



THE BROWN ACT

California's Open Meeting Law

Office of the City Attorney
2024

THE BROWN ACT

- The Brown Act was **enacted in 1953**.
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- Is codified in the **California Government Code**, section 54950, *et seq.*
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- Requires the **deliberations** and **actions** of California's public agency governing boards, commissions and councils be taken openly and in public.

KEY PROVISIONS



- A meeting shall be **open** and **public** except when the Brown Act authorizes otherwise.
- The public has a **right to attend** and **participate in the meeting**.
- A meaningful agenda must **be posted in advance of the meeting**.
- Discussion and action is limited to the matters **listed on the agenda** for the meeting.
- Discussions outside of noticed meetings by a majority of members of the legislative body Council about an item of business within the subject matter jurisdiction of the legislative body are prohibited.

COMMON QUESTIONS AND ISSUES



- Who is governed by the **Brown Act**?
- What constitutes a **meeting**?
- What are the **notice** and **agenda requirements**?
- What are the **public's rights** under the Brown Act?
- What are the **consequences** for violating the Brown Act?

WHO IS GOVERNED BY THE BROWN ACT?

- Any “**legislative body**”.
- **Governing body of any local agency**
i.e., the City Council.
- Local agency commissions, appointed either permanently or temporary, who have **decision making** or **advisory powers**.
- The Park and Recreation Commission is an advisory body subject to the Brown Act requirements.

(Government Code §54952)



WHAT IS A MEETING?



A meeting is: _____

- Any congregation of a majority of the Members of the Commission at the same time and locations including teleconference locations . . . to hear, discuss, deliberate, decide, or take action on any item that is within their subject matter jurisdiction.
- Shall also mean a meal or social gathering of a majority of members of a local body immediately before, during, or after a meeting of a local body (S.O.).

SUBJECT MATTER JURISDICTION OF THE PARK & RECREATION COMMISSION (Charter §809)

- Act in an advisory capacity to the City Council in all matters pertaining to parks, recreation, parkways and street trees.
- Consider the annual budget for parks, recreation, parkways and street tree purposes during the process of its preparation and make recommendations with respect thereto to the City Council and the City Manager.
- Assist in the planning of parks and recreation programs for the inhabitants of the City, promote and stimulate public interest therein, and to that end solicit to the fullest extent possible the cooperation of school authorities and other public and private agencies interested therein.
- Establish policies for the acquisition, development and improvement of parks and playgrounds and for the planting, care and removal of trees and shrubs in all parks, playgrounds and streets, subject to the rights and powers of the City Council.



See the Charter or the Riverside Municipal Code to discover the subject matter jurisdiction of your board/commission.

SERIAL MEETINGS - HUB AND SPOKE/DAISY CHAIN



- 1) A **chain or series** of communications.
- 2) Each of which involves **less than a quorum** of the City Council.
- 3) But when taken together involve a **majority of the body's members** (or)
- 4) A concerted plan to **engage in collective deliberation** on public business through a series of letters, telephone calls, e-mails, that pass from one member of the governing body to the next and excluding the public.

WHAT CONSTITUTES A SERIES OF COMMUNICATIONS?

- A “**series of communications**” includes conference calls, emails, text messages, responses on internet based social media platforms, shared among the majority of the City Council, or conversations among members in which the position of other Members are shared to the majority.
- **Technological devices** may create a “virtual serial meeting” so be mindful of the limitation imposed on the use of social media, e-mails, “IM”, texts, chat rooms, blogs, etc.
- **Case held letter** circulated for signature among a legislative body was a violation of the Brown Act.



ISSUE / CHALLENGE



When can a discussion become an **issue**
for Brown Act purposes?

WHEN THE ISSUE IS:



- **Within subject matter jurisdiction** of the legislative body; and,
- A majority of members participate; and,
- “Meeting is held”; and,
- Brown Act is not followed.

This deprives the public of an opportunity for meaningful observation of and participation in the decision-making.

E-MAIL



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- Remember **e-mails never go away.**
 - E-mail can create a **“virtual serial meeting”**
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- **Don't hit “reply all”** in response to email from staff to all Members of the legislative body.
- **Refrain from emailing or forwarding** an email to a majority of legislative body.

EXAMPLE: E-MAIL

What starts out as “legal” under the Brown Act:

- I think we should do “x” at our next meeting

Becomes “illegal” when it is replied to by a majority or by “Reply to All”:

- “I agree” [Reply to All]
- “Good idea!!!” [Reply to All]
- “Concur . . .” [Reply to All]

USE OF SOCIAL MEDIA



Commission members

Members **may not respond directly** to any communication from another Member on an internet based social media platform regarding a matter within your subject matter jurisdiction

Hypothetical



A member of the Commission posts something on their Facebook page about a development and improvement of a park.

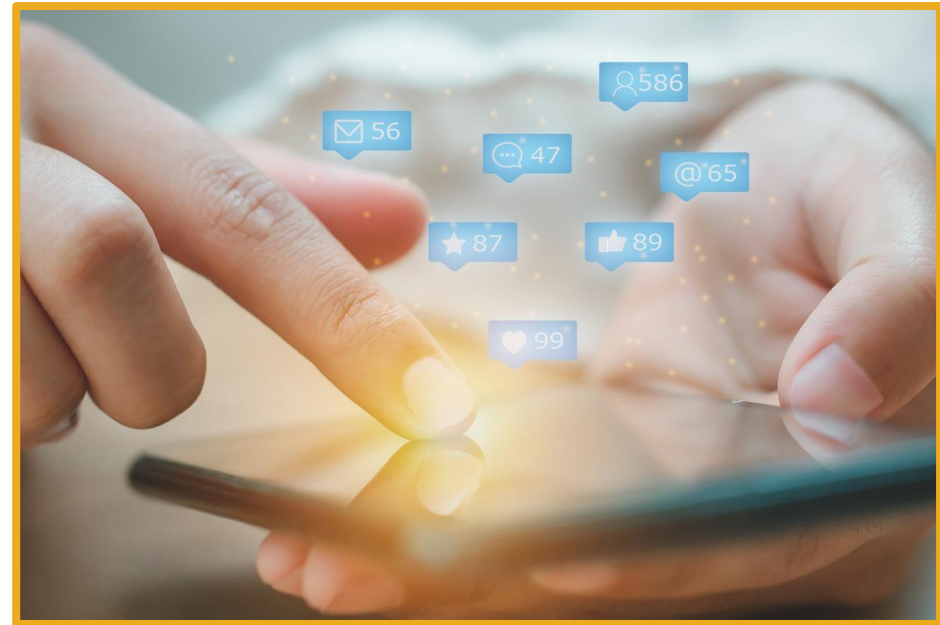
Another member hits “thumbs up” on that post.

Brown Act violation?

USE OF SOCIAL MEDIA

What **did not** make it into the new legislation – language that would have allowed:

- Commenting on another Member's post
- Retweeting
- Forwarding
- Posting an emoji
- Clicking the “like” button



HYPOTHETICAL

A majority of the Park & Recreation Commission decide to attend a Mayor's State of the City address

Brown Act violation?

While there, the members sit together at the same table and discuss a community program that affects City parks.

Brown Act violation?

EXCEPTIONS TO MEETING



- **Individual Contacts**: Individual contacts or conversations between a member of a legislative body and any other person including staff.
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- **Conferences**: Public or educational conferences on matters of general interest.
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- **Community Meetings**: Publicized and public meetings to discuss a topic of local community concern organized by someone other than the City.

EXCEPTIONS TO MEETING



- **Other Legislative Bodies**: Open and noticed meeting of another body of the public agency or open and noticed meeting of a local body of another agency
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- **Standing Committees**: Open and noticed meeting of a standing committee within our agency, provided not a member of standing committee and you only observe
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- **Social or Ceremonial Events**: Purely social or ceremonial events as long as no discussion of business w/in subject matter of jurisdiction of the legislative body.

AGENDAS AND NOTICE



- Every meeting of the Commission **must be preceded by a posted agenda in a location freely accessible 24 hours a day and on-line.**
- The agenda must be posted **at least 12 days** before the regular meeting. (See City of Riverside Sunshine Ordinance)
- The agenda must **advise the public of the meeting** and the **matters to be transacted or discussed.**
- The agenda must state the **meeting time and place.**
- **Each item of business** to be transacted must be briefly described.

ACTION ON NON-AGENDIZED ITEMS

- The members of the Commission may “**briefly**” respond to statements or questions posed by the public at a public meeting.
- The members of Commission may ask “a **question for clarification**, make a **brief announcement**, or make a **brief report** on his or her own activities.”
- Otherwise, **no action** can be taken on issues or items that are not on the agenda.



HYPOTHETICAL

During public comment, a question is raised as to when the City's libraries will reopen. At the request, the Mayor asks the library director to respond. Dissatisfied with the answer, the council takes action to order the library director to re-open the libraries within one week.

Brown Act Violation?

PUBLIC PARTICIPATION



- The public has a right to **attend, observe and participate in meetings.**
- Members of the public **cannot be required to register their names or provide information.**
- All actions taken by the Commission must be **in open session**, unless a closed session is authorized, and the vote of each member must be disclosed to the public at the appropriate time.

CRIMINAL ENFORCEMENT ACTIONS

Why do we take this so seriously?

- It is a **misdemeanor** for a member to attend a meeting where action is taken that violates the Brown Act, and the member intended to deprive the public of information that the member knew or had reason to know that public was entitled.



CIVIL ENFORCEMENT ACTIONS



- Enforcement actions can be brought by the **District Attorney** or **any interested person** to get a court order to stop a violation of the Brown Act.
- A court action may **also void actions** that were taken in violation of the Brown Act.
- Before bringing suit, the plaintiff must demand the legislative body **cure** or **correct** the offending action.

CONCLUSION



**Discussion, Questions,
& Answers**