

THE BROWN ACT: CALIFORNIA'S OPEN MEETING LAW

This chapter discusses the requirements of the Ralph M. Brown Act¹ as they apply to the various boards and commissions of the City of Los Angeles. Its purpose is to acquaint you with these rules and to provide an easy to use guide that will assist you in conducting the meetings of your commission. The chapter is not an exhaustive treatise on the Act; rather, it outlines the most important requirements of the Act.² Questions about the application of these rules may be directed to the Assistant or Deputy City Attorney who regularly advises your commission.

What Bodies Are Covered by the Act?

The Brown Act governs the meetings of all local “legislative bodies,” that is, all multi-member councils, boards, commissions, committees and the like of a local government agency. Only bodies created by charter, ordinance or the formal action of another legislative body are covered by the Act. These bodies may exercise management, policy-making, advisory, legislative or adjudicatory functions, or some combination of those duties. The departmental boards and commissions of the City of Los Angeles are all governed by the Act.

The Act also governs the meetings of standing committees (those which have continued responsibility over a particular subject matter, as well as those with fixed meeting schedules) of the boards and commissions. It does not include temporary advisory committees which consist solely of less than a quorum of the members of the board or commission. These will typically be committees of two members (of a five member board) assigned to investigate and report back on a single issue.

What Is a Meeting?

A “meeting” of a board or commission includes a gathering of at least a majority of the members at the same time and in the same place to hear, discuss or act on one or more matters under the jurisdiction of the board or commission. The only type of meeting allowed by the Brown Act is this type of meeting, and it may lawfully be held only if the notice and agenda requirements discussed below are followed.³

¹ Cal. Govt. Code § 54950, *et seq.*

² This paper reflects amendments to the Act enacted in 2000.

³ Less than a majority of the members of a commission may meet together or over the phone to discuss a subject within the jurisdiction of the commission without having to comply with the Brown Act. Their gathering or discussion does not constitute a “meeting” within the meaning of the Act. However, serial meetings of less than a quorum do constitute a meeting and are subject to the Act.

Informal, social gatherings of board members are not meetings, and need not comply with the Act, as long as there is no discussion of any subject matter under the board's jurisdiction. If these informal gatherings will involve discussions among a majority of the members of a board relating to the board's official business, the meeting should be properly noticed, and an agenda of the business items that will be discussed must be posted. The public must be allowed to attend and participate.

A meeting may include a conference or retreat attended by a majority of commission members. If a conference is open to members of the public and involves issues of interest to the public, it is not a meeting subject to the Act as long as the members do not discuss among themselves, other than as part of the scheduled program, specific issues within the jurisdiction of the commission.

The Act prohibits the use of direct or indirect communications, intermediaries or technical devices used by a majority of a commission to assist them in arriving at any decision. For instance, the chair may not call two other members of a five member board to discuss an agenda item. Nor may one member call a second member, who then calls a third member. Nor may someone on the staff of a department speak or meet with a majority of the department's commission members about a matter the commission will be asked to decide. The same is true for the use of e-mail, fax machines and the like for communication among a majority of members.

Sending or receiving a written communication (including an e-mail) that becomes a public record does not result in a meeting being held. However, a majority of members should not circulate motions, proposals and similar documents among themselves for their review and signature, as that would constitute an unlawful meeting within the meaning of the Act. Also, a majority of members may not exchange letters or e-mails on a subject under the commission's jurisdiction.

Individual communications between members of a board or commission and members of the public are permitted by the Act. However, if a board will be acting on a quasi-judicial, adjudicative matter (e.g., a land use variance or the revocation of a permit or license), all communications between members of the board and anyone with an interest in the matter are required to take place at formal meetings or through written communications that are made a part of the official record.

May Members of a Commission Who Are Not Members of a Committee of the Commission Attend Committee Meetings?

Members of a commission may attend meetings of its committees, even if they are not members of the committees they attend. However, if a majority of the members of the commission attend a committee meeting, there are two legal options:

1. Notice the meeting as a meeting of the commission itself as well as the committee. All of the members in attendance may participate.

2. If the committee is a standing committee, notice the meeting only as a meeting of the committee and comply with all of the following requirements:
 - a. The committee meeting must be open and properly noticed as a committee meeting (no closed session may take place if a majority of the commission is in attendance);
 - b. The members of the legislative body who are not members of the committee may attend *only* as observers and may not participate in the discussion.

(Option No. 2 is available only if the committee is a standing committee of the legislative body.)

May a Majority of the Members of a Commission Attend a Conference or a Meeting of a Private Group?

Members may attend a conference or a meeting of a private group (e.g., homeowner association), even if the conference or meeting will discuss matters of general interest to the community. However, a majority of the members may attend such an event at the same time only if:

- a. The conference or meeting is open to attendance by the public;
- b. If the event is a meeting of a private group, it has been publicized; and
- c. The members do not discuss among themselves, other than as part of the scheduled program, business that is within the subject matter jurisdiction of the commission.

Otherwise, a conference attended by a majority of members must be open to the public. The Act does require the organizers to allow members of the public to attend free of charge if others are charged an admission fee.

What Are the Notice and Agenda Requirements?

Requirements for Regular Meetings

The time and place for regular commission meetings are established by ordinance, resolution or rules of order. They can be changed by similar formal action.

The agenda of a regular meeting of a commission must be posted at least 72 hours before the start of the meeting. With the exceptions described below, all matters that will be discussed or acted on by the commission must be listed on the agenda. That listing must briefly and generally describe the matter that will be discussed or decided in terms that will

be understandable by the public. Matters not on the agenda may be discussed only if they meet the exceptions discussed below.

Requirements for Special Meetings

A “special meeting” of a board may be called by posting a notice/agenda and by delivering (by mail or personal delivery) the notice/agenda to all members and to all media outlets that have requested to be so notified 24 hours before the meeting. The notice/agenda must state the place and time of the meeting, as well as the matters that will be discussed and/or decided. A member who does not receive notice can waive the requirement. That waiver needs to be made in writing either at the time of or before the meeting. Only matters that are on the agenda of a special meeting may be discussed at that meeting.

Requirements for Emergency Meetings

The majority of the members of a commission may call an emergency meeting when an emergency exists that requires discussion or action by the commission. These emergencies include only crippling disasters, work stoppages or other activities which severely impair public health, safety or both. At least one hour notice must be given to media outlets that have requested notice of special meetings. Emergency meetings may not be held in closed session.

Exceptions to the Agenda Requirement

Under almost all circumstances, a matter may not be discussed at commission meetings unless it is listed on the agenda. There are three exceptions, and all three relate to regular meetings. The only matters that can be discussed at special and emergency meetings are those on the written agenda.

A commission may discuss a matter that is not on the agenda of a regular meeting *only* if one the following requirements are met:

- a. By majority vote, the commission determines that the issue to be discussed constitutes an emergency that would allow it to hold an emergency meeting (see discussion above). This discussion must be held in open session.
- b. By a two-thirds vote of the entire membership, the commission determines that there is a need to act immediately, that the commission’s consideration of the matter cannot await the next meeting of the commission and that the need for immediate action arose after the posting of the agenda.

What Information Must an Agenda Contain?

The agenda must list all of the matters that will be considered at the meeting. Each item on the agenda should be described by a brief but informative summary of the nature of the matter to be discussed and/or decided. That description should inform interested members of the public about the matter so that they can decide whether to attend and participate.

What Rights Do Members of the Public Have at Meetings?

Except when closed sessions are permitted (see below), all commission meetings must be held in public. Members of the public who choose to do so must be allowed to attend; they may not be asked to sign-in or provide any information as a condition of attending. Also, members of the public must be allowed to record a meeting on a video or audio tape or to broadcast the proceedings, unless the commission makes a reasonable finding that the activity would disrupt the meeting.

Members of the public must be allowed to present testimony or otherwise address a commission about each item on the agenda. A commission may not act on an agenda item until it has allowed for public comment on that item. At regular meetings, the public must be given an opportunity as well to address the commission on any matter under its jurisdiction, even if the matter is not on the agenda. Commissions may adopt reasonable rules governing the amount of time for such public comment on each item on the agenda as well as the time each member of the public will be allowed to speak. The public may discuss information relating to specific matters and must be allowed to criticize the policies, procedures or programs of the agency. However, disruptions of a meeting need not be tolerated.

Members of the public are entitled to copies of written materials that a commission will consider when discussing or acting on an agenda item. This requirement does not apply to materials that are subject to an attorney-client or other privilege or which are otherwise not required to be disclosed to the public in accordance with the Public Records Act.

Meetings may not be held in facilities which are inaccessible to disabled persons. If a commission holds a meeting in an unusual location, such as a restaurant, the public must be allowed to attend without the need to pay any price for entry (e.g. if the meeting is held in a restaurant, they must be able to attend without buying lunch). They must be able to hear the proceedings and must be allowed to present public testimony.

Under What Circumstances May Closed Sessions Be Held?

Under certain circumstances specifically allowed by the Act, a commission is allowed to meet in closed session. If a meeting is closed to the public, it is not permissible to allow some interested persons to attend while denying access to others. Generally, the only persons who may attend closed sessions are the members of the board and any City staff that is needed to assist the board in its deliberations. Persons without official roles should not attend.

In order for a commission to be able to meet in closed session, the item must be listed on the agenda, or one of the exceptions to the agenda requirement must be applicable. The Act provides a safe harbor with regard to the agenda requirement for closed sessions. If a

commission uses one of the Act's suggested standard agenda item formats contained in the Act, indicating the purpose of a closed session on the agenda, that is all that is required. In addition, the items that will be discussed in closed session must be announced publicly before a closed session is held.

Under certain circumstances, after a closed session is completed, the commission is required to meet in open session and publicly report the action taken and the vote.

Personnel Exception

The Act allows a commission to meet in closed session to discuss the appointment, employment, evaluation of performance, discipline or dismissal of a public employee. The employee involved may request a public hearing when the purpose of the closed session is to consider specific charges or complaints against the employee. If the employee requests a public hearing under those circumstances, the commission must discuss the specific charges or complaints in open session. Because the issues concerning the "personnel exception" can become complicated, the president of the commission or a member of the staff should consult the Office of the City Attorney for advice.

Pending Litigation

A commission is allowed to meet in closed session with attorneys from the office of the City Attorney (or with private counsel retained by the City to provide special legal services) to discuss pending litigation when a discussion of the matter in public would prejudice the City. This section is applicable only when (i) litigation has been formally initiated, (ii) the commission is meeting to decide whether to initiate litigation, or (iii) in the opinion of the commission and its attorneys, based on existing facts and circumstances, there is a significant exposure to litigation. A commission may not otherwise meet in closed session with its attorneys, even when the commission believes that it should receive advice from its attorneys under confidential circumstances.

Before meeting in closed session to discuss pending litigation with its attorneys, the commission must list on the agenda, and/or announce publicly, the specific subdivision of Government Code § 54956.9 which allows the closed session. If a lawsuit or other proceeding (e.g., an arbitration) has been filed, the name of the case must (except in very narrow circumstances) be listed on the agenda or announced.

Real Estate Negotiations

A board may meet in closed session to instruct its agent (who may include a member of the board) concerning the purchase, sale or lease of real property. Before meeting in closed session, the board must meet in public to identify the property involved and the

persons with whom the negotiations will take place. Eminent domain proceedings may not be discussed pursuant to this exception but rather the pending litigation exception.

Must Members Actually Attend Meetings in Order to Participate in Them?

As indicated above, commission meetings must be open and public. That means that commission members usually must be in actual attendance at meetings in order to participate. However, the Brown Act does allow meetings to be held by teleconferencing. A “teleconference” is a meeting where commission members are not all at the same location and are connected by electronic means, through either audio, video or both. During such a meeting, members may discuss and vote on agenda items. If a commission elects to hold meetings in that manner it must comply with all of the following requirements:

- a. Agendas must be posted at all teleconferencing locations, all of which must be listed on the agenda;
- b. Members of the public must be allowed to attend at any of the teleconferencing locations and to address the commission directly at any of the locations;
- c. At least a quorum of the commission must be located at one or more teleconferencing locations within the City; and
- d. The meeting must otherwise comply with all of the other requirements of the Brown Act.

What Are the Penalties and Remedies for Violating the Act?

It is a misdemeanor for a member of a legislative body to attend a meeting at which action is taken in violation of the Brown Act, if the member intends to deprive the public of information to which the member knows (or has reason to know) the public is entitled.

Violations of the Act may also result in the issuance of injunctions and writs of mandate to correct violations or to prevent future violations.

Also, a court can declare a decision made in violation of the Act void. Before filing an action, the complaining party must make a demand that the board cure the violation. That demand must be made within 90 days after an alleged violation occurs. In cases involving alleged violation of the rules governing agendas, the demand must be given within 30 days. If the board fails to cure the violation, a court may issue an appropriate order.