

Reference Guide

Brown Act and Public Records Act

Scientific Review Committee

Prepared by Alameda County Counsel and Center for Collaborative Policy

Overview

1) The Basics

- a. All meetings covered by the Brown Act must be open to the public.
- b. The agenda for such meetings must be posted 72 hours before the meeting.
- c. No action can be taken on an item not on the agenda; except in rare circumstances, no agenda items can be added at the meeting.
- d. The public must have an opportunity to address the committee.

2) Why is the SRC covered?

- a. The Brown Act applies to “meetings” of “legislative bodies.” Both terms are defined very broadly.
- b. A legislative body is “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 a legislative body.”
- c. A meeting is “any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction [of the committee].”

3) Key considerations for the SRC

- a. Teleconference of a majority of members of the committee would have to be noticed.
- b. Members can communicate by email/telephone, but need to ensure to all decisions on action items are made during meetings.
- c. The public must be able to address the committee on each agenda item. Reasonable time limits can be set. (Can be as short as one minute)

Meetings

4) What is a meeting?

A meeting is any gathering, formal or informal, of a majority of the members of a covered board to hear, discuss or deliberate on any matter within the board's jurisdiction. A meeting is subject to the Brown Act if members are briefed about a matter, or hear a proposal, or collectively acquire and exchange facts, even though no action is taken. The collective acquisition of information constitutes a meeting, but not the passive receipt of an individual's mail or the solitaire review of a memorandum by an individual committee member. One-way announcements from staff are fine; however, the SRC should not have substantive email communications between various members.

Serial meetings to reach concurrence are prohibited.

The Act specifically prohibits any use of direct communication, personal intermediaries or technological devices (e-mail, telephone) by a majority of the members to develop a collective concurrence on action to be taken (outside allowed teleconferencing meetings). These meetings are called serial meetings.

Most often this type of meeting is conducted through a series of communications by individual members or less-than-a-quorum groups, ultimately involving a majority of the committee's members. For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person committee. Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred.

The statutory definition also applies to situations in which technological devices are used to connect people at the same time who are in different locations. If the serial communications were not used to develop a concurrence as to action to be taken, the serial communications do not constitute a meeting and the Act is not applicable.

Substantive conversations among members concerning an agenda item prior to a public meeting probably would be viewed as contributing to the development of a concurrence as to the ultimate action to be taken. Conversations which advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue, are all examples of communications which contribute to the development of a concurrence as to action to be taken by the committee.

The SRC can circulate the meeting summaries from one to another to make sure the minutes accurately reflect agreements reached in the meeting, but must approve the meeting summaries at the next meeting.

The facilitator can speak with individual members to develop the agenda. .

Exemptions:

1. Because the purpose of the serial meeting prohibition is not to prevent **citizens** from communicating with their elected or appointed representatives, individual communications between a committee member and a member of the public are specifically exempt from the Brown Act;
2. Attendance at **conferences and other gatherings** which are open to the public as long as board members do not caucus or discuss among themselves, other than in a public forum as part of the scheduled program, business of a specific nature under the committee's jurisdiction;
3. Attendance at **social, informal or ceremonial events** where no business of the committee is discussed or decided.

5) Conference Calls

Teleconferencing may be used for all purposes in conjunction with any meeting within the committee's subject matter jurisdiction pursuant to the procedural requirements of Government Code Section 54953. In addition, there are important rules regarding public access that must be followed. The Act requires that each teleconference location must be fully accessible to members of the public. This means that members of the committee who choose to utilize their homes or offices as teleconference locations must open these locations to the public and accommodate any member of the public who wishes to attend the meeting at that location. Moreover, members of the public must be able to hear the meeting and testify from each location. Finally, the teleconference location must be accessible to the disabled. Because of these requirements, most agencies choose to utilize official or public meeting facilities for their remote teleconference sites.

When a committee elects to use teleconferencing, it must post an agenda at each teleconference location and list each teleconference location in the notice and agenda. Each teleconference meeting must be conducted in such a manner so as to protect the statutory and constitutional rights of the public. Each teleconference meeting agenda must ensure the public's right to testify at each teleconference location in accordance with section 54954.3.

In addition, the Act requires that at least a quorum of the members must participate from locations that are within the boundaries over which the committee exercises jurisdiction. In summary, all votes taken during a teleconference meeting must be conducted by rollcall. Government Code Section 54953(b)(3). The agenda must provide the public with an opportunity to address the committee at each teleconference location.

However, in the context of the SRC's status as an advisory body of national experts, the Office of the County Counsel has indicated that the SRC can utilize conference calls when necessary to accomplish its purposes, without meeting this requirement.

6) 72-Hour agenda posting for regular meetings

An agenda must be posted and mailed, and an agenda packet mailed, to anyone who has requested it, at least 72 hours before a regular meeting. A packet recipient may be charged a fee not exceeding the cost of the mailing service. The agenda is to be posted in a location freely accessible to the public.

7) Action can be taken on an item not on the agenda

(1) If the majority votes that an emergency situation exists, (2) after a 2/3 vote of the committee that there is need for immediate action (if less than 2/3 of the members are present, a unanimous vote of those members present is required) and that need came to the attention of the committee after posting the agenda, or (3) the item was posted for a prior meeting not more than 5 calendar days before and at the prior meeting, the item was continued to this meeting.

8) Special meetings require 24-hour notice

A special meeting may be called any time by a presiding officer or by a committee majority by delivering written notice to each committee member, to each local general-circulation newspaper, and to radio or television stations that have requested in writing to get notice. The notice must be "received" at least 24 hours before the time of the meeting, and must specify the time, place and business to be transacted or discussed. E-mail or fax may be used. Additionally, the notice must be posted at least 24 hours before the meeting in a location freely accessible to all members of the public. Only the items of business specified in the notice can be considered at a special meeting.

9) Email

The court found that circulation of a proposal among board members for their review and signature was a meeting in violation of the Act when a majority of the members of a legislative committee signed the document.

The Attorney General's office in 2001 concluded that a majority of a body would violate the Act if they e-mailed each other regarding current issues under the body's jurisdiction even if the e-mails were also sent to the secretary and chairperson of the agency, the e-mails were posted on the agency's Internet Web site, and a printed version of each e-mail was reported at the next public meeting of the committee. The opinion concluded that these safeguards were not sufficient to satisfy either the express wording of the Act or some of its purposes. Specifically, such e-mail communications would not be available to persons who do not have Internet access. Even if a person had Internet access, the deliberations on a particular issue could be completed before an interested person had an opportunity to become involved.

In the case of *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 381, the California Supreme Court stated that a memorandum from a body's attorney to the members of the body did not constitute a meeting under the Act. The court concluded that this one-way memorandum, which represented a confidential attorney-client communication exempt from disclosure under the California Public Records Act, was outside the coverage of the Act. Under the California Public Records Act, the memorandum was expressly exempt

from disclosure pursuant to section 6254(k). Had the members of the body sought to meet and discuss the memorandum, such a meeting would have been subject to the Act and could have been conducted in closed session only if it qualified under the pending litigation exception contained in section 54956.9.

Any other conversations between the members of the body and the attorney concerning the exempt memorandum would be subject to the serial meeting restrictions discussed previously.

10) Access

No meeting can be held in any facility that has discriminatory admission policies, that is inaccessible to the disabled, or is not open to the public without payment or purchase.

11) Public Comment

The public must have an opportunity to directly address the committee on each agenda item before or during its discussion or consideration, unless the item, substantially unaltered, has already been available for public comment at a previous committee meeting. The committee may not prohibit public criticism of its policies, procedures, programs or services, acts or omissions.

12) Closed Sessions

Closed sessions must be expressly authorized by explicit statutory provisions, for topics such as personnel matters, pending litigation, labor negotiations and property negotiations.

13) Public Records

Materials and written communications provided to a committee majority which are not exempt from disclosure under the Public Records Act must be provided for inspection, upon request, to members of the public without delay. Materials provided by a person who is not a committee member or staff to the committee at a meeting must be made available by the committee to the public at the meeting's conclusion if practicable. Correspondence, such as e-mails, is considered public records.

Meeting materials have to be made available to the public for conference calls and in-person meetings at the same time they are made available to the committee members.

Confidential Information

There are many categories under which records may be exempt from public disclosure. In regards to SRC review of proprietary wind company data, there is a catchall exemption to the Public Records Act for documents where the value to the public in keeping the documents confidential outweighs the value to the public in making them available. The presumption in the law is against use of this exemption, so the SRC would need to establish findings for the necessity of its review. There is no legal basis to allow the SRC to review such materials in closed session. "Selective" or "favored" access is prohibited; once it is disclosed to one requester, the record is public for all. §6254.5

Sources:

California Attorney General's Office 2003 pamphlet on the Ralph M. Brown Act, including text of the Act: http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf,

http://caag.state.ca.us/publications/2003_Main_BrownAct.pdf

Reporters Committee for Freedom of the Press Open Government Guide.

<http://www.rcfp.org/ogg/index.php?op=browse&state=CA>

First Amendment Project Society of Professional Journalists Pocket Guide to the Public Records Act, and to Open Meeting Laws in California: the Brown Act. [http://www.thefirstamendment.org/Brown-](http://www.thefirstamendment.org/Brown-Act-Brochure-DEC-03.pdf)

<http://www.thefirstamendment.org/publicrecordsact.pdf>