

General Information about California's Open Government Laws The Public's Right to Access Public Meetings and Public Records

The Brown Act requires that all meetings of a local government agency or a board or commission appointed by that agency shall be open to the public. This guarantees that the public's business is conducted in public and that you have an opportunity to provide input into the decision making process.

The California Public Records Act requires that the public is given access rights to "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

ADVANCE NOTICE - AGENDAS

The public must have advance notice about what topics are going to be discussed and what decisions might be reached.

Compliance means posting agendas at least 72 hours in advance of the meeting in at least one location accessible to members of the public. This notification may be enhanced by sending copies of the agenda to representatives of the press as well as other individuals and groups. It is also clear that use of a web site to give notice is a new tool that can be used.

The agenda must contain a "brief general description of each item of business to be discussed at the meeting, including items to be discussed in closed session." The description must be adequate enough to convey the full scope of the agenda item. Vague or generalized language is not sufficient if it fails to tell the public the essence of a specific and unusual proposal.

The agenda must also clearly state the time and place of the meeting.

Special meetings require a 24 hour advance notice. It is usually called for a limited purpose.

RIGHT TO COMMENT

The public must have the right to comment on most issues before decisions are made. At all regular meetings time is provided under oral communications for the public to comment on items not on the agenda. Before decisions are made on agenda items, the public is also invited to comment. When meetings are televised, residents who watch the meeting may drive to the meeting to make comments on the spot. The public may also comment by writing to the local agency or speaking with individual members.

There are some items that are not discussed in public and are specifically named in the Brown Act and are listed here:

. to discuss and/or take action on the appointment, employment, evaluation of performance, discipline or dismissal of a public employee, or to hear charges brought against the employee; an employee may request that a hearing on complaints or charges be heard in public.

. to consider pending litigation or to initiate litigation

. to discuss the purchase, sale, exchange, or lease of real property

to discuss labor negotiations and give directions to its negotiators or to discuss the compensation and benefits of unrepresented employees including administrators.

to consider suspension, discipline, or expulsion of a student (for school boards)

RIGHT TO HAVE PUBLIC BUSINESS CONDUCTED IN PUBLIC

All deliberations and discussions and decisions are to be public unless they fall into specific categories. If they do fall in these categories, they must be listed as topics on the closed session agenda and action taken must be reported in open sessions. Televised meetings should be aired live or as soon as possible following the meeting. Archives of meeting tapes should be kept for at least one (1) year. Information on public access to view the tapes should be either on the web site and/or included in the minutes of the meeting. Having a copy of the tape(s) at the local public library is another possibility.

BROWN ACT DO'S AND DON'TS

No, may not do under Brown Act

Yes, may do under Brown Act

Take action on an item not on agenda

Briefly comment on the item
Request staff to give information
Request staff to agendize the item
Respond to a public Statement
By 2/3 vote or unanimous vote if less than 2/3 of Board is present, if emergency (strike, natural disaster, impairing public health/safety) exists or if need arose

Comment on items not on agenda

Make brief reports on his/her own activities
Make brief announcements
Ask for clarification

Preclude public comment before or during consideration of the item

Can prevent public comment if the latter was previously considered by the Board at an open meeting where all interested members of the community were given an opportunity to comment and there are no substantive changes to the item

Preclude public criticism of its policies, procedures, services, its own acts or omissions

May prevent defamatory or other actionable statements or discussion of personnel issues

Poll or discuss issues with Board members to form a collective concurrence

Provide information to a Board member
Attend a social gathering with Board members
Attend a ceremonial gathering with Board members
Attend conferences open to the public/ attended by a variety of officials from governmental agencies

WHEN IS IT A MEETING?

A meeting is:

- Any congregation of the majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body;
- Or-
- Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body. There may be no “secret” meetings in which one member calls another and then another to reach concurrence or deliberate.

IT IS NOT A MEETING UNDER THE BROWN ACT WHEN:

- The staff person communicates information to Board members (example, Weekly Highlights).
- Board members communicate with each other about procedural items...putting items on the agenda if not attempting to form a decision or concurrence.
- One Board member talks to another on the phone if not attempting to form a decision/concurrence.
- A Board member talks to constituents.
- Board members share information with each other (any unilateral memo is not a violation).

COMMITTEES OF THE BOARD

Any committee composed of members appointed by the Board or constituted of a quorum of the Board must follow the Brown Act.

TYPES OF MEETINGS

Regular meetings: 72-hour notice with posted agenda

Special meetings: 24-hour notice with posted agenda

TYPES OF NOTICE

All regular and special meetings should be noticed at its headquarters, the local library, with the print media, and with all employee group headquarters.

The Brown Act requires that items to be discussed or have action taken need only be described in approximately 20-word agenda items. Most agenda items should include the background, status, and recommendations on items.

RIGHT TO INFORMATION

The public has the right to have information about public agencies. This information includes budget information, information about salaries paid employees, information about procedures and policies followed, and background information used in making decisions. A public agency is not required to present information to anyone in a format or in the manner that the person requests. Further, there can be a charge for duplicating materials or mailing them. However, there is little except for items dealing with negotiations, personnel, and legal matters that is not public information. Each agenda item may contain the name and phone

number of the person who prepared the item so that the public may call that person for additional information or clarification.

***RIGHT TO KNOW ABOUT EMERGENCY MEETINGS
AND CLOSED SESSION MEETINGS***

The public has the right to know the topics being discussed at closed session meetings and has a right to know and comment on topics discussed at emergency meetings. The Board can declare an emergency with a majority vote and then post an agenda in public places at least twenty-four hours in advance of the meeting. The Board can also call a special meeting with twenty-four-hour notice. The Board publishes the topics being discussed at closed session meetings.

***RIGHT TO KNOW THE CONSEQUENCES OF A BOARD'S FAILURE TO FOLLOW
THE BROWN ACT***

The district attorney or any other person can file a civil action asking the court to prevent Brown Act violations, investigate the applicability of the Brown act to actions or threatened future actions, compel the legislative body to tape record its closed session. Even when the Brown Act has been violated, the end result typically remains unaltered. Further, no violation has ever ended up as a criminal conviction. However, both of these are possible under the law.

MYTHS ABOUT THE BROWN ACT

Many believe that the appearance of a quorum of a Board at any event constitutes a violation of the Brown Act. This is not true. Only when jurisdictional issues are discussed and a "collective concurrence as to action to be taken" is reached has the Brown Act been violated.

Many believe that Boards can attend out-of-city workshops or retreats. This is not true. They may not meet out of the city and they may not attend retreats if collective concurrence as to action to be taken occurs.

Many believe that there must be a majority of the Board present to violate the Brown Act. This is not true. Serial meetings, technological conferencing, and the Internet all offer the possibility of reaching a collective concurrence.