



 Community Resources

ORANGE COUNTY VETERANS ADVISORY COUNCIL BROWN ACT TRAINING

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*OC Community
Resources*



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TOPICS





BROWN ACT

What is the Goal of the Brown Act?



The goal of the Brown Act is to ensure that the deliberations and actions of the governing bodies of local agencies are:

- Open and public,
- Thereby facilitating meaningful public access to their decision-making processes and
- Curbing misuse of the democratic process by secret legislation.

The Act requires that meetings of such bodies be:

- Open to the public,
- Held on a regular schedule, and
- Conducted in accordance with an agenda available in advance of the meeting.



It prohibits action on items not placed on the agenda and restricts the type of actions that can be taken in private sessions.

The Brown Act also mandates that an agenda be posted at least 72 hours before a regular meeting and forbids action on any item not on that agenda.

BROWN ACT – History



The Ralph M. Brown Act generally requires all meetings (as defined) of a legislative body of a local agency be “open and public.” The act is located at California Government Code Section 54950 et seq., was carried out by Assembly member Ralph M. Brown and passed in 1953.



- Basic Rule:

- “meetings” of legislative bodies must be **open and public**.
- The actions of public commissions, boards, councils, and other public agencies should “be taken openly and that their deliberations be conducted openly.” (Gov. Code § 54950.)

- Purpose:

- Facilitate public participation in government.
- Enable people to be informed so they can keep control over their government and curb the potential misuse of democratic process by secret legislation.

BROWN ACT – Key Concepts and Definitions



Brown Act applies to any “legislative body” of a “local agency”

“Legislative body” includes:

- The governing board of a local agency or any local board created by statute.
 - Any commission, committee, board or other body created by formal action of a legislative body.
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• “Local Agency” includes:

- A county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

BROWN ACT – Standing Committees



Standing committees of a legislative body are legislative bodies if they have either of the following :

1. Continuing subject matter jurisdiction; or
 2. A meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.
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Q: If the standing committee is comprised of less than a quorum of the governing body, is it still subject to the Brown Act?

A: Yes, if it has continuing subject jurisdiction or has meeting schedules fixed by formal action of the legislative body.

Standing committees are treated as extensions of the legislative body and must comply with the Brown Act's open meeting requirements.



“Ad Hoc” committee exception to definition of “legislative body”

A temporary or ad hoc advisory committee, composed solely of the members of the legislative body that are less than a quorum of the “legislative body” is not, itself, a “legislative body.” (Gov. Code § 54952(b).)

The temporary advisory committee must:

1. Serve a limited single purpose
2. Not be perpetual
3. Be dissolved once its specific task is completed

Q: If the legislative body creates an ad hoc committee and states that “the ad hoc will not have continuing jurisdiction” but the ad hoc actually exercises continuing subject matter jurisdiction and is not limited in time, is the ad hoc committee subject to the Brown Act’s requirements?

A: Yes. Substance controls over form.

BROWN ACT – Key Concepts



Brown Act applies to “meetings” of the legislative body.

A “meeting” is “...any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” (Gov. Code § 54952.2(a).)

The defined term “meeting” includes gatherings where members discuss matters within the subject matter jurisdiction of the legislative body (e.g. meals, social events, etc.) not just situations where votes are taken.

BROWN ACT – Key Concepts



“Serial Meetings” prohibited (e.g. daisy chain or hub-and-spoke)

A majority of the members of a legislative body “shall not, outside of a meeting authorized by this chapter, *use a series of communications of any kind, directly or through intermediaries*, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. (Gov. Code § 54952.2(b)(1).)

But “One Way” briefings (e.g. staff briefings) *are* permitted:

The prohibition on serial meetings: “shall not be construed as preventing an employee or official of a local agency, from engaging *in separate conversations or communications*...with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.” (Gov. Code § 54952.2 (b)(2).)

Similarly, a legal memorandum from County Counsel to a BCC does not constitute a “meeting” under the Brown Act.

BROWN ACT – Digital Communications FAQ



Question: Are BCC members limited regarding the items they can and can't discuss over email, text, social media, etc.?

Answer: Yes. “Serial Meetings” are prohibited even when using electronic communications.

The Brown Act prohibits the use of a series of communications, including:

- emails,
- texts, or
- social media

to discuss, deliberate, or take action on any item of business within the body's jurisdiction outside of an authorized meeting.



- A BCC member cannot respond directly to any communication on a social media platform that is made, posted, or shared by any other member of the legislative body if the post is related to matters within the subject matter jurisdiction of the legislative body.
 - For example, if one BCC member **“likes” a social media post** of one other member of the same body, that could violate the Brown Act, depending on the nature of the post. (Gov. Code § 54952.2(b)(3).)
- Similarly, participation by members of a legislative body in an **internet chatroom, blog dialogue, or any other online platforms**, could provide a technological method of allowing a majority of members to discuss, deliberate, or take action on matters of agency business in violation of the Brown Act.

Pop Quiz Regarding Newer Technologies



When could a prohibited serial meeting inadvertently occur?

- A. Replying all to an email message.
- B. Discussing an issue in an internet chat room.
- C. Posting a “like” on a social media platform.
- D. Discussing an issue on a platform that features messages that are only temporary and disappear shortly after creation.
- E. Deploying a digital surrogate to advocate on issues within the subject jurisdiction of the legislative body with other members of the legislative body.
- F. All of the above.

BROWN ACT – Six Exceptions to Definition of Meeting

There are six narrow exceptions to the definition of “meeting”:

1. Individual contacts or conversations between a member of a legislative body and “any other person” are not “meetings,” of the legislative body, provided that they are not “serial meetings.” (e.g. meeting with staff, constituents, and consultants).
2. Attendance at a conference open to the public that addresses issues of general interest to the public or the agency, provided the members do not discuss issues within the subject matter jurisdiction of their legislative body.
3. Attendance at a community meeting that is open to the public and publicized, provided the members do not discuss issues within the subject matter jurisdiction of their legislative body.
4. Attendance at an open and noticed meeting of another local agency, provided the members do not discuss issues within the subject matter jurisdiction of their legislative body.
5. Attendance at a purely social or ceremonial occasion, provided the members do not discuss issues within the subject matter jurisdiction of their legislative body (e.g. wedding, funeral, farewell reception).
6. Attendance at an open and noticed standing committee meeting, provided that members attend only as observers.

Regular Meeting Agenda Requirements



Each legislative body shall provide, by ordinance, resolution, bylaws, or by whatever other role is required for the conduct of business by that body, the **time** and **place** for holding regular meetings. Such regular meetings must typically be conducted within the boundaries of the agency's jurisdiction.

At least 72 hours before the regular meeting, an agenda must be posted in a "location freely accessible to members of the public" and on the agency's primary website.

The Agenda must contain a "brief general description of each item of business to be transacted or discussed."

Except as otherwise provided by law, no action or discussion shall be undertaken on any item not appearing on the posted agenda.

(Gov. Code § 54954.2.)

Special Meeting Agenda Requirements



Special Meetings may be called “at any time” by either (1) the presiding officer of the legislative body of a local agency, or (2) by a majority of the members of the legislative body by posting a notice and also delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. (Gov. Code § 54956.)



The special meeting notice shall be delivered “personally or by any other means” and shall be received at least 24 hours before the time of the meeting.

The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed.



No other business shall be considered at these meetings by the legislative body.

Emergency Meetings



“Emergency” is defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both.

A legislative body may hold an emergency meeting without complying with the 24-hour “Special Meeting” notice and posting requirements. However, telephonic notice is required. (Gov. Code § 54956.5.)

The Public's Right to Documents



Question: When do documents related to agendas need to be made available to the public?

Answer: The following timeframes apply:

- If board members receive the materials **more than 72 hours before** the scheduled meeting, then the materials are deemed public records and must be made available upon request. The location where the documents can be publicly inspected must be included in the posted agenda. (Gov. Code §§ 54954.1 and 54957.5.)
- If a member of the legislative body or staff prepared the materials, and the legislative body received the materials **during the meeting**, the public must have access to the materials during the meeting. If someone outside of the local agency prepared the materials and gave them to the legislative body **during the meeting**, the public must receive access to the materials after the meeting. (Gov. Code § 54957.5(c).)
- If the legislative body members receive the materials **less than 72 hours** before a regular meeting, then the materials must be made available for public inspection **at the same time they are distributed** to the legislative body. (Gov. Code § 54957.5(b)(1) and (2).)



- California changed significant portions of the Brown Act through SB 707.
- There are two categories of changes:
 - Changes that apply to “eligible legislative bodies” such as the Board of Supervisors; and
 - Changes that apply to all legislative bodies, including those that are classified as “not eligible legislative bodies,” such as advisory BCCs.
- SB 707 recast the teleconferencing provisions of AB 361 and AB 2449 and added new teleconferencing options, such as the ability of BCC members to participate in meetings remotely as a reasonable accommodation for a disability.
- Many of SB 707’s changes do not affect advisory BCCs.



Key changes relevant to OCVAC include:

1. Providing members with a copy of the Brown Act
2. Teleconferencing due to a disability
3. Reorganization of teleconferencing rules
4. Removal and muting because of disruption
5. Clarification regarding recording meetings



1. **Copy of Brown Act:** A copy of the Brown Act must be distributed to members.



2. Teleconferencing Due to Member Disability: As modified by SB 707, the Brown Act states that legislative body members with a disability, as defined by applicable law, may participate remotely as a reasonable accommodation for their disability through audiovisual technology, unless physical disability requires off camera participation. (Gov. Code § 54953(c)(1).)

- Participation under this provision is considered “in-person” for determining a quorum of the legislative body.
- Do not need to meet the other standard teleconference requirements like posting the teleconferencing member’s address on the agenda.
- However, the BCC member must use both audio and video (unless their disability requires them to participate off-camera) and must disclose, before any action is taken, whether any adults are present in the room and their relationship.



3. Teleconferencing: SB 707 added Section 54953.8 to the Brown Act to provide new or modified means for legislative bodies to hold meetings entirely remotely or where some members participate from remote locations. (Gov. Code §§ 54953.8.1 through 54953.8.7.)

- The Brown Act's prior "just cause" and "emergency circumstances" allowances for telecommuting were combined and edited under these sections. These rules continue to have various complicated conditions and limitations.



The following slides describe teleconferencing under the traditional Brown Act rules, SB 707, and notice and public access requirements including:

1. Teleconferencing under traditional Brown Act rules
2. Teleconferencing for members with a disability
3. Teleconferencing under a state of emergency
4. Teleconferencing with just cause
5. Teleconferencing for advisory body (“Eligible Subsidiary Body”) meetings, if authorized by the Board of Supervisors

Teleconferencing: Traditional Brown Act Rules



Type of Teleconferencing	Who Can Use It	Special Conditions & Quorum Requirements	Frequency Limits	Noticing Requirements	Public Access Requirements
Teleconferencing Under Traditional Brown Act Rules, Government Code Section 54953(b)(3)	Any legislative body; applies when not using SB 707 exceptions; strict notice and access rules.	Quorum must participate from a single public location within jurisdiction.	No statutory frequency limit.	Agenda must list all teleconference locations and agenda must be posted at each location.	Public access required at each teleconference location; public must be able to address the body at each location.

Teleconferencing: Members with a Disability



Type of Teleconferencing	Who Can Use It	Special Conditions & Quorum Requirements	Frequency Limits	Noticing Requirements	Public Access Requirements
Teleconferencing for Members with a disability, Government Code Section 54953(c)	Legislative body members with disabilities	• Remote participation allowed as reasonable accommodation. • Must use audio & video unless disability prevents. • Must disclose if other adults are present and their relationship. • Counts toward quorum; traditional teleconference rules waived.	No frequency limit; based on ADA accommodation.	Agenda posted normally; accommodation documented in record.	Public access to primary location; the member joins remotely with reasonable accommodation.

Teleconferencing: State of Emergency



Type of Teleconferencing	Who Can Use It	Special Conditions & Quorum Requirements	Frequency Limits	Noticing Requirements	Public Access Requirements
Teleconferencing Under Government Code Section 54953.8.2 in State of Emergency	Any legislative body during a proclaimed state or local emergency	• Entirely remote meetings are allowed. • Majority vote of body finding imminent health/safety risk is required. • The State of Emergency must be reconfirmed, and findings are made every 45 days by the body. • Quorum achieved if met even if all members are remote. No in-person quorum required.	No statutory limit during emergency period.	Agenda must include teleconference details; findings must be documented.	Public must have remote access via telephonic or internet-based option.

Teleconferencing: Just Cause



Type of Teleconferencing	Who Can Use It	Special Conditions & Quorum Requirements	Frequency Limits	Noticing Requirements	Public Access Requirements
Teleconferencing Under Government Code Section 54953.8.3 for Just Cause	Individual board/legislative body members	• Reasons: (1) caregiving, (2) illness, (3) official travel, (4) military service. • Audio & video required unless disability accommodation applies. • Minutes must denote the statutory basis for the remote appearance. • In-person quorum required.	May only appear remotely: (i) Two meetings per year, if the legislative body regularly meets once per month or less. (ii) Five meetings per year, if the legislative body regularly meets twice per month. (iii) Seven meetings per year, if the legislative body regularly meets three or more times per month.	Agenda posted as usual; note remote participation in minutes.	Public attends at primary physical location and the remote member participates via audio and video unless disability accommodation applies.

Teleconferencing: Eligible Subsidiary Body



Type of Teleconferencing	Who Can Use It	Special Conditions & Quorum Requirements	Frequency Limits	Noticing Requirements	Public Access Requirements
Teleconferencing Under Government Code Section 54953.8.6 for advisory body (“Eligible Subsidiary Body”) meetings, if authorized by the Board of Supervisors.	“Eligible Subsidiary Body” includes: (1) created by formal action of the elected decision making body; (2) Serves exclusively in an advisory capacity; (3) “Is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements, grants, or allocations of funds;” and (4) Does not have primary subject matter jurisdiction.	• Approval by parent body required. • No in-person quorum required but at least one staff member of the eligible subsidiary body or the legislative body that created the eligible subsidiary body shall be present at the physical meeting location during the meeting. • Eligible Subsidiary Bodies may meet entirely remotely if findings are made by the legislative body that created them every six months. • The legislative body that created the Eligible Subsidiary body shall make the following findings by majority vote before the eligible subsidiary body uses teleconferencing pursuant to this section for the first time, and every six months thereafter: (i) The legislative body has considered the circumstances of the eligible subsidiary body. (ii) Teleconference meetings of the eligible subsidiary body would enhance public access to meetings of the eligible subsidiary body, and the public has been made aware of the type of remote participation, including audio-visual or telephonic, that will be made available at a regularly scheduled meeting and has been provided the opportunity to comment at an in-person meeting of the legislative body authorizing the subsidiary body to meet entirely remotely. (iii) Teleconference meetings of the eligible subsidiary body would promote the attraction, retention, and diversity of eligible subsidiary body members.	No specific frequency limit; subject to elected decision making body policy.	Agenda must specify teleconference option and approval basis. The eligible subsidiary body shall post the agenda at the physical meeting location but need not post the agenda at a remote location.	Public access via teleconference and physical location as per adopted policy.



Removal Because of Disruption: SB 707 provides for the removal of remote participants from meetings where they engage in behavior that “actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting.” (Gov. Code §§ 54957.95, 54957.96.)

- SB 707 clarifies the ability to mute or remove disruptive individuals who are participating remotely via two-way audiovisual technology.



Recording Meetings: SB 707 states that anyone can record (using digital or other electronic devices) a meeting.

- A legislative body may prohibit meeting recordings only where it makes a reasonable finding that recording constitutes a persistent disruption of the meeting. (Gov. Code § 54953.5.)



OPEN AND PUBLIC MEETING REQUIREMENTS

At regular and special meetings, members of the public have a right to address the legislative body on any item appearing on the agenda, before or at the time the legislative body considers the item.

The Brown Act generally requires that all “meetings” (as defined, whether regular, special, or emergency) be “open and public.”

Each regular meeting agenda shall also provide an opportunity for members of the public to address the legislative body on any item of interest to the public within the subject matter jurisdiction of the body.

No secret ballots; the legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.



Exceptions for Discussing Non-Agenda Items



Question: Can BCC chairs and/or members discuss items that are not on the agenda and if so, are there any limitations?

Answer: As a general rule, under Government Code section 54954.2, a legislative body may not discuss any item that does not appear on the agenda posted for a regular meeting. However, there are limited exceptions:

- Members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights.
- On their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. (Gov. Code § 54954.2.)
- A member of a legislative body, or the body itself may:
 - provide a reference to staff or other resources for factual information,
 - request staff to report back to the body at a subsequent meeting concerning any matter, or
 - direct staff to place a matter of business on a future agenda.

Who enforces the Brown Act?

- According to California Government Code Section 54960, the district attorney or any interested person can initiate legal proceedings to address violations of the Brown Act.
- The enforcement of the Brown Act can be carried out by the:
 - district attorney or any interested person who may commence an action by
 - mandamus, injunction, or declaratory relief
 - to stop or prevent violations or threatened violations of the Act or
 - address past violations by members of the legislative body of a local agency.

BROWN ACT – Civil Enforcement



Brown Act violations and enforcement: Civil Enforcement



Civil Injunction - The district attorney or any interested person (i.e. citizen of the State of California) may commence an action for the purpose of stopping or preventing future violations of the Brown Act. (Gov't Code § 54960.)



Court may invalidate past actions taken in violation of Brown Act – The district attorney or any interested person may file a lawsuit in Superior Court to have the court declare “null & void” action taken in violation of the Brown Act. (Gov. Code § 54960.1.)



Attorneys' fees and court costs – A prevailing plaintiff can obtain recovery of attorneys' fees and court costs. (Gov. Code § 54960.5.)



A variety of legal actions can be filed based on fact-specific issues related to the Brown Act but there are three main categories of civil actions:

- (1) **actions to invalidate** legislative body acts on the grounds that they violated the Brown Act (Gov. Code § 54960.1);
- (2) actions to **determine whether a past action** of a legislative body **constitutes a violation** of the Brown Act. (Gov. Code § 54960.2); and
- (3) actions to **prevent future violations**. (Gov. Code § 54960.)

There are requirements and procedures specific to each type of legal action.



Brown Act violations and enforcement: Criminal Penalties

A member of a legislative body who attends a meeting where action is taken in violation of the Brown Act, where the member intends to deprive the public of information which the member knows or has reason to know the public is entitled to receive, is guilty of a misdemeanor. (Gov. Code § 54959.)

The Brown Act and BCC Bylaws FAQ



Question: Do the BCCs' bylaws supersede the Brown Act's requirements or vice versa?

Answer: No. The BCCs' bylaws do not supersede the Brown Act.

- A BCCs' bylaws require following the Brown Act.
- A BCCs' bylaws may describe procedures for operating within the Brown Act's requirements, but the Brown Act cannot be superseded by bylaws.



THANK YOU!