(a).)

D. NOTICE OF MEETINGS REQUIRED

To ensure that meetings are “open and public,” all legislative bodies subject to the Brown Act are required to publish/post notices of meetings and provide copies of a printed agenda to the public. Notice of regular meetings must be posted 72 hours in advance. (Gov. Code § 54954.2(a)(1).) Notice of special meetings must be published at least 24 hours in advance. (Gov. Code § 54956.)

Meeting agendas must describe each agenda item with adequate specificity so as to inform interested members of the public about what is under consideration so that they can determine whether they wish to participate in the meeting. Agenda descriptions generally need not exceed 20 words. (Gov. Code § 54954.2(a)(1).)

Any writings relating to matters on a meeting agenda distributed to a majority of the members of the legislative body less than 72 hours before the start of the meeting must be made available to the public for inspection at the same time they are distributed to a majority of the members of the legislative body. (Gov. Code § 54957.5(b)(1).) Also, meeting agendas must list the address of the location where the writings will be available. (Gov. Code § 54957.5(b)(2).)

E. CONTENT OF MEETINGS LIMITED TO AGENDIZED ITEMS

Brown Act meetings are limited to the items listed on the published agenda, with narrow exceptions. Nevertheless, because the public has the right to speak on matters not listed on the agenda, non-agendized issues may be briefly addressed. The members of the body holding the meeting may ask questions and direct staff to take action, including by placing the issue on a future agenda, but may not generally discuss or take action on an issue raised by a member of the public at the meeting. (Gov. Code § 54954.2(a)(3).)

F. EXCEPTIONS TO THE BROWN ACT’S OPEN MEETING REQUIREMENTS

1. Individual Contacts

The Brown Act allows individual contacts or conversations between a member of a legislative body and any other person, including other members of the legislative body comprising less than a majority of the legislative body, city staff, and constituents. (Gov. Code § 54952.2(c)(1).) However, members of a legislative body cannot conduct serial meetings, as described below.

2. Conferences

Members of a legislative body may attend conferences, but a majority of members must not discuss among themselves, other than as a part of the scheduled program, specific matters within the jurisdiction of the body. (Gov. Code § 54952.2(c)(2).)

3. Community Meetings

A majority of members of a legislative body may attend a community meeting to address a topic of local concern. However, the meeting must have been organized by a person or group other than the legislative body and the legislative body members must not discuss among themselves, other than as part of the scheduled program, specific matters within the jurisdiction of the agency. (Gov. Code § 54952.2(c)(3).)

4. Meetings of Other Bodies

A majority of the members of a legislative body may attend an open and noticed meeting of another body of the agency, as well as an open and noticed meeting of another local agency, but must not discuss among themselves, other than as part of the scheduled program, specific matters within the jurisdiction of the agency. (Gov. Code § 54952.2(c)(4).)

5. Social or Ceremonial Occasions

A majority of legislative body members may attend social or ceremonial events, but must not discuss among themselves, other than as part of the scheduled program, specific matters within the jurisdiction of the agency. (Gov. Code § 54952.2(c)(5).)

6. Standing Committee Meetings

A majority of legislative body members may attend an open and public meeting of a standing committee of the local agency. However, those members of the body who are not members of the standing committee must attend only as observers. They may not participate. (Gov. Code § 54952.2(c)(6).)

G. TYPES OF MEETINGS SUBJECT TO THE BROWN ACT'S OPEN MEETING REQUIREMENTS

1. Collective Briefings

A majority of legislative body members cannot meet with staff for a collective briefing prior to a public meeting, unless open meeting requirements are followed. (Gov. Code §§ 54952(a), 54953(a).)

2. Retreats and Workshops

The Attorney General has opined that legislative body retreats are subject to the Brown Act's requirements. (Gov. Code §§ 54952(a), 54953(a).)

3. Serial Meetings

Serial meetings may begin with individual contact but devolve into a meeting subject to the Brown Act. The Brown Act provides that

a majority of the members of a legislative body shall not, outside of an authorized meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. (Gov. Code § 54952.2(b)(1).)

Two common types of serial meetings are:

a. “Daisy Chain” Meetings. Legislative body member A contacts member B. Member B contacts member C. Member C contacts member D and so on. Once a quorum of the legislative body is included in a communication chain involving topics within the subject matter jurisdiction of the legislative body, the communication meets the Brown Act definition of a meeting subject to Brown Act requirements. (Gov. Code § 54952.2(c)(1).)

b. “Hub and Spoke” Meetings. If a staff member telephones a majority of the members of a legislative body one by one on specific legislative body business, and in doing so functions as an intermediary for discussion, deliberation or decision making by a majority of the body, a serial meeting results. Similarly, a serial meeting results if a staff member briefs a majority of legislative body members prior to a formal meeting, and in the process, information about the respective views of a majority of the legislative body members is revealed to a majority of the body.

Electronic communications among legislative body members, such as via email or social media, can easily result in serial meetings. If a legislative body member receives an e-mail from another member regarding an item of agency business, and the member then forwards the e-mail to one or more other legislative body members, such that a majority of the members either receive or reply to the e-mail, a serial meeting results, since the communications could result in a majority of the body reaching a collective concurrence. Similarly, “reply to all” messages sent from staff or legislative body members that transmit deliberative, decision making or other content leading to a collective concurrence on agency business result in serial meetings. Such electronic communications not only violate the Brown Act, but create electronic records of the violation. Note also that agency electronic communications are subject to the Public Records Act and all communications between legislative body members and constituents, staff or other legislative body members are subject to disclosure upon request unless an exemption applies.

The Brown Act does permit legislative body member briefing communications, however. The Brown Act provides that it

shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body. (Gov. Code §54952.2(b)(2).)

Therefore, advisory/informational memoranda from staff to all members of a legislative body do not violate the Brown Act.

Effective January 1, 2021, the serial meeting prohibition in the Brown Act was amended to permit legislative body members to engage in separate communications on internet-based social media platforms to answer questions, provide information to the public, and solicit information from the public on matters within the legislative body's subject matter jurisdiction, as long as the legislative body members do not use such platforms to discuss such matters among themselves, including through the use of emoticons. The amendment expires January 1, 2026. (Gov. Code § 54952.2(b)(3).)

4. Closed Meetings/Sessions

a. Closed sessions – meetings of a majority of a legislative body away from the public – may be held only on specified, narrowly-defined topics, and only in accordance with the Brown Act closed session procedural requirements. (Gov. Code §549562.) Closed session descriptions must be listed on legislative body meeting agendas, cite the section of the Brown Act that authorizes the closed session and include information specified in the Brown Act regarding the closed session subject matter and participants. (Gov. Code §54954.5.) Only closed session topics expressly authorized in the Brown Act are permitted. They include:

- License/Permit Determinations (Gov. Code §54956.7.)
- Conferences with Real Property Negotiators (Gov. Code §54956.8.)
- Conferences with Legal Counsel (Gov. Code §54956.9.)
- Liability Claims (Gov. Code §54956.95.)
- Threats to Public Services or Facilities, Public Employee Appointments, Public Employment, Public Employee Performance Evaluation, Public Employee Discipline/Dismissal/Release (Gov. Code §54957.)
- Conferences with Labor Negotiators (Gov. Code §54957.6.)
- Case Review/Planning of Multijurisdictional Law Enforcement Agencies (Gov. Code §54957.8.)
- Reports Involving Trade Secrets (H&S Code §§ 1461, 3216 and 32155 or Gov. Code §§ 37606 and 37624.3.)
- Charges or Complaints Involving Federally Protected Information (Gov. Code §54956.86.)
- Conferences Involving a Joint Powers Agency (Gov. Code §54956.96.)
- Audit by the State Auditor's Office (Gov. Code §54956.75.)

b. The Brown Act prohibits disclosure of confidential information acquired by being present in a closed session authorized pursuant to the Brown Act. Local agencies may seek injunctive relief to prevent disclosure of closed session information, and may discipline employees or refer to the grand jury legislative body members who have willfully disclosed closed session information without authorization. (Gov. Code §54963.)

H. REMEDIES FOR VIOLATIONS

1. Criminal Penalties

Under the Brown Act it is a misdemeanor for a legislative body member to attend a meeting where action is taken in violation of the Brown Act where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled. (Gov. Code §54959(a).)

2. Civil Remedies

Interested parties, including the District Attorney, may bring actions seeking to invalidate legislative body actions allegedly taken in violation of the Brown Act. (Gov. Code §54960.1.) Such actions may seek to challenge past actions of the legislative body, or to prevent future violations. (Gov. Code §§54960.1, 54960.) Those who bring a successful legal challenge regarding a local agency's failure to comply with Brown Act requirements that are subject to legal challenge may seek an order from the court awarding their court costs and reasonable attorneys' fees. (Gov. Code §54960.5.)

3. Cure

The Brown Act requires that parties seeking to invalidate a local agency action for alleged failure to comply with the Brown Act must first send a written notice to the legislative body giving an opportunity for the agency to cure and correct the alleged violation. (Gov. Code §54960.1(b).) Parties seeking injunctive or declaratory relief regarding alleged past violations of the Brown Act must submit to the legislative body a cease and desist letter describing the alleged violation before commencing the action. (Gov. Code §54960.2(a).)

I. ADDENDUM FOR GUBERNATORIAL ORDERS DURING THE COVID-19 PANDEMIC

1. Waiver of Specified Teleconferencing Requirements

Effective March 17, 2020, and for so long as California state or local public health officials have imposed or recommended social distancing orders, Brown Act provisions concerning teleconference meetings requiring the physical presence of legislative body members, the clerk or other personnel, or of the public, in order to participate in or have a quorum for a meeting of the legislative body, are waived, including provisions requiring:

- noticing each teleconference location from which a legislative body member will participate,
- making each teleconference location accessible to the public,
- permitting members of the public to address the legislative body at each teleconference location,
- posting meeting agendas at each teleconference location,
- at least one legislative body member being present at the location specified in the meeting notice, and
- a quorum of the legislative body participating in the meeting from locations within the legislative body's jurisdiction.

(Executive Order N-29-20. See also Gov. Code § 54953(b)(3).)

2. Waiver of Collective Briefing Prohibition

Effective March 21, 2020, notwithstanding Section 54952.2 of the Brown Act, all members of a legislative body may receive simultaneous updates regarding the declared emergency concerning COVID-19 from federal, state and local officials, and may ask questions of such officials, to stay apprised of emergency operations and the impact of the emergency on their constituents. (Executive Order N-35-20. See also Gov. Code § 54952.2.)