

Downey Unified School District

The Ralph M. Brown Act Rules Governing Committee Members

- The Ralph M. Brown Act (“Brown Act”), also referred to as the “Open Meeting Act”, was enacted in 1953. (Gov. Code §§ 54950 – 54963.)
- Open and Public: All of the deliberative processes of legislative bodies, including discussion, debate, and the acquisition of information must be open and available for public scrutiny, subject to certain very narrow exceptions.
- All persons permitted to attend: All meetings of a legislative body shall be open and public, and all persons shall be permitted to attend any meeting of a legislative body of a local agency except as otherwise provided. (Gov. Code § 54953(a).)

- Purposes of the Brown Act
 - To ensure that the governing bodies of local public agencies conduct the people's business in an open and transparent fashion (Gov. Code § 54950);
 - To keep the public informed of the actions, debates and views of locally elected representatives; and
 - To provide the procedural framework for local legislators to meet, debate, act and listen collectively to their constituents.

- A “legislative body” includes governing boards of local agencies and their committees and commissions. (Gov. Code § 54952.)
 - Also includes advisory committees/standing committees that have continuing subject matter jurisdiction or fixed meeting schedules.
 - Created by charter, ordinance, resolution, or formal action of the Board.

(Gov. Code § 54952(b).)

Brown Act Applicability

- Applies to a “member of the legislative body of a local agency” which includes “[a]ny person elected to serve as a member of a legislative body who has not yet assumed the duties of office...”
- Once elected, officials are expected to know the requirements of the Brown Act, even before taking office. (Gov. Code § 54952.1.)

- A “meeting” means any congregation of a majority of members of a legislative body at the same time and location (including teleconferencing and virtual meetings) to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. (Gov. Code § 54952.2(a).)

- Outside of a meeting, a majority of members of a legislative body may not use a series of communications of any kind, directly or through intermediaries to develop a collective concurrence on any matter within the subject matter jurisdiction of the legislative body. (Gov. Code § 54952.2.)

Meetings-Substance v. Procedure

- Procedural or administrative matters do not constitute meetings if they do not involve substantive discussions of a topic within the subject matter of the Board/Committee.
- Examples: Communication limited to providing information (e.g., Superintendent's weekly report) or procedural or administrative matters (scheduling meetings, determining agenda and time allotted to each of them)

Meetings-Developing a Collective Concurrence

- Test: If discussion can potentially contribute to developing a collective concurrence, it likely constitutes a “meeting” for Brown Act purposes.
- Note: Even if a Board/Committee member does not participate in a discussion, the mere act of listening may contribute to developing a collective concurrence.

● Common scenarios that are likely meetings:

- **1. Group Texts/Emails.** Messages in which a majority of the Board/Committee is copied; Consecutive “Forwards” and “Replies” of electronic messages may constitute a serial meeting.
- **2. Hub of a Wheel.** Consecutive conversations through intermediary to poll the Board/Committee;
- **3. Daisy Chain.** Consecutive conversations from one person to another to poll the Board/Committee;
- **4. Internet/Blogs.** List-serves in which a majority of the Board/Committee may post comments and responses such that deliberations, discussions or opining can be viewed as a path to a “concurrence.”
 - Consider Assembly Bill (“AB”) 992

AB 992: Social Media Interactions

- Effective January 1, 2021, amended Gov. Code section 54952.2
- AB 992 clarifies which social media interactions are not in violation of the Brown Act.
- Provides structure and clarity to interactions that may likely already be happening
- Applicable to all social media platforms that are open and accessible to the public (such as Twitter, Instagram, Facebook, TikTok, and Snapchat), and any online service that allows for public interaction, such as:
 - Chatrooms and forums
 - Comment sections on blogs
 - Online media

AB 992: Social Media Interactions Cont.

- Committee members may answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction.
- A majority of members may not “discuss among themselves” a matter within the legislative body's subject matter jurisdiction (e.g., comments or use of digital icons that express reactions to communications).
- Committee members are prohibited from communicating directly with other members regarding any matter within the Committee's subject matter jurisdiction. This may include:
 - Making posts; Commenting; Using digital icons that express reactions (i.e. likes, emojis, thumbs up, etc.).
- These provisions will remain in effect until January 1, 2026, unless further extended.

- Common scenarios that are likely NOT meetings:

- The following scenarios are specifically identified in Gov. Code § 54952.2(c) as not being meetings, “provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.”
 - **[No Quorum]** (1) Individual contacts or conversations between a member of a legislative body and any other person...
 - **[General Meetings]** (2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body...

- **[Community Meetings]** (3) *The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency...*
- **[Public Entity Meetings]** (4) *The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency...*

Meetings Cont.

- ◆ [**Parties**] (5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion...
- ◆ [**District Meetings**] (6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

Agenda Requirements

- 72 hours before regular meeting; 24 hours before special meeting; sufficient detail to allow public to determine whether to participate (“brief general description”)
 - Exceptions to standard agenda requirements
 - 1. Emergency (majority vote);
 - 2. Need to take immediate action that arose after agenda posted;
 - (2/3 vote, unanimous if less than 2/3rds of Board/Committee present)
 - 3. Making a brief announcement or brief report of activity.
- Brown Act Rules that normally apply to teleconference attendance
 - A quorum of the legislative body to meet in person in the agency’s jurisdiction
 - Posting of the members’ remote location on the legislative body’s meeting notice and agenda
 - Public access to each teleconferencing location

AB 2449 – Modification to Brown Act Teleconferencing Procedures

- On September 13, 2022, Governor Newsom signed into law AB 2449, which imposes four periods of differing rules on remote access to, and member attendance of, local agency public meetings under the Brown Act.
- AB 2449 is effective January 1, 2023; codified in new Government Code section 54953(f).
- We will expand on the four periods of differing rules regarding remote access:
 - Now until Jan. 1, 2023 – Rules that normally apply to teleconference attendance (“Rules”) and AB 361
 - Jan. 1, 2023 to Jan. 1, 2024 – Rules, AB 361, and New Rules under AB 2449 (“New Rules”)
 - Jan. 1, 2024 to Jan. 1, 2026 – Rules and New Rules
 - Jan. 1, 2026 and Onward – Rules

Open Meeting Requirements Under AB 361

- On September 16, 2021, Governor Newsom signed into law AB 361 which permits local agencies to conduct public meetings virtually during a declared local or state emergency, without having to rely on executive orders.
- A local agency that wishes to utilize the remote meeting provisions of AB 361 must find that:
 - 1) The state of emergency continues to directly impact the ability of the members to meet safely in person, or
 - 2) State or local officials continue to impose or recommend measures to promote social distancing.
- A local agency must review its determination **every 30 days** and make a new determination as to whether the circumstances which justify teleconferencing still exist.

Jan. 1, 2023 to Jan. 1, 2024 – Traditional Rules, AB 361, and New Rules under AB 2449

- AB 2449 amends the Brown Act’s teleconferencing rules and adds a new alternative for abbreviated teleconferencing procedures that does not require a proclaimed state of emergency.
- Hybrid model of physical and remote attendance
- AB 2449 requires that at least a quorum of members participate in person from a single physical, public location clearly identified on the agenda and within the local agency’s territorial jurisdiction. (Gov. Code § 54953(f)(1).)
- A member may request virtual attendance for “just cause” or due to "emergency circumstances".

Jan. 1, 2023 to Jan. 1, 2024 – Traditional Rules, AB 361, and New Rules under AB 2449

- Just Cause:
 - A member must notify the legislative body and provide a general description of the circumstances justifying need for virtual attendance. A member can make her notification to appear virtually as late as the start of the meeting.
 - A member is limited to two virtual attendances based on “just cause” per calendar year. (Gov. Code § 54953(f)(2)(A)(i).)
- Qualifying Reasons:
 - Childcare
 - Contagious illness.
 - Defined physical or mental disability that is not otherwise accommodated for
 - Traveling while on official business of legislative body or another state or local agency

Jan. 1, 2023 to Jan. 1, 2024 – Traditional Rules, AB 361, and New Rules under AB 2449

- Emergency:
 - A member must make request “as soon as possible” and provide general description of the circumstance justifying the request. (Gov. Code § 54953(f)(2)(A)(ii).)
 - Requires that the legislative body take action and approve the remote attendance at the start of the meeting for the member to be allowed to participate remotely for that meeting. (Id.)
- Qualifying Reasons:
 - Physical or family medical emergency

Teleconferencing Requirements

- Legislative body must provide either a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting. (Gov. Code § 54953(f)(1)(A).)
- A legislative body that holds a meeting shall follow the procedural rules outlined in Gov. Code § 54953(f)(1), including: Agenda must include call-in option for public to attend meeting; public comments must be allowed in real time during meeting
- AB 2449 requires record keeping of the following:
 - Which member has made a request to appear remotely
 - How many times each member has appeared remotely
 - The member's reason for appearing remotely, and any action taken by the legislative body
 - Who will be in physical attendance at the meeting and confirmation there will be a physical quorum

Thank You

Downey Unified School District

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