

BROWN ACT BASICS

THE BIG QUESTION

- **What does the Brown Act do?**

The Brown Act requires that all meetings of public agencies take place in public after sufficient notice has been given to the public of the matters to be discussed at the meeting.

The purpose is to facilitate public participation in local government decisions and curb misuse of the democratic process by secret legislation by public bodies

THAT DOESN'T SEEM SO HARD

- Unfortunately , the simple answer to the big question ends up raising a number of smaller questions, each of which has a more complicated answer.
 - What is a “public agency”?
 - What is a “meeting”?
 - What does it mean to meet “in public”?
 - What happens if a public agency does not meet in public?

WHAT IS A PUBLIC AGENCY?

- Public agencies include:
 - Governing bodies of local agencies (e.g. City/County Councils, School/CCD Boards, Public Utility Boards, etc.);
AND
 - Sub-Committees of governing bodies that:
 - Include a majority of governing board members, OR
 - Are standing committees with a specific purpose, or are created by formal action of the body.
- The governing board approved bylaws for the CBOC which state that the CBOC is deemed to be subject to the Brown Act
- Education Code Section 15280(b): meetings of the CBOC “shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board of the district.”

WHAT IS A MEETING?

- Any gathering of a majority of the members of the Public Agency to hear, discuss, and/or deliberate on any item of business within the subject matter jurisdiction of the body.
- “Gatherings” do not have to happen in person.
 - Conference calls
 - Group e-mails
 - Serial Meetings (more later)

WHAT IS NOT A MEETING?

If a majority of the CBOC does not discuss CBOC business, there is no “meeting” when a majority of members attend:

- Conferences and similar gatherings which are open to the public.
- Open and public meetings held by another person or organization.
- Open and noticed meetings of another legislative body.
 - So a majority of you can attend meetings of the Board of Education so long as you are not talking about CBOC business.
- Purely social or ceremonial occasions.
 - So you do not need to run away from each other at the supermarket (unless you really want to).

SERIAL MEETINGS

- In addition to prohibiting gatherings of a majority of the CBOC to discuss business, the Brown Act also limits how CBOC members can interact one-on-one.
 - Communications with less than a quorum of other Board members on a topic are permissible.
 - Using a series of such communications to circumvent the Brown Act is not.
- Separate conversations or communications outside of a meeting with members of a legislative body are OK if the person does not communicate to the other members of the CBOC the comments or positions of any other member of the respective committee.

BEST PRACTICES TO AVOID SERIAL MEETINGS

- If an e-mail concerns an issue that needs the District's attention, consider sending it to the District representative instead of another CBOC member. That minimizes the risk of e-mail chains.
- Scrupulously avoid the "reply-all" button.
- Do not ask staff if they know how other members feel about a given issue. Even though staff are not part of the agency for Brown Act purposes, if staff conveys the position of other members, it is a violation of the Act.

WHAT DOES IT MEAN TO MEET IN “PUBLIC”?

- Notice must be given of the time, and agenda of issues to be discussed at a meeting (72 hours for regular meeting, 24 hours for special meeting).
- CBOC may not take action on non-agendized items in the absence of an emergency.
- Location must be accessible to the public.
- Teleconferences are permitted. Currently, there are special, post-Pandemic rules in place governing teleconference participation (more on that below).

WHAT DOES IT MEAN TO MEET IN “PUBLIC”? (CONTINUED)

- Public must be given the opportunity to comment.
 - General comments on any item within the jurisdiction of the CBOC.
 - Additional comments on each agenda item.
- While the School Board recesses into “closed session” to discuss litigation, land acquisition or personal matters, all of the CBOC business should be discussed in public. No need for closed sessions.

MEETING IN PUBLIC VS. MEETING WITH THE PUBLIC

While the public must be given the opportunity to comment, they do not have the right to have their questions answered then and there.

- The Brown Act requires that any “meeting” of a majority of CBOC members be accessible to and viewable by the public.
- The Brown Act does not require the agency to allow the public to derail or control the discussion during a meeting. You are meeting, not them.

POST-PANDEMIC RULES (EFFECTIVE UNTIL 1/1/24)

- Teleconferencing permitted if:
 - Teleconferencing rules are followed (rollcall votes, protection of public participation, noticed and agendaized).

AND EITHER

- **Just Cause** (caregiving, contagious illness, physical or mental disability, or travel on behalf of the Board)
 - may be used twice per calendar year per member.

OR

- **Emergency Circumstances** approved by the Board (physical or family medical emergency that prevents attendance in person)
 - may **not** be used for more than:
 - » three consecutive months;
 - » 20% of the regular meetings within a calendar year; or
 - » two meetings if the Board meets fewer than 10 times per calendar year

POST-PANDEMIC RULES (EFFECTIVE UNTIL 1/1/24)

REQUIREMENTS FOR TELECONFERENCE PARTICIPATION

- A quorum of the Board must participate **in person** from a singular physical location identified on the agenda that is open to the public and within the agency's boundaries.
- Access must be provided to the public by one of:
 - Two-way audiovisual platform; or
 - Two-way telephonic service and live webcasting of the meeting.
- Means of public access must be included on the agenda.
- If there is a disruption in the broadcast, no action can be taken until public access is restored.
- Opportunity for real time public comment is given.
- General description of the Just Cause or Emergency Circumstances must be provided (does not require disclosure of personal medical information).
- Notice must be given at the earliest opportunity.
 - If not known in time to include on the agenda, must be added per Gov. Code 54954.2(b)(4).
- Must participate through BOTH audio and visual technology.
- Member must disclose before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location and the general nature of the member's relationship with such individuals

ENFORCEMENT

- Invalidation of actions taken in violation of the Act.
- Court order forbidding the agency from violating the Act again.
 - This means that if there were future violations, the member(s) at issue would be violating not just the Act, but a court order, leaving themselves open to civil contempt charges.
- Misdemeanor criminal charges.
 - For intentional violations only; this is very rare.

TAKE AWAYS

1. All CBOC meetings should take place in public at properly noticed meetings. No closed sessions.
2. Discussion of topics of interest to the CBOC should be limited to those topics on the published agenda. Therefore, be sure you get topics to the chair or District staff so that items can be placed on the agenda.
3. No serial meetings.