



BUSINESS ADVISORY COMMITTEE
Tuesday, December 9, 2014 at 5:30pm
383 Main Street, City of Brawley
Administrative Building Council Chambers

Committee Members:

Sean Wilcock, Chairperson
Alan Huber, Vice-Chairperson
Sarah Chairez
Lupe Navarro
Audrey Noriega

Ex-officio Members:

Donnie Wharton, Council Member
Rosanna B. Moore, City Manager
Jason Zara, Executive Director

Agenda

Call to Order & Roll Call

Approval of the Agenda

Public Comments

Presentations

- Update by County Supervisor Ryan E. Kelley

Consent Agenda

- Approval of Minutes of October 29, 2014
- Approval of Meeting Calendar for 2015

Old Business

- Continued Discussion and Input on Sidewalk Sales (G Gaste, RB Moore)

New Business

- Overview of the Ralph M. Brown Act by Bill Smerdon, City Attorney

Committee Member Comments/Remarks

Adjournment



BUSINESS ADVISORY COMMITTEE
383 Main Street, City of Brawley
Administrative Building Council Chambers
October 29, 2014

MINUTES

Call to Order

The meeting was called to order at 5:30 p.m.

Roll Call

Members Present: Sarah Chairez, Alan Huber, Lupe Navarro, Audrey Noriega,
Sean Wilcock

Members Absent: None

Ex Officio Members Present: Rosanna Bayon Moore, City Manager
Jason Zara, Brawley Chamber of Commerce Exec. Director
Donald Wharton, City Council Member

Other Staff Present: Ruby Walla, Finance Director
Gordon Gaste, Planning Director

Approval of the Agenda

Motion: Approved as presented. ***Wilcock/Huber 5-0***

Public Comments

1. City of Brawley Mayor Pro-Tempore George Nava commented re: the original formation effort for the Business Advisory Committee and thanked the committee for participating.
2. **New Business**
 - a. Welcome and Introductions
 - b. Revisit of Enabling City Council Resolution 2010-37, 2014-36, Roles and Responsibilities of the Business Advisory Committee. It was clarified that Ex-Officio Members do not vote.
 - c. Nomination and Election of Chairperson and Vice-Chairperson

Motion: To nominate Alan Huber as Vice-Chairperson of the Business Advisory Committee. **Huber/Navarro 5-0**

Audrey Noriega was nominated as Chairperson. Noriega respectfully declined nomination.

Motion: To nominate Sean Wilcock as Chairperson of the Business Advisory Committee. **Noriega/Navarro 5-0**

- d. Establishment of Regular Meeting Schedule (at least once quarterly per Resolution).

Ex-Officio Member Bayon Moore presented a 2015 calendar.

Motion: To hold meetings once per month on the second Tuesday of each month, starting December 9, 2014 at 5:30PM at the City Council Chambers. **Huber/Noriega 5-0**

- e. Presentation, Discussion and Input on Peddler's Permit (R Walla, RB Moore)

Finance Director Ruby Walla presented the staff report on Peddlers Licenses and Brawley Municipal Code Section 16.86.

Motion: To establish a peddler's business license that applies to vendors or booths at City & Chamber sanctioned events only, excluding Cattle Call events during Cattle Call week. **Huber/Noriega 5-0**

- f. Presentation, Discussion and Input on Sidewalk Sales (G Gaste, RB Moore)

Planning Director Gaste presented the staff report on Sidewalk Sales and input from the Planning Commission to date.

The committee directed to bring back the subject back for further discussion and input at the next meeting. Staff offered to gather additional input from downtown merchants.

Committee Member Comments/Remarks

Ex-officio Wharton commented that the Business Advisory Committee has been formed at a good time. With Committee recommendations and leadership, one year from now improvements in this City will be evident.

Next Meeting Date

Due to the continued discussion regarding Sidewalk Sales, meeting at the normally established time would conflict with scheduled absence of Planning staff. The Business Advisory Committee adjourned to November 19, 2014 at 5:30PM.

Adjournment

There being no further business before the Business Advisory Committee, the meeting was adjourned at 8:15PM.

BUSINESS ADVISORY COMMITTEE 2015 MEETINGS

January 2015

S	M	T	W	T	F	S
	4	5	7	8	2	3
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February 2015

S	M	T	W	T	F	S
1	2	4	5	6	7	
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March 2015

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2015

S	M	T	W	T	F	S
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	22	23	24	25	
26	27	28	29	30		

May 2015

S	M	T	W	T	F	S
3	4	6	7	8	9	1
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June 2015

S	M	T	W	T	F	S
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2015

S	M	T	W	T	F	S
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	22	23	24	25	
26	27	28	29	30	31	

August 2015

S	M	T	W	T	F	S
2	3	5	6	7	8	1
9	10	11	12	13	14	15
16	17	19	20	21	22	
23/30	24/31	25	26	27	28	29

September 2015

S	M	T	W	T	F	S
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October 2015

S	M	T	W	T	F	S
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	21	22	23	24	25
26	27	28	29	30	31	

November 2015

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2015

S	M	T	W	T	F	S
6	7	8	9	10	11	12
13	14	16	17	18	19	
20	21	22	23	24	25	26
27	28	29	30	31		

Notes

All meetings are scheduled for 5:30 P.M. at the Brawley City Council Chambers Located at 383 Main Street, Brawley, CA

- Council Meeting
- BAC Meeting

Scheduled Holidays

- Jan. 1 – New Year’s Day 2015
- Jan. 19 – Martin Luther King Day
- Feb. 16 – President’s Day
- May 25 – Memorial Day
- July 3 – Independence Day
- Sept. 7 – Labor Day
- Nov. 11 – Veterans Day
- Nov. 26 – Thanksgiving Day
- Nov. 27 – Day after Thanksgiving
- Dec. 24 - Christmas Eve
- Dec. 25 – Christmas Day
- Dec. 31 – New Year’s Eve
- Jan. 1 – New Year’s Day (Jan. 1, 2016)

BUSINESS ADVISORY COMMITTEE
STAFF REPORT
City of Brawley

Meeting Date: 10/19/14

City Manager: RBL

PREPARED BY: Gordon R. Gaste, AICP, Planning Director

PRESENTED BY: Gordon R. Gaste, AICP Planning Director

SUBJECT: Downtown Specific Plan Area Sidewalk Sales Specific Plan Amendment

DISCUSSION: Currently, sidewalk sales within the Downtown Specific Plan boundaries require a Planning Commission Conditional Use Permit (CUP). Following feedback from local merchants during last year's Cattle Call festivities, City Council directed staff to research other potential avenues for accommodating sidewalk sales. Such a change requires an amendment to the Downtown Specific Plan which would first be considered by the Brawley Planning Commission and then would be forwarded to the City Council with a recommendation.

The Brawley Planning Commission considered the sidewalk sales topic in June and August of 2014.

Staff, in consultation with the Chamber of Commerce, developed potential alternatives to the existing CUP process. The following were options that were presented in June of 2014 to the Planning Commission:

1. Allow sidewalk sales during the Cattle Call and holiday season by right for all businesses. For example, the dates could range from November 1 through January 1.
2. Permit a maximum number of passes per year to be used at any time for each business. For example, a business could only have 6 sales per year at a time of their choosing. Each pass could represent a 2-day (48-hour) period to correspond to a weekend.
3. Leave the process "as is," requiring a Planning Commission CUP.

On August 13, 2014, the Planning Commission voted to recommend an amendment to the Downtown Specific Plan, allowing sidewalk sales with the following provisions:

1. Allow sidewalk sales year round in the right-of-way, within the first five (5) foot area from the property line with an annual City issued permit and modest fee of \$100 - \$200 to defray the cost of code enforcement.
2. Require submittal of a layout for all proposed sales, to ensure adherence to ADA and the Fire Codes.

4. Encourage the Chamber of Commerce and downtown merchants organizations to establish standards for displaying items in an organized and uniform fashion such as use of standardized tables and racks.
5. Prohibit the storage of products that block the doorway in or outside the building when taken inside to allow for proper emergency access.
6. Enforce requirements and issue violations as infractions per Section 1.7-1 of the Zoning Ordinance.

ATTACHMENT: Draft Ordinance

FISCAL IMPACT: Permit and Code Enforcement Time

DRAFT
ORDINANCE NO. 2014-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRAWLEY,
CALIFORNIA, APPROVING THE AMENDMENT OF THE DOWNTOWN SPECIFIC PLAN (PD12-01) -
SIDEWALK SALES**

WHEREAS, the City Council approved and adopted the Downtown Specific Plan (PD12-01) via Ordinance 2013-02 on January 15, 2013; and

WHEREAS, said Specific Plan amendment is based upon the City of Brawley General Plan and City of Brawley Zoning Ordinance within the guideline of said Specific Plan, as adopted by the City Council; and

WHEREAS, the Specific Plan amendment does provide for the reasonable use and development of the area of the City included within said Specific Plan; and reasonable use and development of the area of the City included within said Specific Plan; and

WHEREAS, the Planning Commission recommended approval of this Specific Plan amendment on August 13, 2014; and

WHEREAS, the City Council has considered said Specific Plan amendment and the recommendations of the city staff, and with respect thereto, has determined that the requirements hereinafter enumerated are necessary to ensure that the Specific Plan, and the implementation thereof, will conform to all ordinances, policies, rules, standards, and improvement and design requirements of the City of Brawley except as specifically waived;

THEREFORE, THE CITY COUNCIL OF THE CITY OF BRAWLEY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

That the City Council hereby amends the Downtown Specific Plan reflecting the change in Sidewalk Sales as follows:

Section 1: Remove Temporary Outdoor Sales from Conditional Uses in zones Civic Center Main Street, Civic Center Neighborhood, West Village Main Street, West Village Neighborhood, East Village Main Street, East Village Neighborhood and East Village Enterprise. Add Sidewalk Sales to Permitted Uses with the additional wording "with annual permit".

Section 2: Addition of Section 4.4.12 specifying regulations regarding Sidewalk Sales:

- * An annual permit is required at a cost of ~~\$100.00 or \$200.00~~ (to be set by CC)
- * Outdoor display must be flush against the building of the abutting property, must leave entrances and driveways clear, and may not extend more than five (5) feet into the sidewalk
- * Free access to all buildings and access requirements shall be per the California Uniform Fire, Building and Barrier Free Codes. It shall also be consistent with any applicable standards established by the Americans with Disabilities Act
- * Items shall not be placed in or on street furniture, parking meters, public signage, planter boxes, turf, dirt or landscaped areas nor beyond the edge of the business' street frontage
- * The display must be removed any time the Planning Director, Building Official, Public Works Director, Police Chief or Fire Chief determines that a clear sidewalk is needed and requests removal for use of travel or transportation, street cleaning or maintenance, street utility work, a crowd control event or parade, or an emergency
- * Insurance shall be provided by the business owner
- * The City assumes no responsibility for the items on display, irrespective of whether the loss occurs through accident, collision, vandalism, theft or otherwise
- * Violation of this provision shall constitute an infraction per Section 1.7-1 Violation constituting Infraction of the Brawley Municipal Code

DRAFT

Section 3: Effective Date. This Ordinance shall take effect and shall be in force thirty (30) days after the date of its adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in the Imperial Valley Press, a newspaper of general circulation, printed and published in the County of Imperial, State of California, together with the names of the members of the City Council voting for and against the same.

PASSED, ADOPTED AND APPROVED at a regular meeting of the City Council held on the ??th day of ??? 2014.

CITY OF BRAWLEY, CALIFORNIA

Don C. Campbell, Mayor

ATTEST:

Alma Benavides, City Clerk

**STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
CITY OF BRAWLEY)**

1st Reading

I, Alma Benavides, City Clerk of the City of Brawley, California, **DO HEREBY CERTIFY** that the foregoing Ordinance No. 2014- was passed and adopted by the City Council of the City of Brawley, California, at a regular meeting held on the ??th day of ??? 2014 and that it was so adopted by the following roll call vote: m/s/c/

**AYES:
NAYES:
ABSTAIN:
ABSENT:**

DATED: ??? ??, 2014

Alma Benavides, City Clerk

2nd Reading & Adoption

I, Alma Benavides, City Clerk of the City of Brawley, California, **DO HEREBY CERTIFY** that the foregoing Ordinance No. 2014- was passed and adopted by the City Council of the City of Brawley, California, at a regular meeting held on the ??th day of ?? 2014 and that it was so adopted by the following roll call vote: m/s/c/

**AYES:
NAYES:
ABSTAIN:**

DRAFT

ABSENT:

DATED: ??? ??, 2014

Alma Benavides, City Clerk



OPEN & PUBLIC IV:

A Guide to the Ralph M. Brown Act

—2ND EDITION, REVISED JULY 2010—



CHAPTER 3:

MEETINGS



BROWN ACT MEETINGS

SIX EXCEPTIONS TO THE MEETING
DEFINITION

COLLECTIVE BRIEFINGS

RETREATS OR WORKSHOPS OF
LEGISLATIVE BODIES

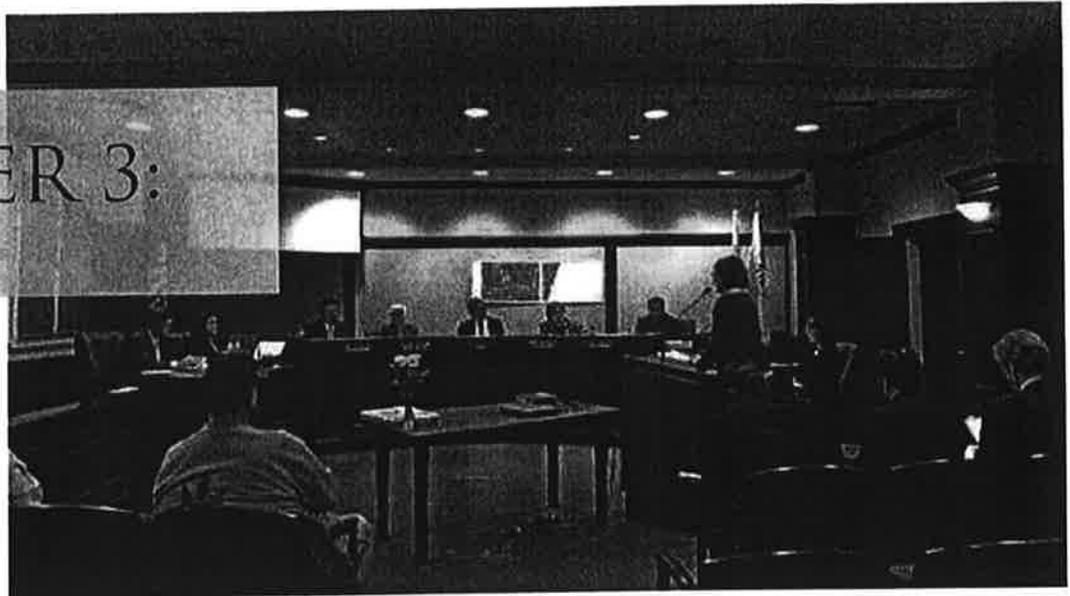
SERIAL MEETINGS

INFORMAL GATHERINGS

TECHNOLOGICAL CONFERENCING

LOCATION OF MEETINGS

CHAPTER 3: MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... 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 legislative body or the local agency to which it pertains."¹ Under the Brown Act, the term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well.

■ BROWN ACT MEETINGS

Brown Act gatherings include a legislative body's regular meetings, special meetings, emergency meetings and adjourned meetings.

- "Regular meetings" are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.²
- "Special meetings" are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings.³
- "Emergency meetings" are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.⁴
- "Adjourned meetings" are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.⁵

■ SIX EXCEPTIONS TO THE MEETING DEFINITION

The Brown Act creates six exceptions to the meeting definition:⁶

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.



Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. Again, a majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition.

"I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.



Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.⁷ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

- Q.** The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?
- A.** *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*
- Q.** The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?
- A.** *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).⁸

- Q.** The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
- A.** *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The sixth and final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the local agency.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

■ COLLECTIVE BRIEFINGS

None of these six exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

■ RETREATS OR WORKSHOPS OF LEGISLATIVE BODIES

There is consensus among local agency attorneys that gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or on team building and group dynamics.⁹

- Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?**
- A. No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.**

■ SERIAL MEETINGS

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority.

The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision-making. The Brown Act provides that “[a] majority of the members of a legislative body shall not, outside a meeting...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”¹⁰

The serial meeting may occur by either a “daisy-chain” or a “hub-and-spoke” sequence. In the daisy-chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated or taken action on an item within the legislative body's subject matter jurisdiction. The hub-and-spoke process involves, for example, a staff member (the hub) communicating with members of a legislative body (the spokes) one-by-one for a decision on a proposed action,¹¹ or a chief executive officer briefing a majority of redevelopment agency members prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting “with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”¹²

The Brown Act has been violated however, if several one-on-one meetings or conferences leads to a discussion, deliberation or action by a majority. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.¹³



A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.¹⁴ Such a memo, however, may be a public record.¹⁵

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff and news media against revealing such positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."¹⁶ Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

The planning director should not ask, and the member should not answer. A one-on-one meeting that involves communicating the comments or position of other members violates the Brown Act.

Practice Tip:

When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

- Q.** The agency's Web site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate or take action on matters of agency business.
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the “reply to all” button that may inadvertently result in a Brown Act violation.

■ INFORMAL GATHERINGS

Often members are tempted to mix business with pleasure—for example, by holding a post meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.¹⁷ A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop’s Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues. But it is the kind of situation that should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive’s presence in no way lessens the potential for a violation of the Brown Act.

- Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?
- A.** *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

■ TECHNOLOGICAL CONFERENCING

In an effort to keep up with information age technologies, the Brown Act now specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.¹⁸ While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary within the body.

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”¹⁹ In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:²⁰

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency’s jurisdiction;
- Additional teleconference locations may be made available for the public;



Practice Tip:

Legal counsel for the local agency should be consulted before teleconferencing a meeting.

- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

- Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?**
- A. She may not participate or vote because she is not in a noticed and posted teleconference location.**

The use of teleconferencing to conduct a legislative body meeting presents a variety of new issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

LOCATION OF MEETINGS

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.²¹

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:

- Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property, which cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

- Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?**
- A. Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be able to attend.**

- Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries or at its principal office if that office is located outside the territory over which the agency has jurisdiction;

- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.²²

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.²³ A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.²⁴

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.²⁵

Endnotes:

- 1 California Government Code section 54952.2(a)
- 2 California Government Code section 54954(a)
- 3 California Government Code section 54956
- 4 California Government Code section 54956.5
- 5 California Government Code section 54955
- 6 California Government Code section 54952.2(c)
- 7 California Government Code section 54952.2(c)(4)
- 8 California Government Code section 54952.2(c)(6)
- 9 "The Brown Act," California Attorney General (2003), p. 10
- 10 California Government Code section 54952.2(b)(1)
- 11 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 12 California Government Code section 54952.2(b)(2)
- 13 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 14 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 15 California Government Code section 54957.5(a)
- 16 California Government Code section 54952.2(b)(2)
- 17 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 18 California Government Code section 54953(b)(1)
- 19 California Government Code section 54953(b)(4)
- 20 California Government Code section 54953
- 21 California Government Code section 54954(b)
- 22 California Government Code section 54954(b)(1)-(7)
- 23 California Government Code section 54954(c)
- 24 California Government Code section 54954(d)
- 25 California Government Code section 54954(e)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengovernment. A current version of the Brown Act may be found at www.leginfo.ca.gov.