

# Brown Act Guide

Rev. 09/22

## Open Meeting Rules *for CA's Local* Mental / Behavioral Health Boards & Commissions

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CA Association of Local Behavioral Health Boards & Commissions (CALBHB/C) supports the work of CA's 59 local mental and behavioral health boards & commissions. [www.calbhbc.org/brown-act](http://www.calbhbc.org/brown-act)

**Brown Act Open Meeting Rules for  
CA's Local Mental Health / Behavioral Health Boards & Commissions**

*Revised September 2022*

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**I. THE BASICS** - Under the Brown Act, an agency must comply with the following:

**Open & Public Meetings**

A meeting is any gathering of a majority of the members (quorum) of a covered board, commission, or its standing committees to hear, discuss, or deliberate on matters within the agency’s or board’s jurisdiction. Meetings of public bodies must be “open and public“. Actions may not be secret. Action taken in violation of open meetings laws may be voided.

**Who is covered?**

**Public bodies** of local agencies, including counties and cities, school and special districts.

- **“Legislative bodies”** of each agency, the agency’s governing body, plus “covered boards,” that is, any board, commission, committee, task force or other advisory body created by the agency, whether permanent or temporary.
- **Standing Committees** of a covered board or commission, regardless of number of members.

**Who is not covered?**

**Ad hoc advisory committees** (also called “work groups”) consisting of less than a quorum of the covered board (or its standing committees) with a short-term, time-limited purpose.

**Most non-profit organizations**

**State government agencies** are instead covered by the Bagley-Keene Open Meeting Act.

**Documents**

- Treat documents shared with a majority of the board or commission as public. Distribute and post “without delay”.

**Posting:**

- Agendas posted 72 hours in advance of regular meetings
- Agendas posted 24 hours in advance of special meetings (plus notification of local media)
- Agendas must be posted on the local agency’s website

**Public Participation:**

- Public Comment before or during agenda items.
- Sign-In or identification is not required
- Non-disruptive recording and broadcasting is allowed

**Teleconferencing - Note: “Allowances” on Pages 3-7**

- Agendas must be posted at all teleconference physical locations
- Each teleconference location must be listed on the meeting notice and agenda
- Each teleconference location must be accessible to the public, allowing for public comment.
- At least a quorum of the members must participate from locations within the county (or jurisdiction)
- All votes must be by roll call.

**Voting**

- Conduct only public votes (no secret ballots)
- All teleconference votes must be by roll call.

## II. FREQUENTLY ASKED QUESTIONS

**Conference Attendance** - If individual members attend a conference called by someone else, is this covered by the Brown Act? They are allowed to attend. The best practice is for board/commission members to sit apart from one another.

**Closed Meetings** - Is it permissible to conduct "Closed Meetings"? **Yes & No**, closed meetings are allowed under certain conditions, and with specific requirements:

Pending Litigation: Only if open discussion "would prejudice the position of the agency in the litigation". The litigation must be named on the posted agenda or announced in open session unless doing so would jeopardize the board's ability to service process on an unserved party or conclude existing settlement negotiations to its advantage. To qualify, the agency must:

- Be a party to pending litigation
- *Or* expect, based on certain specified facts, to be sued
- *Or* expect to file suit itself

Personnel: To discuss the appointment, employment, performance evaluation, discipline, complaints about or dismissal of a specific employee or potential employee. The employee may request a public meeting on any charges or complaints.

Not Allowed for discussing:

- General employment
- Independent contractors not functioning as employees
- Salaries
- The performance of any elected official, or member of the board or commission
- The local agency's available funds
- Funding priorities or budget

**Lack of Quorum** - A board, commission or a standing committee meeting has less than a quorum. Is it still required to meet openly? **Yes**, if it has either a set meeting schedule or a continuing subject matter jurisdiction, it is required to meet openly. (A quorum is required for members to conduct a vote.)

**Serial Meetings** - Members use individual contacts to collectively decide an issue. Is this a violation? **Yes**, information communicated to a quorum through a series of contacts (such as: individual phone calls ("daisy chain"), emails, chat messages, or a third person ("spoke and wheel")) is prohibited by the Brown Act.

**Retreats** - Are board/commission retreats subject to Brown Act Rules? **Yes**, if it is a meeting of a local board, commission or a standing committee, the event is subject to the requirements of the Brown Act.

**IIIA. ALLOWANCES for MEMBERS:** “Just Cause” or “Emergency” (When not operating in a “Public Emergency”) *In Effect 1/1/23 - 1/1/26*

A local board/commission member may participate remotely without posting their physical location on the agenda if all of the following requirements are met:

- 1) Quorum at Physical Location - At least a quorum of the members of the board/commission participate in person from a singular physical location clearly identified in the agenda.
- 2) Public Access - (Both Remote and In-Person)
  - a) Remote Public Access - The public may access the meeting remotely through:
    - i) A two-way audiovisual platform **or**
    - ii) A two-way telephonic service and a live webcasting of the meeting
  - b) In-Person Public Access to the physical location.
- 3) Circumstances: One of the following circumstances applies:
  - a. **“Just Cause”** - The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year. **or**
  - b. **“Emergency Circumstances”** - The member requests to participate in the meeting remotely due to emergency circumstances and the board/commission takes action to approve the request. The board/commission shall request a general description of the circumstances relating to the member’s need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information.
- 4) Procedures:
  - a) Member Request - A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.
  - b) Board/Commission Response - The board/commission may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting.
  - c) Disclosure - The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member’s relationship with any such individuals.
  - d) BOTH Audio & Visual Participation - The member shall participate through both audio and visual technology.

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- 5) Limits to Remote Participation - The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

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#### DEFINITIONS:

**“Emergency circumstances”**: A physical or family medical emergency that prevents a member from attending in person.

**“Just cause”** means any of the following:

1. A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
2. A contagious illness that prevents a member from attending in person.
3. A need related to a physical or mental disability.
4. Travel while on official business of the legislative body or another state or local agency.

**“Remote location”** means a location from which a member of a legislative body participates in a meeting other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

**“Remote participation”** means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

**“State of emergency”** means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

**“Teleconference”** means 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.

**“Two-way audiovisual platform”** means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

**“Two-way telephonic service”** means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

**“Webcasting”** means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

### III B. ALLOWANCES: DURING PUBLIC EMERGENCIES - [AB 2449](#) (Expires 1/1/2024)

Local boards and commissions **may meet solely by teleconference without providing any physical meeting addresses** during a proclaimed state of emergency in which state or local officials have imposed or recommended measures to promote social distancing.

Continuation of this allowance requires that the local agency must **place an item on the agenda** of a Brown Act meeting **once every thirty days** to make findings regarding the circumstances of the emergency and **vote** to continue using the law's exemptions for as long as it deems necessary. See below for specifics.

State of emergency exemptions from in-person requirements are permissible under the following conditions, and with the following requirements:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. **[To continue the allowances, this vote must be agendized once every thirty days to make findings regarding the circumstances of the emergency and vote to continue using the law's exemptions for as long as it deems necessary. ]**

A local agency that holds a meeting under these circumstances is required to do all of the following, in addition to giving notice of the meeting and posting agendas as required under the Brown Act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies.

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions;
- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment;
- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option;
- The legislative body need not provide a physical location for the public to attend or provide comments;
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public;
- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option, or is within the local agency's control and prevents the public from submitting public comments (any actions taken during such a service disruption can be challenged under the Brown Act's existing challenge provisions);
- Not require comments be submitted in advance (though the legislative body may provide that as an option), and provide the opportunity to comment in real time;
- Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment;

- If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register, and may not close the registration comment period until the comment period has elapsed.

If the state of emergency remains active for more than 30 days, the board/commission must make the following findings by majority vote every 30 days to continue using the exemption to the Brown Act teleconferencing rules.

- The legislative body has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: The state of emergency continues to directly impact the ability of members to meet safely in person, or State or local officials continue to impose or recommend social distancing measures.

This means that a local agency will have to put an item on the agenda of a Brown Act meeting once every thirty days to make findings regarding the circumstances of the emergency and vote to continue using the law's exemptions for as long as it deems necessary. The public emergency allowances will sunset on January 1st, 2024.