

Brown Act Basics

*Regulating the meetings of local
agency legislative bodies*

History of the Brown Act



- Authored by Ralph M. Brown, a Central Valley assemblyman, the Brown Act was passed in 1953. Its purpose is to safeguard the public's right to access and participate in government meetings within the State.

- The Brown Act is found at California Government Code Sections 54950 – 54963.

Intent of the Brown Act

- To ensure that deliberations and actions of local legislative bodies are open and public.
- To ensure meaningful public access to local agency decisions.
- Meetings must be open to the public, held on a regular schedule, and follow a noticed agenda.
- No secret ballots.

The Brown Act only applies to “meetings” of a MAJORITY of the members.



What constitutes a “meeting” under the Act?

- Deliberations or actions by a majority,

and

- Serial meetings which result in a “collective concurrence.”

“Daisy Chain” Serial Meetings



Member A contacts Member B, Member B contacts Member C, Member C contacts member D and so on, until a quorum and “collective concurrence” has been established as to some local agency business outside of a public meeting.

“Spoke and Hub” Serial Meeting



The “Spoke and Hub” process involves, for example, a staff member (the hub) communicating with members of a legislative body (the spokes) one-by-one prior to a formal meeting, and reveals the views of respective members.

Pop Quiz #1

A member of the City Council informally establishes an advisory committee of five residents to advise him on issues as they arise. Does the Brown Act apply to the meetings of this committee?

Answer

No, because the committee has not been established by formal action of the City Council.

What is NOT a Meeting?

- Individual contacts between a council member and another person do not constitute a meeting.
- Majority of the council members at a:
 - Conference open to the public
 - Local public meeting
 - Open meeting of another body
 - Social or ceremonial event

But, cannot discuss city matters among themselves.

Committees and the Brown Act

Standing Committees

- Ongoing or indefinite term
- Continuing subject matter jurisdiction, or, has a fixed meeting schedule set by the legislative body
- Subject to Brown Act notice and meeting requirements, even if comprised of less than a quorum

Ad Hoc

- A temporary advisory committee
- Composed solely of less than a quorum
- Serves a limited or single purpose and must be dissolved on completion of its task
- Not subject to Brown Act notice and meeting requirements

Pop Quiz #2

The City Council establishes a standing committee of two of its five members which meets monthly. A third member of the council wants to attend these meetings and participate. May she?

Answer

She may attend, but only as an observer; she may not participate.

When Can Meetings Be Held?



Regular Meetings

- Agenda posted 72 hours before the meeting

Special Meetings

- Called by the chair or by a majority of the members
- Agenda posted 24 hours before the meeting

Emergency Meetings

- “Emergency”
 - work stoppage or crippling activity resulting in severe public health / safety impairment;
 - 1 hour notice to media
- “Dire Emergency”
 - Crippling disaster, mass destruction or terrorist act
 - Notice to media at or near time members are notified, if possible
- Post-meeting posting requirements

Pop Quiz #3

A member of the City Council on vacation desires to participate in a meeting of the City Council and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

Answer

She may not participate or vote because she is not in a noticed and posted teleconference location accessible to the public.

Agenda Descriptions

- Brief description of each item – 20 words, unless complex
- Must inform public of scope of the intended plans – so they can decide whether to participate
- Include the date, time and location of the meeting
- Must be posted at a location that is “freely accessible to members of the public”

Public's Right to Comment

- ❑ Regular meeting – any matter within the subject matter jurisdiction *and* any matter listed on the agenda
 - There must be a “public comment” item listed on the agenda
- ❑ Special meeting – agenda items only
- ❑ Comment opportunity must occur before action is taken
- ❑ May not limit “negative” comments, criticism

Pop Quiz #4

Must the City Council allow members of the public to show videos or make a power point presentation during the “public comment” part of the agenda, as long as the subject matter is relevant to the City and is within the established time limit?

Answer

Probably, although the City is under no obligation to provide equipment.

Responding to Non-Agenda Public Comments

- While public may comment on anything, Council generally may only act on or discuss items on agenda
- Council, or staff, may “briefly respond” to public comments or questions on non-agenda items; or
- May refer to staff for information; or
- Request staff to report back; or
- Direct that item be placed on a future agenda.

Pop Quiz #5

During “Public Comment” a person wishes to speak but refuses to sign the sign-in sheet, state his name or give his address. Does he have the right to speak?

Answer

Yes. Public speakers cannot be compelled to give their name or address as a condition of speaking. Use of “voluntary” sign-in sheets is permissible.

Disruptive Attendees

- Council may remove persons who willfully disrupt the proceedings;
- If order still cannot be restored, the meeting room may be cleared.
- However, all press and other members of the public who were not part of the disruption must be allowed to stay.

Amending the Agenda



- When majority decides there is an “emergency situation”;

OR

- When two-thirds of the members who are present determine:
 - there is a need for immediate action; AND
 - the need to take action “came to the attention of the City after posting the agenda.”

Note: amending the agenda requires a degree of urgency. Once amended, the Council may discuss and act on the added agenda item.

Closed Sessions

- All meetings must be in open session unless a specific exception authorizes meeting in closed session;
- Recommended use of “safe harbor” agenda descriptions;
- Public may comment on closed session items prior to going into closed session;
- Agency staff, counsel may attend as required;
- Disclosure of information learned in closed session is prohibited.

Closed Sessions, Cont.'

Brown Act authorizes the following closed sessions items:

- Conference with real property negotiator
- Conference with legal counsel – existing litigation
- Conference with legal counsel – anticipated litigation
- Conference with labor negotiator
- Threat to public services or facilities
- Public employee appointment or employment
- Public employee performance evaluation
- Public employee discipline/dismissal/release

Rules for Personnel Closed Sessions

The 24 hour written notice rule:

- ❑ Applies to “specific complaints or charges”
- ❑ Employee has the option for closed or open session
- ❑ Council may still deliberate in closed session
- ❑ Rule does not apply to evaluations

No discussion / action allowed on compensation:

- ❑ Exception: reduction as part of discipline

Pop Quiz #6

Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the Council in closed session?

Answer

No. The 24 hour written notice requirement is reserved for situations where the body is to hear specific complaints and charges from witnesses.

Also, most employee evaluations are made by the City Manager, not the Council.

Reporting out of Closed Session

- ❑ Only if “Action Taken”
- ❑ Report action taken at the same meeting
 - Real Estate
 - If final, report the agreement and its terms
 - If not final, report the approval and the substance of the agreement when completed
- ❑ Litigation
 - Report approvals unless it would jeopardize the case
 - Report settlements of litigation same as with agreement of real estate.

Reporting out, cont.'

□ Personnel

- Report appointments, employment, acceptance of resignations and other actions which affect employment status
- Do not report dismissals or non-renewals until the first public meeting after the exhaustion of any administrative remedies

□ Labor Negotiations

- Report approval of agreement concluding labor negotiations
- Report after the agreement is final and has been accepted and ratified by the other party

Violations of the Brown Act

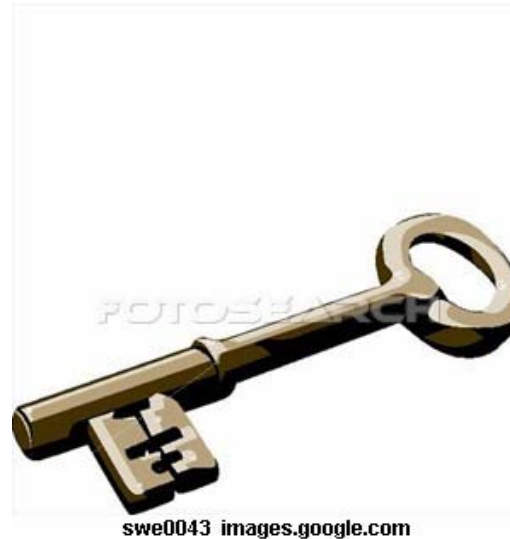
❑ Criminal Complaints

- Violation by a member who acts with improper intent is punishable as a misdemeanor;
- Intent must be “to deprive the public of information to which the member knows or has reason to know the public is entitled.”

❑ Civil Actions

- District Attorney or any interested party may begin an action.
- Remedies may include asking the court to:
 - Stop or prevent violations of the Brown Act;
 - Determine applicability of Brown Act to action of the council;
 - Determine whether action by the council is valid under law;
 - Compel Council to tape record its closed sessions

In summary, the KEY the Brown Act is a single sentence that has remained unchanged since its adoption in 1953:



“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 in this chapter.”