



Brown Act Training

March 13, 2025



Agenda

1. Policy purpose
2. What is a legislative body?
3. What is a meeting?
4. Agendas and public participation
5. Closed sessions
6. Remedies

Policy Purpose

“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, except as otherwise provided in this chapter.”

Courts generally construe the Brown Act to further the public’s right of access and rarely construe it in a way that narrows the public’s right of access.

What is a legislative body?

- The Board
- Any committee of the Board (e.g., Audit, Personnel, etc.)
 - The Board has imposed Brown Act compliance on its ad hoc committees
- Any advisory committee appointed by the Board (e.g., Bond Oversight Committee, Civilian Review Board, etc.)

What is a meeting?

- A meeting is any gathering of a majority of Directors at the same time and location, including remote locations as authorized under the Brown Act, during which Directors “hear, discuss, deliberate, or take action on” any matter within the subject matter jurisdiction of the Board
- Quoted terms are construed broadly
 - For example, “hear” is not interpreted hyper-technically to mean a quasi-judicial hearing of the Board

What is not a meeting?

- Communication between less than a majority
 - CAUTION! Avoid serial meetings and remember committee assignments
- Conferences that are open to the public and involve topics of general interest to the public or to public agencies like BART, so long as a majority of Directors do not discuss among themselves, other than as part of the scheduled program, business within BART's subject matter jurisdiction
- Publicized community meetings that are open to the public and address topics of local community concern, organized by a person or organization other than BART, so long as a majority of Directors do not discuss among themselves, other than as part of the scheduled meeting, business within BART's subject matter jurisdiction

What is not a meeting?

- Meetings of other legislative bodies, so long as a majority of Directors do not discuss among themselves, other than as part of the scheduled meeting, business within BART's subject matter jurisdiction
 - For conferences, community meetings, and other legislative body meetings, consider sitting separately to avoid even the appearance of private discussion
- BART committee meetings, provided that Directors who are not committee members attend as observers only (Director public comment not permitted if a majority of Board is present)
- “Purely” social or ceremonial events, e.g., wedding, sporting event, birthday party
- Grand jury testimony given in private

Meeting Example

- A city Chamber of Commerce holds a meeting at which the Mayor, a member of the City Council, delivers a “State of the City” address and a majority of Council members are present
- Meeting? Yes, according to the California Attorney General
 - A majority of Council members are present and the Council’s subject matter jurisdiction obviously includes the state of the city
 - The Council members are there to “hear” the State of the City address
 - Not a conference because:
 - Did not involve multiple presentations facilitating interchange of views among multiple parties
 - Did not involve discussion of issues of general interest to the public or to other public agencies
 - Not a community meeting because:
 - Ticket purchase required to attend
 - Not a “purely” social or ceremonial event because:
 - State of the City address involves the public’s business

Meetings – Areas for Caution

- Serial meetings
 - Chain – Directors pass communications along one-by-one until a majority have participated
 - Hub and spoke – an external person, usually staff, receives communications from Directors and passes them along to other Directors until a majority have participated
- Committees
 - Committees usually reach a quorum with fewer members
- Social media
 - Brown Act permits individual Directors to use social media to answer questions, provide information to the public, or solicit information from the public regarding matters within BART's subject matter jurisdiction
 - Brown Act prohibits Directors from responding directly to any communication from another Director on social media regarding a matter within BART's subject matter jurisdiction, including by commenting, sharing, or reacting to the other Director's communication
- Informal public gatherings
 - Meeting in public (e.g., in a restaurant) still violates the Brown Act if discussing issues within BART's subject matter jurisdiction

Meetings – Remote Attendance

- “Traditional teleconferencing”
 - Address must be on the agenda and agenda must be posted in advance at the location
 - Location must be open to the public and allow for public comment
 - Must have a quorum within the District
- “AB 2449 remote attendance” (total per Director cap of 5 meetings per year)
 - Just cause (up to 2 meetings per year)
 - Contagious illness, family caregiving, travel on District or other state or local government business, disability
 - Announcement required – DSO provides script
 - Emergency circumstances
 - Your own or a family member’s medical emergency
 - Vote required – DSO provides script
 - Must have a quorum at one location within the District
 - Must participate using video and audio

Agendas and Public Participation

- Every topic to be discussed or voted on must be on the meeting agenda
- Public comment
 - Required for every agenda item, before or during Board's consideration of item
 - Additionally, general public comment is required for any topic within the subject matter jurisdiction of the agency, even if not on the agenda
- Responding to general public comment
 - Directors or staff may "briefly respond" to general public comment on topics not appearing on the agenda
 - Directors may provide the public with a reference to staff or other resources for factual information
 - Directors may submit an RCI to place a topic raised during general public comment on a future meeting agenda
 - Directors may not hold a discussion among themselves in response to general public comment about a topic not on the agenda

Closed Session

- Only permitted if expressly authorized by Brown Act
- Must be on the meeting agenda
- May only include those staff and consultants necessary to assist Board with the item
- Generally may not include party in negotiation with District (e.g., labor union, adverse party in litigation)
- Depending on action, may require an announcement in open session

Closed Session - Confidentiality

- Brown Act requires all closed session discussion and documents be kept confidential, to prevent a partially closed meeting, unless:
 - Board authorizes disclosure
 - Disclosure is made in confidence to the District Attorney or grand jury due to a perceived violation of law
 - Disclosure is an expression of opinion concerning the propriety or legality of actions taken in closed session
 - Disclosure is of information that is already public

Remedies

Potential remedies for violations of the Brown Act include:

- Invalidation of Board action
 - Board must first be given an opportunity to “cure or correct” the alleged violation
- Declaration by court that past action violates Brown Act
 - Board must first be given opportunity to make an “unconditional commitment” to cease and desist from violation
- Costs and attorney’s fees for successful claims
- Misdemeanor penalties if (1) Director attends a meeting at which violation occurs and (2) Director intended to deprive the public of information that Director knew or should have known the public was entitled to.

Questions?