



The Brown Act

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Intent: Transparency & Public Input

- ▶ Government officials are elected by the people and govern on behalf of the people.
- ▶ The public needs to have access and be able to observe, monitor, and evaluate its government officials.



When Does the Brown Act Apply?

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.

Government Code Sec. 54953.

What is a Legislative Body?

The Brown Act broadly defines a “legislative body” to include:

“A commission, committee, board, or other body of a local agency whether **permanent or temporary, decision making or advisory**, created by charter, ordinance, resolution or formal action of the legislative body.” Government Code Sec. 54952(b).

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When Does the Brown Act Apply?



Pop Quiz:

The Board of Supervisors appoints 9 local community members to the Climate Change Committee. The group is not paid. They don't have authority to take action. They are a group of local scientists, teachers, business professionals and college students. They research. They meet with County staff. They make recommendations to the Board.

Does the Brown Act apply?



What is a Meeting

* Meeting means any congregation of a majority of members of a legislative body at the same time and location to hear, discuss, deliberate or take action on any item within their subject matter jurisdiction;

and

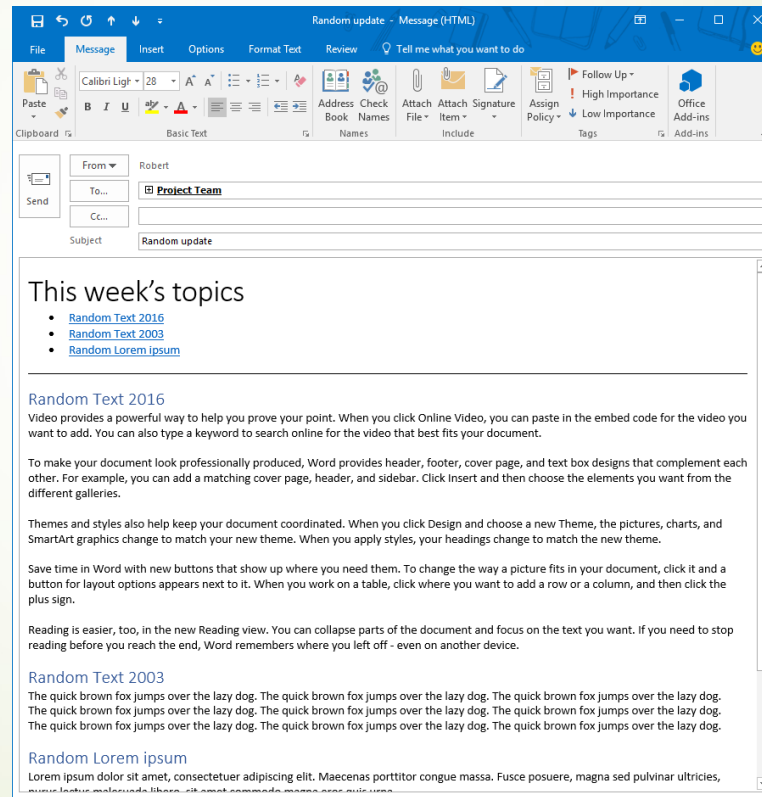
* A majority of members shall not use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate or take action

Is this a meeting?



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Is this a meeting?



Serial Meetings

A majority of members of a legislative body shall not, outside of an open and public meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business.

[Government Code Sec. 54952.2(b).]

Email or Text Chain

Commissioner A texts Commissioner B to chat about agenda item #7. Commissioner B emails Commissioners C and D about the same issue. The group may be forming a serial meeting if the series of communications involves a quorum.



Hub and Spoke



- Commissioner A calls Commissioner B to discuss agenda item #3. Next, A texts C and D to get their thoughts too.

What is NOT a Serial Meeting?

- ▶ Individual contacts between Commissioners and staff, counsel or others, e.g. staff meeting with a Commissioner to answer questions or provide information. Government Code Sec. 54952.2(c)(1)
- ▶ Staff should not ask and Commissioner should not answer questions about concerns or positions of other Commissioners.

NOT a Meeting

- Attendance at social or ceremonial events where no business of the Commission is discussed. Government Code Sec. 54952.2(c)(5).
- Community forums and meetings of other government bodies.

NOT a Meeting

- ▶ Attendance at public conferences if Commissioners do not discuss among themselves the business of their jurisdiction. Government Code Sec. 54952.2(c)(2)(3) and (4).

Social Media

New Law Alert:

- ▶ Commissioners may not engage in discussions, comment or “like” a fellow Commissioner’s FB page or other social media page if it involves the business of the Commission. Government Code §54952.2.
- ▶ A Commissioner may communicate on social media to provide information to the public, but only if the Commissioners do not discuss business among themselves.

Notice & Posting Agendas

- ▶ Agenda must be posted 72 hours in advance (if a special meeting is called by the Commission, 24 hour notice must be given)
- ▶ Brief description of items of business
- ▶ Agendas must be publicly accessible and distributed in advance to those who request copies

Items Not on Agenda



- No discussion or decision on items not on the posted agenda

Items Not on Agenda

- ▶ Members or staff may briefly respond to questions posed by the public.
- ▶ Members may ask staff a question, make a brief announcement or make a brief report on his or her own activities.
- ▶ Members may ask staff to report back to the body at a subsequent meeting, or take action to direct staff to place a matter on a future agenda.

Public Comment

- ▶ Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject area of the legislative body. (*Gov. Code § 54954.3(a).*)
- ▶ Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.



Public Comment – Legal Update

- ▶ Many commissions have adopted a policy to limit public comment on a topic (such as 3 minutes per speaker).
- ▶ Recent change in the law requires that whenever a Brown Act body limits the time for public comment, it must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity. Government Code section 54954.3.

Brown Act Violations: Civil Action

- ▶ Any individual or the District Attorney may file a civil lawsuit for injunctive relief or to void action taken in violation of the Brown Act. Government Code Sec. 54960.
- ▶ Attorneys' fees are available to prevailing plaintiffs. Government Code Sec. 54959.

Brown Act Violations: Criminal Penalties

- ▶ Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of the Brown Act and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled to, is guilty of a misdemeanor. Government Code Sec. 54959.

Public Records Act

- ▶ The Public Records Act ensures public access to information concerning the conduct of the people's business. (Gov. Code 6250)
- ▶ All of the County's records must be disclosed to the public upon request, unless there is a specific exemption. Exemptions are very narrow.
- ▶ Public records include email messages, text messages, notes kept in the ordinary course of business that pertain to the County's work.
- ▶ Best practice: draft written communication carefully and thoughtfully. Keep in mind the public's right to view records upon request.
- ▶ Additional resource:
<https://www.cacities.org/Resources/Open-Government>

Questions?

Thank you to the Commissioners and to all staff for your service to the community!