

BROWN ACT AND OAKLAND SUNSHINE ORDINANCE QUICK OVERVIEW

Brown Act & Sunshine provide:

“In enacting [the Brown Act], the legislature finds and declares that the public commissions, boards and councils and the other 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.” (Ralph M. Brown Act – Gov. Code § 54950)

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided [under the Ralph M. Brown Act].” (Gov. Code § 54953.)

“[The Sunshine Ordinance] is intended in part to clarify and supplement the . . . Brown Act . . . to assure that the people of the City of Oakland can be fully informed and thereby retain control over the instruments of local government in their city.” (Sunshine – Oakland Muni. Code § 2.20.010)

- **All meetings of a legislative body must be open and public, except for closed sessions authorized by law.**
- **Closed session authorizations must be narrowly construed.**
- **All persons must be permitted to attend open and public meetings.**
- **Voting by secret ballot is prohibited.**
- **The body must report all actions taken and the vote or abstention of each member present for the action.**

(Gov. Code § 54953)

Legislative Body means:

- Oakland City Council and Board of Port Commissioners.
- *Board, commission, task force established by the Charter (e.g., Public Ethics Commission, Civil Service Board, Police and Fire Retirement Board, Police Commission and Redistricting Commission).*
- Board, commission, task force established by the City Council or Port Board by ordinance, resolution or motion.
- Advisory board, commission or task force created and appointed by Mayor that exists for longer than 12 months.
- Standing committees of the above, with continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action.

(Oakland Muni. Code § 2.20.030)

MEETING includes:

- **Congregation of a quorum or majority of the Commission:**
 - **Face to face meetings,**
 - **Teleconference participation,**
 - **Meal gatherings (before, during or after a meeting).**
- **Serial communications regarding matters within the subject matter jurisdiction that involve a quorum or more of the Commission.**
- **Use of intermediaries to discuss, deliberate, take action or develop a consensus on matters within the subject matter jurisdiction of the Commission.**

Examples:

- **Email communications among a quorum or more of the Commission regarding matters within its subject matter jurisdiction.**
- **Conversations between a quorum of the Commission at a dinner, conference, party or other social/public event regarding matters within its subject matter jurisdiction.**
- **Asking council aides, staff or city officials about the positions of other Commissioners regarding matters within the Commission's subject matter jurisdiction.**

(Gov. Code § 54952.2; Oakland Muni. Code § 2.20.030)

Provided Commissioners do not discuss City business among themselves, a quorum may attend:

- **Conferences open to the public;**
- **Open and public community meetings organized by persons or organizations other than the City;**
- **Open and noticed meetings of another local agency;**
- **Open and noticed meetings of the legislative body of another local agency;**
- **Social or ceremonial events.**

(Gov. Code § 54952; Oakland Muni. Code § 2.20.030)

Meeting Location and Time

- **Commission meetings must be held within City of Oakland boundaries.**
- **Meetings should be held on weekday evenings “whenever reasonably possible”.**
- **Meetings must be video and audio taped.**

(Gov. Code § 54954; Oakland Muni. Code § 2.20.060 & 2.20.160)

AGENDA REQUIREMENTS

- **Purpose**
 - **Establish the scope of what may be discussed at the meeting – discussions outside the scope of what is described in the Agenda are not permitted;**
 - **Describe the set of permissible action(s) that may be taken at the meeting.**
- **Agenda Description.**
 - **Brief, general description of items, preferably no more than 20 words.**
 - **Clear and specific language sufficient “to alert a person of average intelligence and education whose interests are affected by the item that s/he may have reason to attend the meeting or seek more information.”**
 - **Abbreviations and acronyms must be spelled out in titles and text.**
 - **Time and location of the meeting.**
 - **Contact information to request disability-related accommodations.**

AGENDA REQUIREMENTS, cont'd

- **Agenda Publishing/Posting.**
 - Agendas must be posted at a public, accessible location. [City Hall, 14th Street display cases].
 - Copies of agendas and agenda-related materials must be placed on file in City Clerk's Office and Main Library.
 - Agendas and agenda-related materials should also be posted online; but, failure to timely post online due to software/hardware problem is not a defect in noticing.

(Gov. Code § 54954.2; Oakland Muni. Code § 2.20.030)

PUBLIC TESTIMONY

- **Speaker Cards:** The Commission may require speakers to submit speaker cards for open forum and agenda items for in-person meetings.
- **Open Forum:** Must provide opportunity for public comment on non-agenda matters at beginning or end of meeting. Commission Chair can allow open forum speakers to address agenda items.
- Each member of the public that wishes to speak on an item must be allowed to speak prior to Commission vote on the item.
- Members of the public must be allowed to speak on all items appearing on the agenda, even if the Commission removes the item.

(Gov. Code § 54954.3, Oakland Muni. Code § 2.20.150)

PUBLIC TESTIMONY, cont'd

- **Cannot prohibit speakers from expressing public criticism about City services, procedures, activities, etc.**
- **Public speaker time.**
 - **Two (2) minutes minimum should be allowed for public speakers unless the circumstances described below warrant a reduction.**
 - **Commission Chair may reduce time to 1 minute maximum -**
 - ✓ **Time reduction must be “reasonable” and applied uniformly.**
 - ✓ **What is a ‘reasonable’ depends on several factors, e.g.:**
 - **Time constraints of the meeting,**
 - **Number of agenda items,**
 - **Complexity of the items,**
 - **Number of persons that have submitted speaker cards**

(Gov. Code § § 54954.3, Oakland Muni. Code § 2.20.150)

Notice of Meetings

Regular Meetings: **72 Hours Notice.**

Special Meetings: **48 hours.** Weekends and holidays cannot be counted towards the 48 hours.

Exceptions:

- Agendas and agenda-related materials for a special meeting scheduled on a Monday may be posted **by noon, the prior Friday.**
- Special meetings held offsite requires **10 days notice.**
- Special meeting scheduled in place of a regular meeting that falls on a holiday requires **5 days notice.**

Who may call a special meeting?

- Commission Chair (if one is elected).
- Commission by majority vote.

(Sunshine § 2.20.070 & 2.20.080; Charter § 208)

Enforcement & Penalties

Public Ethics Commission (PEC)

- Complaints may be filed with the PEC.
- May investigate and/or conduct public hearing following investigation.
- May issue a cure and correct demand to legislative body.
- May file a civil lawsuit against legislative body.

Civil Actions

- Individuals or district attorney may file action:
 - Injunctive/mandatory/ declaratory relief, or
 - Void the action taken by the legislative body in violation of the Act.
- Legislative body would have opportunity to cure and correct actions.
- Costs and attorneys fees may be awarded.

Criminal Penalties

- District attorney may seek misdemeanor penalties against individual members of the body, who:
 - participate in a meeting of the body where action is taken in violation of the Brown Act,
 - with “intent to deprive the public of information the member knows or has reason to know the public is entitled to receive .
- “Action” = collective decision, commitment or promise reached by the body.

(Gov. Code § § 54959, 54960, 54960.1, 54960.5; Oakland Muni. Code Chapter 2.20, Art. IV)

References

- Board and Commission Member Handbook
<https://cao-94612.s3.amazonaws.com/documents/Board-Commission-Handbook-2019-Final-W-COVER-2-4-19.pdf>
- Oakland's Sunshine Ordinance
https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.20PUMEPURE