



The Brown Act, as Applied to the Advisory Council

Advisory Council Meeting

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Topics to be Covered

1. Purpose of the Brown Act

2. Why The Advisory Council Is Covered

3. Which Meetings are Covered?

4. The Noticed Agenda

5. Conducting the Meeting

6. Pathways for Remote Participation by Council Member

7. Conduct Outside the Meeting – No “Serial Meetings”

8. Consequences for Brown Act Violations

Purpose of the Brown Act

“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.” (Cal. Gov. Code Section 54953(a).)

“That one sentence is by far the most important of the entire Brown. [. . . That sentence is the heart of the Brown Act.” – California League of Cities Guide to the Brown Act, Updated January 2024

Why the Advisory Council is Covered?

YES, BECAUSE: Legislative bodies of local agencies, including boards, commissions, committees, and *advisory bodies*, and standing committees with continuing jurisdiction or fixed meeting schedules must hold public meetings under the Brown Act.

EXCEPTION: Ad hoc committees composed of less than a quorum, created for a temporary and limited purpose, and dissolved when their task is complete are not “legislative bodies” and don’t need to hold a public meeting.

Are All Meetings Covered?

COVERED: Gatherings of a majority to hear, discuss, deliberate, or act on agency business, even without final action; includes workshops, retreats, and study sessions.

STRICTLY DEFINED EXCEPTIONS: Individual conversations, public conferences, community meetings, attendance at other public meetings, and social or ceremonial events, provided no majority discussion of agency business occurs among members.

The Noticed Agenda

THE ROLE OF THE AGENDA: The noticed agenda limits what the body may discuss or act on, provides notice to the public, and defines the scope of permissible action at the meeting. Include a brief general description of each item with sufficient detail to inform the public; the description controls the permissible scope of discussion and action.

VERY LIMITED OFF-AGENDA EXCEPTION: Permissible off-agenda actions include *brief* responses to public comment, clarifying questions, referrals to staff, placement on a future agenda, and brief announcements, without broader discussion or action. (Rule of Thumb: 2-3 sentences max).

Conducting the Meeting: *Loss of Quorum*

Without a quorum there is no meeting; no action may be taken; any informal discussion must occur outside the meeting and without deliberation among a majority on agency business.

Conducting the Meeting: *Tips for Effective Meetings*

FOR THE CHAIR:

Outline any limitations on public participation (e.g., time limits) and assure people they will be allowed to share their views

FOR OTHER MEMBERS:

Address remarks and debate to the chair or presiding officer; wait for recognition by the chair before speaking / avoid cross-talk

Conducting the Meeting: *Tips for Effective Meetings (cont.)*

FOLLOW COMMON STRUCTURES:

1. Receive Staff Report
2. Questions from the Board/Commission
3. Receive Public Comment
4. Discuss/deliberate
5. Motions/action (if necessary) (*Note: secret ballots prohibited*)

ENCOURAGE CIVILITY: Remind all participants to be respectful of public speakers—do not allow heckling and to hold applause.

Conducting the Meeting: *Removal for Disruptive Conduct*

Removal is permitted only after a warning unless conduct constitutes the actual use of force or a true threat of force*; criticism or viewpoint alone is not disruption and cannot be the basis for removal or silencing.

- “True threat of force” is defined to mean a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.
- **New:** It is now expressly stated that local agencies may remove or restrict participation by individuals engaging in disruptive behavior during teleconferenced or hybrid meetings, ensuring order even in virtual settings.

Conducting the Meeting: Public Comment

- Cannot require names or conditions for attendance
- Reasonable time limits on public comments allowed. However, when a legislative body limits time for public comment, the legislative body must provide at least twice the allotted time to a member of the public who utilizes a translator

Pathways for Remote Participation: Overview

- Just Cause Remote Participation
- Traditional Teleconferencing
- State of Emergency Teleconferencing – Not Covered In Further Detail
- Teleconferencing under the Americans with Disabilities Act (ADA) –
Contact Air District Staff, Not Covered In Further Detail

Pathways for Remote Participation: Just Cause Remote Participation

Two uses* per year for qualifying reasons such as childcare, illness, disability, or official travel; disclosure of adults present in the room is required when participating remotely under these provisions. Just cause remote attendance retains the requirement that a quorum be physically present at a publicly accessible location and requires a verbal statement at the start of the meeting describing the justification for remote participation.

Practical Tip: Notify staff that wish to appear remotely. Then, at the beginning of the meeting, briefly state the circumstances for just cause.

*As limited by Brown Act, because the Advisory Council meets once per month or less

Conduct Outside Public Meetings

Serial meetings are prohibited, including through emails or intermediaries; a majority may not develop a collective concurrence outside a properly noticed meeting.

EXAMPLES:

1. “Daisy chain” (A to B, B to C, C to D)
2. “Hub and spoke” (e.g. use of staff to communicate with members one by one for deliberation or a decision.)
3. Avoid converting permitted communications into serial meeting. (Example: A member of the public meets individually with each Board member about an issue. The member should avoid making inquiries about what the other members thought or said.)

Conduct Outside Public Meetings: *Email Risks*

Reply-all chains can violate the Brown Act; email may be used for scheduling or distributing information only; no deliberation, advocacy, or polling of member positions by email.

Conduct Outside Public Meetings: *Role of Staff*

Air District staff may provide information to members individually; staff may not relay member views among members; avoid facilitating a collective concurrence through staff communications or briefings.

Penalties for Brown Act Violations

Potential consequences include invalidation of actions, injunctions against violations, recovery of attorneys' fees, and potential criminal liability for intentional violations where elements are met.

Questions & Discussion

For more information:

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