



# THE BROWN ACT

AND RECENT DEVELOPMENTS

## WHAT IS THE BROWN ACT

- Authored by Ralph Milton Brown (1908–1966) a Central Valley assemblyman, the Brown Act was passed in 1953, to safeguard the public's right to access and participate in government meetings within the State.
- The Brown Act is found at California Government Code Sections 54950-54963

## INTENT OF THE BROWN ACT (1)

- “The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”
- “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, excepts as otherwise provided by this Chapter.”

## INTENT OF THE BROWN ACT (2)

- To ensure that deliberations and actions of legislative bodies of local government agencies are open and public.
- To ensure meaningful public access to local government decisions.
- The business conducted on behalf of the public is most certainly the public's business.

# WHO IS SUBJECT TO THE BROWN ACT

All governing boards of local government agencies.

The advisory and standing sub-committees created by such governing boards.

All boards, committees, and bodies created by federal or state law.

## WHAT IS A MEETING?

- A **MEETING** is a majority of the members of a legislative body present at the same time and place to hear, discuss, or deliberate government business.
- A congregation of a majority of the members which involves any aspect of that decision-making process triggers Brown Act requirements.

# WHAT IS NOT A MEETING?

- Conferences, trainings, seminars
- Community forums
- Meetings of other government bodies
- Special occasions such as weddings, graduations, etc.

# WHAT TO AVOID (1)

- A majority of members **MAY NOT** use a telephone, e-mail, fax, internet-based social media platform or other electronic means to discuss or to development a consensus, agreement, or decision.
- Similarly, a majority of members **MAY NOT** use a go-between to discuss or to develop a consensus, agreement, or decision.



## WHAT TO AVOID (2)

- **Serial Meetings.** A serial meeting may occur through a series of communications that cumulatively involve a majority of the legislative body.
- **A Hub and Spokes Communications.** Board member A speaks to member B, then to member C, and then to member D.
- **Chain Communications.** Board member A speaks to member B, member B speaks to member C.
- **All such communications can inadvertently lead to a collective concurrence of a legislative body.**

## WHAT TO AVOID (3)

- Polling of the members of a legislative body by another member of that body, whether personally or by using staff or technology to do so, is prohibited.
- Staff can meet individually with a majority of the members of the body if staff does not share the other members' views and/or opinions.

# NOTICE REQUIREMENTS

- **FOR A REGULAR MEETING:** Notice must be posted 72 in advance and sent to those persons who request notice.
- **FOR A SPECIAL MEETING:** Notice must be posted 24 hours in advance and must be provided to requesting news media.
- **FOR AN EMERGENCY MEETING:** Notice must be posted 1 hour in advance and news media that have requested notice must be notified by telephone 1 hour in advance.
- Notice must be posted in an accessible location and on the legislative body's website if it has one.

# AGENDA REQUIREMENTS (1)

- Each agenda must contain a brief description of every item to be discussed, including closed session, and those descriptions must be clear enough that members of the public will understand the nature of the item and the possible action to be taken, if any. The description of each agenda item is generally provided in 20 words or less.
- Each agenda for a regular meeting must include time for public comment.

## AGENDA REQUIREMENTS (2)

- The agenda is the promise made to the public by the legislative body – this is what will be discussed/acted upon. Keeping within the boundaries of each agenda item description is the way the legislative body keeps that promise.

## AGENDA REQUIREMENTS (3)

- No action/discussion shall be taken on any item not appearing on the agenda, EXCEPT members of a legislative body may briefly:
  - Respond to public input and/or ask a question for clarification;
  - Make reports of activities or make announcements;
  - Ask staff to report back on a matter at a subsequent meeting or the legislative body itself may direct staff to place a matter on a future meeting agenda.

## AGENDA REQUIREMENTS (4)

- Additionally, the legislative body may take action on an item not appearing on the agenda if there is an emergency or a need to take immediate action which came to the attention of the legislative body after the agenda was posted.
- A determination there is a need to take immediate action requires a  $2/3$  vote of the members of the legislative body present, or if less than  $2/3$  are present, a unanimous vote.

# LOCATION OF MEETINGS

- Public meetings must be held within the boundaries or jurisdiction of the government entity.
- EXCEPTIONS:
  - To inspect real/personal property;
  - To meet with federal/state officials to discuss legislation and/or regulatory issues;
  - To hold a closed session with legal counsel.



## RIGHTS OF THE PUBLIC (1)

- To address the legislative body on both agenda items (public comment) and non-agenda items (public input).
  - Public Input – Any member of the public may address the legislative body at their regular meetings on matters not appearing on the agenda if the matter is within the jurisdiction of that body.
  - Public Comment – Any member of the public has a right to address the legislative body at any regular or special meeting on any item on that body's agenda.

## RIGHTS OF THE PUBLIC (2)

- To have meetings of the legislative body open and public, unless subject to a closed session exception;
- To be accommodated, if disabled, to ensure access and participation;
- To obtain copies of all written materials which are distributed to the legislative body, except for privileged materials;
- To be able to audio- or video-record the meeting and take photographs of the proceedings or broadcast them, unless doing so creates a disturbance.

# CLOSED SESSION – GENERAL INFORMATION

- Closed session exceptions must be narrowly construed.
- The agenda must contain a brief description of each closed session item.
- Each such item requires a pre-closed session announcement by the legislative body and a post-closed session report of any action taken.
- Except for the above reporting out requirements, strict confidentiality of closed sessions must be preserved.

# CLOSED SESSION – PERMISSIBLE ITEMS (1)

- **PERSONNEL MATTERS**

- This exception allows the legislative body to discuss in closed session the appointment, employment, evaluation, discipline, or dismissal of an employee who is appointed by the legislative body. This exception may not be used to discuss policy, general employee issues, job descriptions, etc.

- **LABOR NEGOTIATIONS**

- This exception allows the legislative body to meeting with the local government entity's bargaining representatives in closed session to discuss negotiation matters and instruct the representatives as to represented and unrepresented employees.

# CLOSED SESSION – PERMISSIBLE ITEMS (2)

- **PENDING LITIGATION**

- This exception allows the legislative body to confer with legal counsel when open discussion would prejudice the position of the local government entity in litigation. Litigation may be existing or threatened based upon statutorily acceptable facts and circumstances. This exception also applies to the consideration of whether to initiate litigation.

- **REAL PROPERTY**

- After a negotiating team is established by the local government entity in open session, that team may meet with the legislative body in closed session to discuss and receive instructions as to price and terms prior to the purchase, sale, lease, or exchange of identified real property.

## CLOSED SESSION – PERMISSIBLE ITEMS (3)

- SECURITY OF PUBLIC FACILITIES/SERVICES
- This exception allows a legislative body to meet in closed session with the attorney general, district attorney, local government entity counsel, sheriff/chief of police and respective deputies, and/or a security consultant/operations manager on matters which pose a threat to security of public buildings, the security of essential public services, and/or a threat to public facilities or public services.

# VIOLATIONS OF THE BROWN ACT

- Violations of the Brown Act can lead to invalidation of any local government entity's action, payment of a challenger's attorney fees, civil liability and criminal liability (misdemeanor).

# TELECONFERENCING UNDER THE BROWN ACT

- **TRADITIONAL TELECONFERENCING**

- Traditional teleconferencing may be used by a legislative body if the requirements of Government Code section 54953 are met.

Those requirements include, but are not limited to:

- Agendas must be posted at all teleconference locations;
- Each teleconference location must be identified in the notice and agenda of the meeting and each such location must be accessible to the public.



## TELECONFERENCING UNDER AB 361 (1)

- Until January 1, 2024, Assembly Bill 361 authorizes a legislative body to use teleconferencing, without complying with the Brown Act's teleconferencing quorum, meeting notice, and agenda requirements set forth in Government Code Section 54953(b)(3), in very specific circumstances:

## TELECONFERENCING UNDER AB 361 -2

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; or
- The legislative body holds a meeting during a proclaimed state of emergency for purposes of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees; or
- The legislative body holds a meeting during a proclaimed state of emergency and has determined by majority vote pursuant that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

## ASSEMBLY BILL 2449 (1)

- Until January 1, 2026, AB 2449 allows members of a legislative body of a local agency to use teleconferencing without noticing their teleconference locations and making them publicly accessible if specified requirements are met.
- At least a quorum of the members of the body must participate in person at a singular physical location which is open to the public and within the boundaries of the local agency's jurisdiction.

## ASSEMBLY BILL 2449 (2)

- **THE LEGISLATIVE BODY MUST:**

1. Provide a two-way audio-visual platform or a two-way telephonic service and a live webcasting of the meeting by which the public may remotely hear and visually observe the meeting and also remotely address the legislative body;
2. Give notice of the means for the public to access the meeting and offer public comment in each instance the legislative body notices the meeting or posts the agenda;

## ASSEMBLY BILL 2449 (3)

- THE LEGISLATIVE BODY MUST:

3. Identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in or internet-based service option, and at the in-person location of the meeting; and
4. Provide an opportunity for the public to address the legislative body and offer comment in real time.

## ASSEMBLY BILL 2449 (4)

- AB 2499 authorizes a member of a legislative body to participate in a meeting remotely using these provisions **if one of the following circumstances applies:**
- 1. JUST CAUSE. The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for **just cause**, including a general description of the circumstances relating to their need to appear remotely at the given meeting. These provisions cannot be used by any member of the legislative body for more than two meetings per calendar year; or

## ASSEMBLY BILL 2449 (5)

- 2. EMERGENCY. The member requests the legislative body to allow them to participate in the meeting remotely due to **emergency circumstances** and the legislative body takes action to approve the request, as follows:
  - a. The legislative body is required to request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and does not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law.

## ASSEMBLY 2449 (6)

- b. The legislative body may decide to allow the member to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting as specified.
- c. The above provisions cannot serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.



# ASSEMBLY BILL 2449 (7)

. JUST CAUSE is defined as any of the following:

- a) Childcare or caregiving need that requires them to participate remotely;
- b) A contagious illness that prevents a member from attending in person;
- c) A need related to a physical or mental disability not otherwise accommodated; or
- d) Travel while on official business of the legislative body or another state or local agency

## ASSEMBLY BILL 2449 (8)

- EMERGENCY CIRCUMSTANCES means:
- A physical or family medical emergency that prevents a member from attending in person.

## SENATE BILL 1100

- The presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.
- Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior.

# SENATE BILL 1100 -2

- **DISRUPTING THE MEETING** means:
  - Engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes:
    - A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Government Code section 54954.3 [public comment] or any other law; or
    - Engaging in behavior that constitutes use of force or a true threat of force.
  - A true threat of force is one that a reasonable observer would perceive as an actual threat to use force by the one making that threat.

The image features a blue gradient background with white circuit-like lines in the corners. These lines consist of straight paths that branch out and terminate in small circles, resembling a stylized PCB or network diagram. The lines are positioned in the top-left, top-right, bottom-left, and bottom-right corners, framing the central text.

**THE END – AND NOT A MOMENT TOO SOON**