

BROWN ACT AND OAKLAND SUNSHINE ORDINANCE OVERVIEW

3025167

2021

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)

“[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)

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).
- 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)

Open & Public Meetings

- **All meetings of a legislative body must be open to the public.**
- **The public must have sufficient notice of the meeting.**
- **All persons must be permitted to attend meetings and speak at public forum and on items.**
- **Voting by secret ballot or proxy voting is prohibited.**
- **The body must report all actions taken and the vote or abstention of each member present for the action.**

(Gov. Code § 54953)

The following communications are prohibited:

- **Congregation of a quorum of the Commission in a place that is not noticed and open to the public, such as:**
 - **Face to face meetings,**
 - **Teleconference discussions,**
 - **meal gatherings (often before, during or after a meeting).**
- **Serial communications that involve a quorum of the Commission.**
 - **Serial communication = a series of communications/meetings between a quorum of the Commission .**
 - **Example: Member A calls member B who then calls member C and so on until a quorum of the Commission has reached a collective decision on a matter.**
- **Use of intermediaries to discuss, deliberate, take action or develop a consensus among a quorum of the Commission.**

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

Examples of prohibited communications:

- Email communications among a quorum re Commission business.
- Conversations among a quorum at a dinner, conference, party or other social/public event re Commission business.
- Asking City staff about the positions of a quorum re Commission business.
- Discussion among a quorum regarding scheduling a meeting date.

Exceptions

- **Commission members may attend the following if a quorum does not discuss Commission business:**
 - **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 body of the local agency;**
 - **Open and noticed meetings of the legislative body of another local agency;**
 - **Social or ceremonial events.**

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

Meeting Location and Time

- **Commission must establish by formal action a regular meeting time and location for meetings.**
- **Meetings must be held within City of Oakland boundaries.**
- **Includes: workshops, training sessions, meal gatherings, etc.**

Exceptions that might apply to the Commission:

- **Participate in meetings or discussions of multi-agency significance outside Oakland;**
 - **Meetings with federal or State of California officials when a local meeting is impractical, solely to discuss legislative or regulatory issues related to Commission business.**
- **Meetings should be held on weekday evenings whenever reasonably possible.**

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

AGENDA REQUIREMENTS

- Agenda description
 - Date, time and location of meeting.
 - brief, general description of items in clear and specific language sufficient “to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item.”
 - *Commission cannot discuss items not on the agenda, except:*
 - *to make brief announcements (e.g., a community event),*
 - *to schedule future meetings or items,*
 - *to provide brief answers to public speakers (e.g., a city email address where speaker can get more information).*

(Gov. Code § 54954.2; Oakland Muni. Code §§ 2.20.030, 2.20.070, 2.20.080)

AGENDA REQUIREMENTS

- Notice - Agenda & Materials

- Regular Meetings – 72 hours prior to meeting.

- Special Meetings – 48 hours prior to meeting.

- weekends or holidays DO NOT COUNT towards 48 hours.

- Exceptions:

- Special meeting held offsite - **10 days notice.**

- Special meeting scheduled in place of a regular meeting that falls on holiday - **5 days notice.**

- Agendas & materials for special meeting scheduled on Monday - posted **by noon, the prior Friday.**

(Gov. Code § 54954.2; Oakland Muni. Code §§ 2.20.030, 2.20.070, 2.20.080)

PUBLIC TESTIMONY

- **Public Speaker time.**
 - **Two (2) Minutes Minimum should be allowed for public speakers.**
 - **Chair of the Commission may reduce time provided he or she states reasons on the record for the reduction.**
- **Speaker time limits:**
 - **Must be reasonable and applied uniformly.**
 - **What is a 'reasonable' depends on several factors, e.g.:**
 - **Time allocated for the meeting,**
 - **Number of agenda items,**
 - **Complexity of the items,**
 - **Number of persons that have submitted speaker cards**

(Oakland Muni. Code § 2.20.150)

PUBLIC TESTIMONY, cont'd

- **Cannot prohibit speakers from expressing public criticism about City services, procedures, activities, etc.**
- **OPEN FORUM: Regular and special meetings must provide opportunity for public comment on non-agenda matters at the beginning or end of the meeting.**
- **Members of the public must be allowed to speak on all items appearing on the agenda, even if the Commission removes the item.**
- **People interested in speaking can be required to submit speaker cards by a deadline. (Deadline, if imposed, should be addressed in Commission's meeting rules.)**
- **Each member of the public that wishes to speak on an item must be allowed to speak prior to Commission's vote on the item.**

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

RECORDING MEETINGS

- Each regular and special meeting of the Commission must be audio taped.
- Audio recordings of the meeting are a public record and subject to disclosure. The City will preserve them for at least four years.
- Meetings *may* be video recorded.
- Members of the public have the right to take photographs at the meeting and video record the meeting, provided they are not disruptive.

(Oakland Muni. Code § 2.20.160.B.)

Enforcement & Penalties

Public Ethics Commission (PEC)

- Complaint may be filed.
- May investigate and/or conduct public hearing following investigation.
- May issue a cure and correct demand to legislative body.

Civil Actions

- Any interested party may file an action.
- Commission has opportunity to cure and correct.
- If judgment is rendered against the City, Commission action is void.
- Costs and attorneys fees may be awarded.

Criminal Penalties

- Misdemeanor: attendance at a meeting of the body where action is taken in violation of the Brown Act.
- Meeting with “intent to deprive the public of information the members knows or has reason to know is public.
- “Action” = collective decision, commitment or promise reached by the body.

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