



Town of San Anselmo

Brown Act Reference Guide

"Public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."
Brown Act, Gov. Code, § 54950.

This guide is intended to provide a summary of California's open meeting law, the "Brown Act", as it applies to issues that may arise before the Town Council, Planning Commission, and the Town's various standing committees. A more thorough Brown Act discussion may be found in the League of California City's publication, "Open & Public V: A Guide to the Ralph M. Brown Act."¹ Please feel free to contact the Town Attorney's office with any questions or concerns. We are here to assist you, and appreciate your work for the San Anselmo community.

In a nutshell, the Brown Act requires that: 1) all meetings are open to the public; 2) the public has the right to comment; and 3) no discussion, deliberation, or action among a majority of the legislative body may occur outside a public meeting.

¹ <https://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>

Brown Act Applies to All Legislative Bodies of a Local Government

- ❖ *Includes Town Council, Planning Commission, and standing committees.*
- ❖ *Temporary “ad hoc” committees comprised solely of less than a quorum, with a single subject matter, and of limited duration, are not subject to the Brown Act.*
- ❖ *All meetings of a legislative body are open and public.*

All meetings of the local agency’s legislative body must be open to the public unless an exception applies. (Gov. Code, § 54953(a).) A “legislative body” includes all elected and appointed bodies such as the Town Council and Planning Commission, and all standing committees. The Brown Act also applies to newly elected Town Council members before they are sworn-in. (Gov. Code, § 54952.1.) In contrast, temporary “ad hoc” committees comprised solely of less than a quorum of the legislative body, with a single subject matter, and of limited duration, are not subject to the Brown Act.

Definition of a Meeting

- ❖ *All meetings must be open and public.*

The Brown Act requires that all “meetings” of a legislative body be open and public. The definition of a “meeting” is broad and covers most gatherings of a majority of a legislative body, including: any gathering of a majority of members; at the same time and location; to hear, discuss, deliberate, or take action upon any item that is within its subject matter jurisdiction. (Gov. Code, § 54952.2.)

Put another way, any time a majority of a legislative body “meets” either in-person or otherwise, and talks about any item or potential item of Town business, the Brown Act applies.

Exceptions to Meeting

- ❖ *Individual contacts.*
- ❖ *Conferences.*
- ❖ *Community meetings.*
- ❖ *Other legislative bodies, if observer only.*
- ❖ *Ceremonial or social events.*
- ❖ *Other standing committees.*

The limited situations listed above do *not* constitute a Brown Act meeting, and therefore are not required to be open and public. (Gov. Code, § 54952.2.)

Under the individual contact exception, communication between one member and another does not qualify as a Brown Act meeting. (Gov. Code, § 54952.2(c)(1).) However, these communications may become a prohibited “serial meeting” if the individual also makes a series of contacts with a majority of

the members, or if the communication is forwarded to a majority of the members. Serial meetings, and how best to avoid them, are explained in the “Serial Meeting” section below.

A majority of a legislative body may also attend a seminar, conference, or educational gathering if the conference is open to the public and involves matters of general interest to the public or local agencies, rather than the jurisdiction specifically. For example, a public official may attend a League of California Cities conference, but not a seminar to discuss among themselves items specifically relating to the Town of San Anselmo. (Gov. Code, § 54952.2(c)(2).)

A privately sponsored neighborhood meeting, town hall forum, or other community meeting where issues of general local interest are discussed, may be attended by a majority of the legislative body. However, the meeting must be “open and publicized” and the members may not discuss among themselves items relating to the Town, other than as a general part of the scheduled program. A majority of members may attend an open noticed meeting of another legislative body or local agency. (Gov. Code, § 54952.2(c)(4).) However, members may not discuss among themselves specific Town business other than as part of the scheduled meeting.

The social or ceremonial exception provides that public officials may attend purely social or ceremonial events. (Gov. Code, § 54952.2(c)(5).) Members may not discuss among themselves specific items of Town business.

The standing committee exception allows members of one legislative body who are not members of a standing committee to attend an open and noticed standing committee meeting. (Gov. Code, § 54952.2(c)(6).) Officials may only attend as observers, and should not speak at the standing committee meeting or otherwise participate.

Pitfalls: Prohibited Serial Meeting

- ❖ *No serial meetings allowed; “Hub and Spoke” and “Daisy Chain”; use care with electronic communications and social media.*

Noted above, a Brown Act “meeting” occurs whenever a majority of a legislative body discusses, deliberates, or takes action on an item within its subject matter jurisdiction. For example, a majority cannot meet in any physical or virtual location – be it Town Hall, the local bakery, or a Zoom meeting – to discuss Town matters unless it is noticed, open, and public. Similarly, the Brown Act prohibits public official communication that may have the same effect as a meeting – referred to as a “serial meeting”.

The Brown Act prohibits serial meetings. (Gov. Code, § 54952.2(b)(1).) A serial meeting is a series of communications between members where ideas regarding Town business are exchanged among a majority through an intermediary, or by telephone, text, voicemail, or other electronic communication.

A serial meeting typically occurs in the following ways:

Hub and Spoke. A serial meeting can occur when an intermediary contacts at least a quorum of the legislative body to develop a collective concurrence on an action to be taken by the body. The hub can be any person, and the spokes are public officials. For example, one official on a 5-member committee sees another at the grocery store and says: “I’ve talked to member A and she will vote to recommend the plan to the Council. How about you?”

Any third party, such as a resident or reporter, may become an unknowing “hub” to a prohibited serial meeting. For example, a resident asks the member for her views on a matter, and then communicates the views of other members that constitute a majority of the body. To avoid this pitfall, state your ground rules up front. Explain that you do not wish to hear the views of other members, and will not make a final decision on the matter prior to the meeting. Request that your views not be communicated forward.

Daisy Chain. A serial meeting occurs when there is a series of communications among at least a quorum of members. For example, member A calls member B, who then emails member C, and so on. However, an official may have communications outside a public meeting with other public officials to *answer questions or gather factual information* on an issue, IF that person does not communicate to other members the comments or positions of any other member. (Gov. Code, § 54952.2(b)(2).) We urge caution in this scenario, as there is a risk that one person will disclose the views of other members constituting a majority of the body. To avoid an inadvertent violation, we recommend that public officials not discuss Town business with a majority of members. If necessary to do so, we suggest that you begin the communication stating that you do not wish to hear the position of any other member.

Electronic Communication to “Meet”. Public officials should be careful not to inadvertently participate in a serial meeting by use of electronic communication. Given the ease of electronic communication – whether texts, emails, or social media platforms – violations can occur quickly and easily.

Recent State law imposes additional restrictions and clarifications regarding social media. An official may communicate via a social media platform for the purpose of answering questions, providing information to the public, or soliciting information from the public regarding a matter within the legislative body’s subject matter jurisdiction. However, officials may not use these platforms to discuss among themselves business that is within the subject matter jurisdiction of the legislative body, which is defined broadly and includes social media posts and the use of any “digital icon that expresses reactions to communications made by other members of the legislative body...” such as a thumbs-up or smiley-face emoji.

Additionally, an official may not directly respond to any communication on a social media platform that is made, posted, or shared by another member of the legislative body. For example, one committee member may not post a comment in response to another committee member’s social media post, even though there is no communication among a majority of the members of the legislative body. Please note that this is a more stringent standard than the traditional serial meeting prohibition, which prohibits communication among a *majority* of members.

The following guidelines are useful:

- Avoid sending emails to the whole legislative body. If necessary, provide information only. Do not solicit a response.
- Avoid group texts with a majority of the legislative body.
- Use caution when replying to emails that are to the legislative body. Do not communicate your position. Do not use “reply all”.
- Be careful before sending any email or text. Remember, your email or text may be forwarded to other officials, inadvertently creating a serial meeting.
- Remember, emails and texts even on your private device and from your private account will be a disclosable public record if related to the Town’s business; they are not private and may require disclosure in the event of a Public Records Act request.
- Use care when commenting on, and using digital icons (e.g., a thumbs-up emoji) on, social media platforms. Do not engage with another official from the legislative body on a social media platform.

Agendas

- ❖ *No discussion or action allowed for items not on the agenda.*

There are two main provisions of the Brown Act that ensure public business occurs openly. First, legislative bodies must post agendas prior to the meeting.

Second, no action or discussion may occur on items that are not listed on the agenda. (Gov. Code, § 54954.2.) There are limited exceptions. Officials or staff may briefly respond to public comment, ask clarifying questions, or make a brief announcement. Members may also request staff to report back at a subsequent meeting or direct staff to place a matter on a future agenda.

As a general rule, any discussion on non-agendized items should be brief and limited to asking or responding to, clarifying factual questions.

Public Participation

- ❖ *Public has the right to give general comments on any topic within the legislative body’s subject matter jurisdiction during the open comment portion of the meeting; and comment on any item of business on the agenda.*

Members of the public have the right to give public comment on: 1) any item within the subject matter jurisdiction of the body (this typically occurs during the general comment period before the main portion of the meeting); and 2) any item of business being considered by the legislative body on the agenda. (Gov. Code, § 54954.3(a).) Public comment should be allowed prior to the body taking any action on an item of business.

However, to ensure the orderly conduct of a meeting, the legislative body may place reasonable time limitations on public comments. Public comment may be limited to 3 minutes per speaker. Additionally, neither the legislative body nor anyone at a meeting (such as a presenter or staff) has a duty to respond to public comment or answer questions; however, responses may occur at the chair's discretion.