

# The Brown Act

The Brown Act of 1953 ([Government Code §§ 54950-54962](#)) governs meeting access for local public bodies.

## Meetings under the Brown Act

A meeting is any gathering of a **majority of the members** of a board to hear, discuss, or deliberate on matters within the agency's or board's subject matter jurisdiction. (§ 54952.2(a)) No vote or action is required for the gathering to be a meeting. The question about any gathering is whether it serves as a conduit for collective concurrence. Other important points about public meetings include:

- Must be open and public, and may not be secret;
- Serial meetings and Hub & Spoke meetings are illegal (§ 54952.2(b)(1)); and
- If action is taken in violation of open meetings laws, action may be voided. (§ 54953(a).
- See **Appendix A** for the 5 types of meetings allowed by the Brown Act.

## The Brown Act applies

- To **Local agencies**, including counties, cities, school and special districts. (§ 54951)
- To **Legislative bodies** of each agency--the agency's governing body plus any board, commission, committee, task force or other advisory body created by the agency, whether permanent or temporary. (§ 54952(b))
- To any **standing committee** of a board, regardless of the number of members, and having continuing jurisdiction over a particular topic. (§ 54952(b))

## The Brown Act does not apply

- To **ad hoc advisory committees** consisting of less than a quorum of the covered board (§54952(b)); most *non-profit corporations*.
- To all **other government agencies**. State governmental agencies are covered by the **Bagley-Keene Open Meeting Act of 1967**. (Govt. Code §§ 11120-11132) Students and campuses of the California State University are covered by the **Gloria Romero Open Meetings Act of 2000**. (Govt. Code §§ 89305-89307)
- Certain gatherings by the board are not covered by the Brown Act as long as the board members do not deliberate on topics within the board's subject matter jurisdiction. For example:
  - At a conference open to the public involving issues of general interest to the public. (§ 954952.2(c)(2));

- At a publicized meeting organized to address community concerns by another organization (§ 954952.2(c)(3));
- At a noticed meeting of another organization (§ 954952.2(c)(4));
- At a purely social or ceremonial occasion (§ 954952.2(c)(5)); and
- At a noticed standing committee meeting provided the non-member board members attend only as observers. (§ 954952.2(c)(6)).

### The Brown Act requires a local agency

- **To post notice and an agenda** at least 72 hours in advance of any regular meeting (§ 54954.2(a)); additionally
  - Post notice of continued meetings, (§ 54955.1);
  - Deliver notice of special meetings at least 24 hours in advance (to those who request it), (§ 54956);
  - Deliver notice of emergency meetings at least one hour in advance. (§ 54956.5 (a)(2)); and
  - Allow actions on items that have not been agendized only under the following situations. (§ 54954.2 (b));
    1. When a majority vote of the board establishes an emergency situation;
    2. When a 2/3 vote board (or unanimous, if 2/3 not present) decides that there is a need to take immediate action on an item that came to the attention of the board after the agenda was posted; or
    3. When an item has been postponed from a previous meeting that occurred not more than 5 days ago.
- **To notify the media** of special or emergency meetings (if requested), (§ 54956.5 (b)(2));
  - Allow media to remain in meetings cleared due to public disturbance. (§§ 54957.9)
- **To hold free of charge meetings** in places accessible to all (§ 54961(a)).
- **To not require a "sign in"** for anyone. (§ 54953.3)
- **To allow non-disruptive recording** and broadcast of meetings, (§ 54953.5(a)), and
  - Let the public inspect any recording made by the agency of its open meetings. (§ 54953.5(b)) The agency may destroy recordings it made after 30 days. (§ 54953.5(b))
- **To allow the public to address** the board at regular or committee meetings on any item in the agency's subject matter jurisdiction. (§ 54954.3(a))

- **To conduct only public votes**, with no secret ballots. (§ 54953(c))
- **To treat documents as public** without delay, if distributed to all or a majority of members of a board before or at the meeting, being that these documents are disclosable under the Public Records Act. (§ 54957.5)

### **The Brown Act's complex exception – Closed Sessions**

- Closed sessions are permitted only if they meet defined purposes and follow special requirements (§§ 54954.2(a)(1), 54954.5, 54957.7).
- Special public notice and agenda requirements apply (§§ 54954.2, 54954.5, 54957.7).
- All actions taken and all votes in closed session must be publicly reported orally or in writing within 24 hours (§ 54957.1(b)), and copies of any contracts or settlements finally approved must be made available promptly (§ 54957.1(c)).

### **The Brown Act does not require closed session.**

However, it does allow closed sessions under special situations that shall be cited on the agenda before the board goes into closed session.

1. **Personnel** -- Only to discuss the appointment, employment, performance evaluation, discipline, complaints about or dismissal of a specific employee or potential employee (§ 54957(b)(1)). The employee may request a public meeting on any charges or complaints.  
*But not for deliberation of general personnel policies or individual salaries unless as part of disciplinary action or labor negotiations.*
2. **Pending Litigation** -- Only if open discussion would prejudice the position of the agency in the litigation. (§ 54956.9). The litigation must be named on the posted agenda or announced in open session unless doing so would jeopardize the board's ability to service process on an unserved party or conclude existing settlement negotiations to its advantage. (§ 54956.9(c)).  
*But not simply for protection of attorney/client privilege.*
3. **Labor Negotiations** -- Only to instruct the agency's identified negotiator on compensation issues (§ 54957.6).  
*But shall first identify its designated representative.*
4. **Property Negotiations** -- Only to discuss, with an agency's identified bargaining agent, price or payment terms. The parcel, negotiators and the prospective seller or purchaser must be on the agenda. (§ 54956.8) Final price and payment terms must be disclosed when the actual lease or contract is discussed for approval. (§ 54957.1(a)(1))

*But not for discussion of potential sites, but rather about a specific one. The board shall also identify its negotiator, the real property involved, and the opposing party.*

5. **Others** -- License applications for people with criminal records (§ 54956.7); threats to public services or facilities; (§ 54957) insurance pooling (§ 54956.95)).

### **Shall vs May:**

Notice that the Brown Act sometimes specifies that an action **SHALL** be taken and at other times it states that an action **MAY** be taken.

The **SHALL** refers to mandatory requirements of this law. The **MAY** refers to actions that a board has permission to perform if the board has the authority from its own bylaws or rules.

### **Teleconference:**

An example of an action that the Brown Act allows a board to perform (if its bylaws allow it) is to hold a meeting by **Teleconference**. If a board holds a meeting by teleconference, the Brown Act dictates under what conditions this actions shall be taken. Such as the following (§ 54953):

1. The teleconference meeting shall comply with all other requirements.
2. All votes shall be taken by roll call.
3. Agenda shall be posted at all teleconference sites.
4. Each teleconference site shall be identified on the meeting's posted notice and agenda.
5. Each teleconference site shall be accessible to the public.
6. The public shall be provided an opportunity to address the board from each of the teleconference sites.
7. At least a quorum of the board members shall participate from within the boundaries of the board's jurisdiction.

The Brown Act is a state law. It specifies the minimum that the public expects because the public insists on remaining informed. The public intends on retaining control over the instruments they have created.

(See **Appendix B** for often misunderstood facts about the Brown Act.)

*This is a brief summary of general information on the Brown Act. This does not substitute for research or attorney consultation on any specific situation.*

## Appendix A: The Brown Act Allows for 5 Types of Meeting

<b>Meeting Type</b>	<b>Post and Notice</b>	<b>Ordered by</b>
<b>Regular (§ 54954.2)</b>	<p>Post at least 72 hours before the meeting.</p> <p>Notice mailed to those on a list for a minimal fee.</p>	Ordered per bylaw or motion
<b>Adjourned (§ 54955)</b>	<p>Post at least 24 hours after adjournment of original meeting that set the adjourned meeting. Posted near the door!</p> <p>If the hour is omitted, the hour is that of the regular meeting.</p> <p>Notice in same manner as in Special Meeting.</p>	<p>Ordered by majority vote at regular meeting, adjourned meeting, or special meeting. Quorum is not required.</p> <p>If all members are absent, clerk or secretary may declare adjournment and set the adjourned meeting.</p>
<b>Special (§ 54956)</b>	<p>Post at least 24 hours before the meeting.</p> <p>Written notice to each member and media (that requested it) at least 24 hours before the special meeting. Written notice is dispensed with if member waives it or attends meeting. May be called to discuss budget but not salaries.</p>	Ordered by presiding officer or majority of the members
<b>Emergency (§ 54956.5)</b>	<p>Post at least 24 hours before, if possible.</p> <p>Notify the media (that requested it) at least 1 hour before, or when possible. Minutes shall be posted for at least 10 days as soon as possible.</p>	Ordered by majority of members for conditions of work stoppage, crippling activity, impaired public health or safety.
<b>Dire Emergency (§ 54956.5)</b>	<p>Post at least 24 hours before, if possible.</p> <p>Notify the media (that requested it) at least 1 hour before, or when possible. Minutes shall be posted for at least 10 days as soon as possible.</p>	Ordered by majority of members for conditions of crippling disaster, mass destruction, terrorist act, endangered public health or safety.

## Appendix B: Ten Often Misunderstood Facts about the Brown Act

1. **Standing Committees** irrespective of their composition with a continuing subject matter jurisdiction or with formally scheduled meetings are subject to the Brown Act. (§ 54952)
2. Nothing in the Brown Act is intended to allow members of the public free **admission to a conference** or similar gathering at which the organizers have required other participants or registrants to pay fees as a condition of attendance. (§ 54952.2 (c)(2))
3. A member of the public shall not be required, as a condition to attendance at a meeting, **to register his name**, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance. (§ 54954.3)
4. The board may adopt reasonable regulations to ensure that the public has an opportunity to address the board, including but not limited to, **limiting the total time** allocated for public testimony on an issue and for each speaker. (§ 54954.3(b))
5. The board shall not **prohibit public criticism** of the policies, procedures, programs, or services of the board, or of the acts or omissions of the board. (§ 54954.3 (c))
6. Nothing in the Brown Act shall confer any privilege or **protection for expression** beyond that otherwise provided by law. (§ 54954.3 (c))
7. Prior to holding any closed session, the board shall disclose, in an open meeting, the item to be discussed in **closed session limited to** items on § 54954.4. In closed session the board may consider only those matters covered in its statement. (§ 54957.7 (a))
8. In the event that any meeting is **willfully interrupted by a group** of persons so as to render the orderly conduct of such meeting unfeasible, the board may order the meeting cleared and continue in session. (§ 54957.9)
9. A court may award court costs and reasonable attorney fees to the plaintiff in any action brought forth that finds the **board has violated** the Brown Act. (§ 54960.5)
10. A court may award court costs and reasonable attorney fees to a defendant in any action brought forth that finds that the accusation was clearly frivolous and **totally lacking in merit**. (§ 54960.5)