

California's Sunshine Law: The Ralph M. Brown Act

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ALAMEDA

**Sunol Citizens' Advisory Council
Special Meeting
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The Guiding Principle of the Brown Act

The Public's business must be conducted in *public*, with ample opportunity for public participation



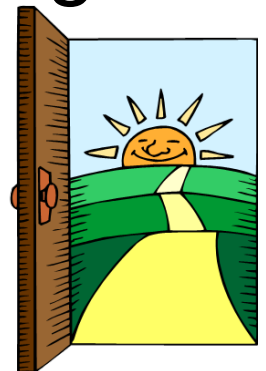
Who is Subject to the Brown Act?

- Any board, commission, committee or other body created by a charter, ordinance, resolution or other formal action of the Board of Supervisors
- **Your Council was created by action of the Board of Supervisors, making it subject to the Brown Act.**

The Open Meeting Rule

THE RULE is that meetings are OPEN to the public; exceptions to the rule are narrowly construed:

“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.”



What is a “Meeting?”

A meeting occurs whenever a majority of the members of your council or of a subcommittee of the council come together at the same time or place and **hears, discusses, deliberates, or takes action** on an item within the **subject-matter jurisdiction of the body.**



Meetings May Be:

- Formal or informal
- Involve only discussion or action, or both
- In person, or through technology



Meetings Can Include:

- Retreats
- Site visits
- Social gatherings or “networking” before or after a noticed meeting



Unlawful Meetings

- “Pre-meetings” and “Post-meetings” held without notice to the public
- Serial meetings



What's a Serial Meeting?

A serial meeting occurs when a majority of the members of a legislative body, outside of a properly noticed public meeting, use a series of communications—directly or through intermediaries—to discuss, deliberate, or take action on any item of business within the body's subject-matter jurisdiction.

Types of Serial Meetings

- “Chain” meetings: Member A talks to member B, who talks to Member C...



- “Hub-and-Spoke” meetings: A talks to B, then C, then D...



How Serial Meetings Occur

- Through technology:

- Text
- Email
- Phones, etc.



- Through staff



Discussions With Staff

Staff may *answer questions* or *provide information* to individual members *so long as* any views or positions expressed by the member are *not communicated* to other members



Exceptions: What ISN'T a Meeting?

- Attendance of majority at
 - regional/state/national conference
 - local meeting open to the public
 - social, recreational, ceremonial event not sponsored by or for the body
- *But no collective discussion of Council business can occur at these events*

What about Social Media?

- The Brown Act applies to an “internet-based social media platform” (*e.g.*, Twitter/X, Facebook, Instagram, Tiktok, Reddit)
- “Meeting” does not include *a* member engaging in a separate conversation or communication on a social media platform to answer questions, provide information to or solicit information from the public regarding a matter within the subject matter jurisdiction of the legislative body
- In essence, social media is allowed as a one-way or public-facing communication tool, not as a place for members to interact with each other about agency business.

Social Media Communications

- Social media communications include those that are made, posted or shared on the social media platform between members, **including comments or the use of digital icons that express reactions**
- “A member of the legislative body shall **not respond directly** to any communication on an internet-based social media platform ... that is made, posted, or shared by **any other member** of the legislative body.”
- You may never communicate with other members about council business on social media.



Meeting Rules: Time and Place

- Meetings must be held within Alameda County
- Meetings must occur at a time and place set by ordinance, resolution, bylaws, or other rule of the body



What's a Teleconference?

“A meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”



Teleconferencing Overview

- SB 707 replaces the teleconferencing framework, effective January 1, 2026
- Traditional Teleconferencing still exists
- Just Cause Teleconferencing has been modified
- Emergency Circumstances Teleconferencing has been eliminated and incorporated in Just Cause Teleconferencing
- Disability Accommodation Teleconferencing has been created
- Exceptions for *Eligible Subsidiary Bodies*

What is an Eligible Subsidiary Body?

- Serves exclusively in an advisory capacity
- Is not authorized to take final action on legislation, regulations, contracts, permits, licenses, grants, or funding allocations
- Does **not** have primary subject matter jurisdiction over:
 - Elections
 - Budgets
 - Police oversight
 - Privacy
 - Library material access restrictions
 - Taxes or related spending proposals
- Sunol CAC is very likely an ESB

What is an Eligible Subsidiary Body, Cont'd

- An ESB may meet remotely
- Requires formal approval from the parent body (Board of Supervisors)
- The BOS must, by majority vote, authorize remote meetings of the ESB
- BOS must find that remote meetings will enhance public access and promote attraction, retention, and diversity of ESB members
- The BOS must adopt these findings before first use and every six months thereafter
- After the BOS acts, the ESB itself must approve the use of teleconferencing by majority vote
- Not available for members who are elected officials

Traditional Teleconference Rules

- Each teleconference location must be identified in the notice and agenda
- Agenda must be posted at each location
- Each location must have public access
- Public must have opportunity to speak at each location
- A quorum must be within the County
- All votes must be taken by roll call



“Just Cause” Teleconferencing

- A member may participate remotely for “just cause” when:
 - Childcare or caregiving for a child, parent, grandparent, grandchild, sibling, spouse or domestic partner
 - A contagious illness
 - Immunocompromised child, parent, grandparent, sibling, spouse, or domestic partner that requires the member to participate remotely
 - A physical or family medical emergency which prevents in-person attendance
 - Member is required to be 50+ miles away under official military orders
 - Member has a need related to a disability not covered under disability accommodation of the BA
 - Travel on official business of the legislative body
- Available two meetings per year

Just Cause Cont'd

- Members may participate remotely for qualifying reasons
- Requires a quorum to meet in-person at one noticed meeting location open to the public
- Minutes must identify the specific statutory basis used for remote participation
- Disclose anyone who is 18 years or older in the room with them
- Member must notify body as soon as possible
- No posting at remote location or identifying remote location on the agenda

Disability Accommodation Teleconferencing (New)

- Applies only to a member who needs remote participation as a *reasonable accommodation*
- Must participate via audio and video unless disability prevents it
- Disclose anyone who is 18 years or older in the room with them
- Treated the same way as attending in person for quorum purposes
- No requirement to open their remote location to the public
- No posting of/at remote location

Written Material

- Writings related to an open session agenda item of a regular meeting that are **“distributed to all, or a majority of all”** of the members less than 72 hours before the meeting must be made available for public inspection “at the time” of distribution to all or a majority of all members
- “Writings” can be available for public inspection by internet posting and physical copies available at a designated office and meeting location

Distribution of Writings

- If a writing (that is a public record) is distributed during the meeting and it was prepared by staff or members of the body, it must be made available at the meeting
- If it was prepared by some other person, it must be made available after the meeting

Distribution of Writings

- Must include all materials provided to a majority of the council, including presentations and reports
- If a document is too large or impractical to post online, it must be made available for in-person public inspection
 - Make it available immediately for public inspection at the same time the members receive it
 - At a designated office
 - Agenda identifies physical office where public inspection can be made

Notice & Agenda

- Regular meeting agendas must be posted 72 hours in advance of the meeting
- Special meeting agendas require only 24 hours advance notice
- Teleconference meetings require posting at each remote location for the 72 hour or 24 hour posting period
- The agenda shall contain a brief general description of each item of business to be transacted (e.g, action item) or discussed (e.g., discussion or informational item).
- Agendas must describe each item to be considered in enough detail that a person of ordinary intelligence could determine whether the item is of interest

Importance of the Agenda

A body subject to the Brown Act *may not discuss* and *may not transact (act)* on items not on the agenda or that are beyond the reasonable scope of the agenda description



Importance of the Agenda

- Ask yourself: would a reasonable member of the public, reading the agenda, understand what business will be discussed or acted upon?
- The public must know specifically *what* the body is discussing, not just *that* it will discuss something
- Adequate agenda descriptions protect the work of your body from Brown Act challenges

These Don't Need to be On the Agenda

- Commendations
- Announcements
- Request to agendize future items
- Limited follow-up to general public comment, to provide information or direction to staff

Announcements

- Should be concise
- Unilateral
- No discussion
- No request for feedback
- No deliberation
- No opinion
- No advocacy



Rights of the Public

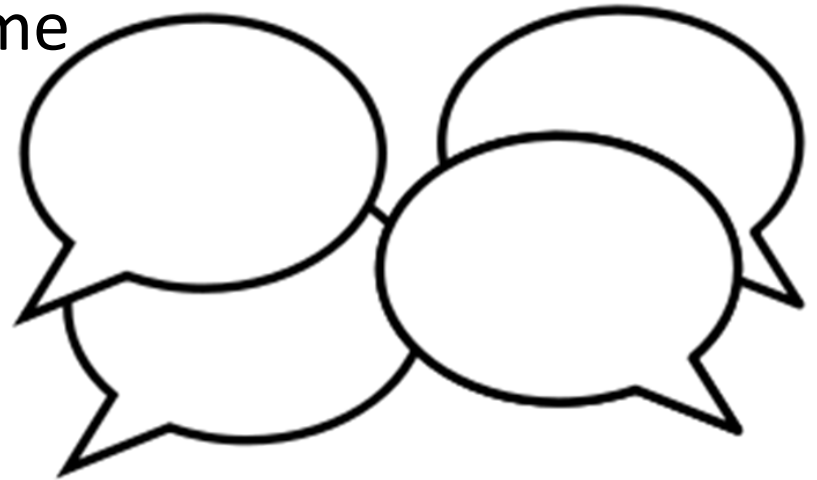
ACCESS TO MEETINGS

- To have meetings open and public, with limited exceptions
- To have access to all agendas of public meetings and documents distributed to the legislative body members
- To audio/video record the meetings and to inspect recordings of the meetings made by the agency.
- To attend without any precondition (for example, cannot mandate that attendees give their names or register to speak)



Types of Public Comment

- Specific: concerning an item on the agenda, at the time of consideration
- General: Any item within the Council's subject matter jurisdiction, but not listed on the agenda



Specific Public Comment

Opportunity for public to directly address the Council members on

- Any agenda item – discussion, information, or action items
- Must occur *before*
 - conclusion of consideration of item (discussion or information item); or
 - action taken (action item)

1. =

2. =



Specific Public Comment

- Members should avoid engaging in a back-and-forth discussion with members of the public
- Members should not deliberate with members of the public or with other members during public comment



General Public Comment

- May occur at any time in the meeting
- Is limited to matters within scope of Council's jurisdiction, even if not on the agenda
- Members may not discuss or respond substantively to the public in a way that could be interpreted as a "meeting" on a non-agendized item
- Not required at special meetings

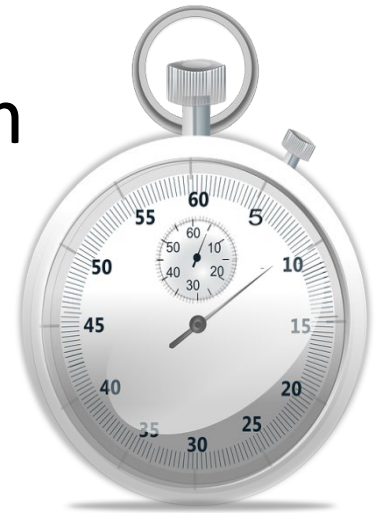
Rights of the Speaker

- Right to equal time:
 - Brown Act is about fairness, transparency, and public trust.
 - Applying time limits consistently prevents favoritism, protects the integrity of the process, and reduces legal risk.
- Right to criticize policy body, its members, and its staff
- Cannot be disruptive



Limits on Public Comment

- “Up to” a reasonable amount of time per speaker (for example, two or three minutes) on an item
- Reasonable limit on total public comment time on an item “before or during” its consideration
- No right to a response from the body, its members, presenters or staff



Controlling Unruly Speakers

- Council Chair may impose reasonable time, place, and manner restrictions on public participation
- Unruly speakers may be excluded from the forum *if necessary* to allow business to continue
- A warning must be given



Consequences of Brown Act Violations

- Brown Act violations are a breach of public trust and transparency
- Violators may include any member, the entire advisory body, or the County
- Any action taken in violation of the Brown Act may be invalidated by the Court
- Knowing violation is a misdemeanor

Criminal liability for Brown Act Violations

- A member who intentionally deprives the public of information they are entitled to under the BA commits a misdemeanor, including:
 - Conducting business outside noticed meetings
 - Participating in illegal serial meetings
 - Taking action when not properly agendaized
- A misdemeanor charge may include fines, jail time, and may affect eligibility for future public service roles

Civil consequences and litigation exposure

- Court may invalidate action taken, including injunctions restricting conduct and/or requiring public corrective actions
- If the challenger prevails, County must pay attorney fees which are likely thousands of dollars even for a minor violation



QUESTIONS?

