

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

OFFICE OF THE COUNTY COUNSEL COUNTY OF ALAMEDA

**Eden Area Municipal Advisory Council
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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





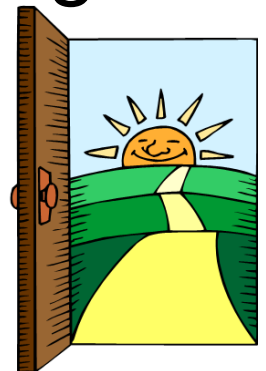
Who is Subject to the Brown Act?

- 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



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



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





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)
- “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

Social Media - Definitions

- 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**
- “Internet-based social media platform” means an online service that is open and accessible to the public (i.e., the general public may access and participate)



Meetings: 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



“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.”
- “Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.”



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



Teleconference for just cause or emergency circumstances :

AB 2449

- New law effective 1/1/2023 which does not require a state of emergency, *but...*
- At least a quorum must meet in person within the body's jurisdiction
- Members can participate via teleconference a limited number of times **if** either **“just cause”** or **“emergency circumstances”** exist
 - There is a notification/request process to participate via teleconference
 - Must attend using both video AND audio
 - Must announce if there is anyone 18 years or older with the member and identify that person and their relationship to the member

“Just Cause”

- Defined as:
 - (1) childcare or caregiving for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation;
 - (2) a contagious illness that prevents the member from attending in person;
 - (3) a need related to a disability not otherwise accommodated; or
 - (4) travel while on official business of the legislative body or a state or local agency.
- No more than two meetings in a calendar year
- Approval by the legislative body is not required.
- The reason for teleconferencing must be disclosed on the record
- The request must be made “at the earliest opportunity”

“Emergency Circumstance”

- Defined as a physical or family medical emergency that prevents a member from attending in person
- No specific limit on the number of times an “emergency circumstance” can be used, but the annual cap (described below) generally limits its use
- Remote participation due to “emergency circumstance” **must be specifically approved** by legislative body as an action item.
- A request can be added to an agenda and must be acted on at the beginning of the meeting
- Member must provide a general description of the emergency
- The description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information exempt under existing law



More on AB 2449

- Annual Cap: no more than three consecutive months of teleconferencing and no more than 20% of the meetings per calendar year.
- Agendas do not need to be posted at a member's remote location.
- Local agencies must provide at least one of the following:
 - A two-way audiovisual platform; **and/or**
 - A two-way telephonic service and live webcasting of the meeting
- The public must still be able to attend in person



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
- There is an exception for staff reports or similar documents made available 72 hours prior to the meeting by internet posting/office availability



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

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
- 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 act* on items not on the agenda or that are beyond the reasonable scope of the agenda description



Very Limited Exceptions

- Public health/safety emergency
 - Immediate need to avoid serious injury to public interest



- An item continued from previous agenda *and* that last meeting was within the last 5 days

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



Rights of the Public

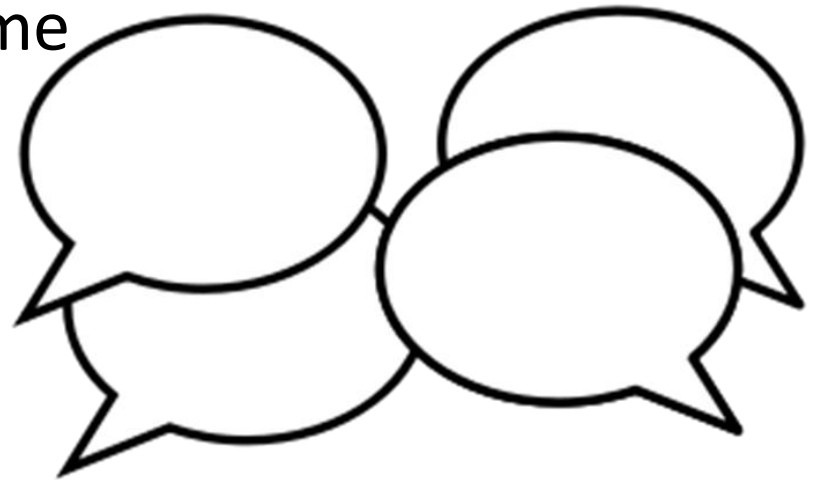
ACCESS TO MEETINGS

- 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. =



General Public Comment

- May occur at any time in the meeting, at the discretion of the Chair or Council majority
- Is limited to matters within scope of Council's jurisdiction, even if not on the agenda
- Members may not discuss or respond substantively
- Not required at special meetings

Rights of the Speaker

- Right to equal time
- Right to criticize policy body, its members, and its staff
- Note, however, the County's Abusive Conduct Policy protects staff from "abusive" behavior
- 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, 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



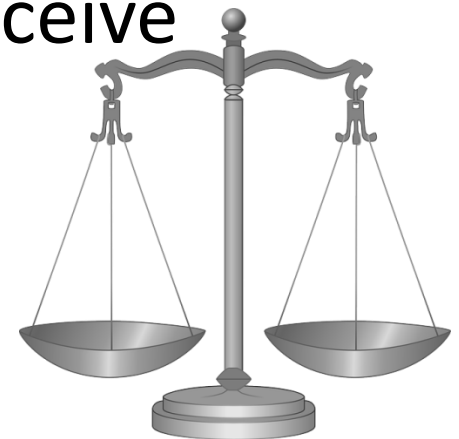
Violation of the Brown Act

- Disclosure of closed session discussion
- Willful violation of Brown Act
 - Action taken in violation of Brown Act
 - Member intends to deprive the public of information to which the public is entitled
- A violation is a misdemeanor



Additional Penalties

- Voiding of action taken in violation of Brown Act
- Injunction or declaratory relief to stop or prevent violations of Brown Act
- Prevailing plaintiff may receive attorneys' fees and costs





Moving on from Brown Act...

The Board of Supervisors has enacted new code and policy relating to behavior of County employees and/or County Bodies:

- Code of Ethics – Board and Commission Members
- Abusive Conduct Prevention Policy



Code of Ethics – Board and Commission Members

- In 2024, County of Alameda adopted a code of ethics for all boards and commissions.
- Codified in Admin Code § 2.02.200
- Goal is to ensure that promoting the common good is the hallmark of the decision-making process for all.

Code of Ethics – Board and Commission Members

Establishes 16 maxims for achieving the goal, including:

- Actively promote public confidence in county government through your actions.
- Recognize and support the public's right to know the public's business.
- Involve residents in the decision-making process and welcome divergent points of view.
- Respond to the public in ways that are complete, clear, and easy to understand.
- Be a good listener, carefully considering all opinions and points of view.
- Comply with all laws and regulations applicable to an appointed official and those governing the conduct of meetings.



Alameda County Abusive Conduct Prevention Policy

- Purpose: Ensure a work environment free of abusive conduct
- Applies to: All County personnel, including interactions with contractors, vendors, clients, and the public
- Commitment: Promote courtesy, respect, and professional conduct in the workplace by all County personnel



Definition of Abusive Conduct

- Abusive conduct includes:
 - Verbal abuse: derogatory remarks, insults, epithets
 - Threatening, intimidating, or humiliating behavior
 - Sabotaging or undermining work performance
- Note: A single act may qualify if it is especially severe and egregious
- Important: Does not require a protected class element (e.g., race, gender)



Enforcement and Prohibition on Retaliation

- Includes acts by or against contractors, vendors, and others affiliated with the County
- No retaliation, employee is protected for:
 - Reporting abusive conduct
 - Participating in an investigation
 - Opposing abusive behavior in good faith
- Violations: May result in disciplinary action, including dismissal



Levine Act

- California Government Code § 84308
- Applies to appointed officials in **quasi-judicial proceedings**
- Limits contributions **and requires disclosure and disqualification**

Levine Act - Monetary Contribution Limits

- Officials may not receive more than \$500 in campaign contributions from:
 - Applicants, Agents, or Parties with a financial interest
 - Applies during the proceeding and 12 months prior

Levine Act - Disclosure Requirements

- If you've received >\$500 from an interested party since 1/1/2025, you **must disclose** it on the record
 - *If you received >\$250 prior, you must disclose it on the record.*
- You are **disqualified** from participating in the decision
- Unless: You return the contribution within 30 days of learning about the matter



Levine Act - Contributions After the Decision

- No contributions >\$500 allowed for **12 months** after a decision
- Applies to:
 - Applicants
 - Agents
 - Any party with a financial interest
- Covers **all contributions**, including to reelection campaigns



Levine Act – Why it Matters

- Violations can lead to:
 - Invalidated decisions
 - Fines or enforcement by FPPC
 - Reputational damage
 - Goal: Transparency and fairness in land use and permit decisions

QUESTIONS?

