



BAUASI Approval Authority
Brown Act Review & Update

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A Professional Law Corporation

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Ralph M. Brown Act

Gov. Code, 54950, et seq.

- Adopted in 1953; occasionally amended
- State law governing meetings of local “legislative bodies”
- Rules are designed to ensure actions and deliberations are taken openly and with public access and input
- Applies to
 - Governing bodies of local agencies (*e.g.*, city council, board of directors, Approval Authority)
 - Decision-making or advisory bodies created by formal action of the legislative body (*e.g.* commissions, standing committees)
- Does not apply to “ad hoc” committees

“Meeting”

Quorum

+ **Hearing, Discussion, Deliberation**

(formal or informal)

+ **Item of Business**

(*i.e.* Subject Matter Jurisdiction)

= **Meeting**

- *Illustration:* If 6 or more Representatives collectively hear, discuss, or business of the Approval Authority, the Brown Act applies.

Serial Meetings

Series of communications = Meeting

- Hub and spoke
 - A staff member (the hub) communicates with members of a legislative body (the spokes) one-by-one for input on a proposed action and in the process reveals members' positions to other members in advance of the meeting.
- Daisy chain
 - Member A talks to Member B about an item of business. Member B talks to Member C., who talks to Member D, and so on, about the same item of business.

BEWARE OF THE REPLY-ALL ON EMAILS!

Exceptions

- Conferences
- Community meetings
- Social or ceremonial occasions
- Individual deliberation and decisionmaking
- Individual contacts
- Standing committees
- Meetings of other legislative bodies

“Open & Public”

- Notice and agenda requirements
- Discussion and action limited to agenda
- Public vote, no secret ballots
- Disclose documents distributed to body
- Allow public comment, criticism
- Comply with ADA
- No discrimination

Closed Sessions

- Allowed only by specific provisions of the Brown Act
- Special notice and reporting requirements
- Examples of permissible topics:
 - Real estate negotiations
 - Pending or threatened litigation
 - Initiation of litigation
 - Personnel
 - Labor negotiations
 - Public security

Recent Updates

- AB 992 (2020)—Social Media
- E.O. N-29-20 (2020)—Virtual Meetings

Social Media

AB 992 (2020)

- Amends Government Code Section 54952.2 to clarify that most communications on social media are permissible.
- Bright-line rule:
 - Members of a legislative body may not respond directly to any communications posted on the internet by other members of the same legislative body regarding a matter within the jurisdiction of the legislative body.
 - Includes “likes” and emojis
- Applies to “internet-based social media platform,” which doesn’t appear to include NextDoor (oversight?) or other platforms where participation is limited. In those cases, normal rules would apply.

Virtual Meetings

Executive Order N-29-20 (2020)

- Issued: March 17, 2020
Extended: June 11, 2021
Expires: September 30, 2021
- Suspends Brown Act rules for attendance by teleconference

Executive Order N-29-20

Suspended Teleconference Rules

- Physical presence of members of legislative body or public not required
- Notice of each teleconference location of members not required
- Teleconference location does not need to be accessible to the public
- No requirement for public comment at each teleconference location
- Quorum of members within jurisdiction territory not required
- BUT must allow public to observe and comment telephonically or electronically.

Executive Order N-29-20

After September 30, 2021?

Permanent legislative efforts appear to be dead or tabled until next year

- **AB 703**—Removes teleconference notice requirements; requires allowing public to observe and address directly in person *and* remotely via phone or web; requires a quorum of members participate in-person from singular physical location open to public identified on agenda
- **AB 361**—Until January 1, 2024, authorizes local agencies to use teleconferencing without complying with the teleconferencing when a legislative body holds meeting during a declared state of emergency
- **AB 339**—Until December 31, 2023, requires all open and public meetings of city council or county board of supervisors governing 250,000+ people to meet in-person but include opportunity for public to attend and participate via phone or web; requires certain city councils or county board of supervisors to continue video streaming (Note: Other local agencies were removed from bill.)

Whether there will be a last-minute extension of E.O. N-29-20 by the Governor likely depends on Covid-19 numbers at end of September.