



# The San Francisco Sunshine Ordinance, the Brown Act, & Public Records Act

## Meetings and Public Records Requests

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# The Brown Act & Sunshine Ordinance

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## **Conducting the People's Business**

### The Brown Act: Government Code §§ 54950-54963

Local legislative bodies, such as boards, councils and commissions, are groups of people who come together to discuss and come up with the most effective ideas.

The Ralph M. Brown Act is the law that guarantees the public's right to attend and participate in meetings of local legislative bodies.

### Sunshine Ordinance: San Francisco Administrative Code Chapter 67

San Francisco's Sunshine Ordinance was developed to ensure easier access to public records and to strengthen open meeting laws.

# Meeting Defined

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A meeting occurs whenever a majority of the members of a policy body come together, or have a serial communication, to discuss any business within the subject matter jurisdiction of this body. Admin. Code § 67.3(b)(1).

Meetings must be open to the public and held within city limits. Cal. Govt. Code § 54954(b); Admin. Code § 67.6(b).

A meeting occurs even if the policy body takes no action but only gathers information collectively or discusses an issue.

Formal meetings, retreats, site tours, and meal gatherings are allowed if done properly.

Pre-meetings, post-meetings, teleconferencing (with limited exceptions), and seriatim (or serial) meetings are not permitted.

# Policy Bodies

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The Committee is a policy body, and the Committee “meets” when a majority of the members of the body (including open seats) come together in the same time and place. This overlaps with a “Quorum.” In the example of this Committee, 7 out of 12 members constitutes a Quorum.

Carefully track attendance because the Committee can lose a Quorum during the meeting, and at that point the Committee cannot take any further formal action other than: (1) fix the time to adjourn, (2) adjourn the meeting, (3) recess the meeting, or (4) take measures to secure a Quorum. Although the “meeting” of the policy body has ended, members can remain for discussion, but such discussion is not a “meeting.”

Policy bodies often create subgroups or committees comprised of members of the Committee (whether ad hoc or permanent) that are also subject to the Brown Act, such as a standing committees on budget, personnel, bylaws, etc.

Subordinate policy bodies may be unintentionally created without a formal vote of the Committee, such as the Chair suggesting that members A & B look into something and report back to the Committee.

# Open Meeting Basics

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Agendas must be posted at the Library and on the department website at least 72 hours in advance for regular and special meetings. Accompanying materials must be posted when made available to the Committee.

The public has the right to observe and participate in the meetings, including:

- General public comment period for all other subjects not listed on the agenda but are within the subject matter jurisdiction of this body (regular meetings only)
- Separate public comment on every action item before the vote.

All deliberations and actions must occur during open, properly noticed meetings.

In-person attendance is required and remote attendance is restricted. (See remote exceptions in Legal Rules Governing Remote Participation by Members of Policy Bodies in Meetings Beginning March 1, 2023)

The City must provide notice of the cancellation of a meeting to the public as soon as reasonably possible. Admin. Code § 67.6(g).

# Agenda Requirements

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Agendas must be posted at least 72 hours before the meeting. Amendments can be posted less than 72 hours in advance as long as they provide greater specificity to what has already been posted.

The Agenda should be sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected of the reasons to attend the meeting or seek more information on the item. Reasonable person standard.

Agenda must specify discussion, action, and discussion and possible action items.

Policy bodies cannot take “action” unless the item is identified as “Action Item.” However, the body is not required to take action.

Policy bodies cannot discuss or act on items not on the agenda. However, they can direct staff to add items to future agendas, and they can rearrange items on the agenda.

Policy bodies can have limited follow-up to general public comment for purposes of clarification, but not discussion.

# Do's: Conduct of Meeting

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Many policy bodies have rules of conduct in their bylaws or resolutions.

- Start meetings at the scheduled time or later (for example, to wait for a member due to traffic, etc.)
- Take roll and be sure the quorum is present.
- Notify the attendees if agenda items that are listed will be discussed in a different order. Admin. Code § 67.15(e).
- Conduct votes openly and publicly. Each individual vote must be recorded by name.
- If an item has been discussed and the quorum decides to change their stance later in the meeting, that is permitted. When this occurs, the chair must make it clear that the group has not completed its consideration of the item and they intend to bring it up again which includes public comments.
- The chair may order the removal of individuals engaging in disruptive behavior. Depending on the circumstances, before taking this step, the chair should warn the offending individual and afford an opportunity to correct the behavior.
- Once an action has been taken, the policy body must disclose the action and announce the vote of each member. Cal. Govt. Code § 54953(c)(2).

# Don'ts: Conduct of Meetings

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- No secret or anonymous ballots.
- No asking members their votes in advance of the meeting.
- Don't start meetings before the time listed on the agenda.
- Don't conduct meetings without a quorum.
- Don't read or send text messages during meetings.
- An absent member may not vote by proxy. See generally Charter §§ 2.104(b), 4.104(b); Admin. Code §§ 1.29, 67.16.
- No abstentions—all members must vote, unless they have a conflict of interest or are excused by a majority of members present. Charter § 4.104(b)



# Closed Session

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Committee Secretary and Chair should consult with City Attorney's Office in advance to ensure compliance with Brown Act/Sunshine Ordinance.

Closed-door meetings may be held under limited exceptions. (Real estate negotiations, existing or anticipated litigation, personnel matters, labor negotiations, security matters, etc.)

Closed sessions must be properly noticed on the agenda and any action taken must be publicly reported at the end of the session.

Individual members of legislative bodies may not disclose information discussed in closed session.

During closed session: stay on topic and conduct yourself as though the discussion could later be disclosed, record the session and keep indefinitely, and restrict attendance to members and necessary staff and employees.

# Public Attendance and Comment

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Cannot require sign-in or ID to attend. You may ask for a name, but pseudonyms are allowed.

Must allow:

- Public to record.
- Provide opportunity to comment ***before*** any action is taken.
- Provide general comment period for non-agenda topics within body's purview.
- Make writings related to open session business available to public.

Members may not respond or act in response to public comment, but may briefly respond or ask questions, refer to staff for follow-up or request that something be placed on a future agenda for discussion.

# Checklist for Chair re: Public Comment

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Ask for public comment on each item, even if the room is empty, so that it is recorded.

Take public comment before any vote.

Announce the specifics of the vote after each action item.

If agenda is rearranged, then let public know ASAP.

If item has been scheduled for a specific time, do not take it earlier.

Apply and enforce the speaking time equally, regardless of viewpoint, but allow additional time for people with disabilities or who need translation, as appropriate.

Public speakers are allowed up to three minutes on an item, but the chair can reduce the speaking time for all public speakers on an item if there is a reasonable basis (Limited time, lots of public speakers, long agenda.) Basis should be on the record and announced before the start of public comment on the item.

Public speakers can be critical, but not disruptive.

No right to a response.

# Sunshine Ordinance & Public Records Act

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What is a Public Record?

It is any writing that contains information relating to the conduct of public business prepared, owned, used by a state or local agency.

Examples of Public Records:

Agendas, staff reports, contracts, emails, including attachments to emails, video recording, audio recording, voicemail, text messages and photographs.

# Information on personal communications devices

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Any communication relating to the City's business that a public employee or official sends or receives on a personal electronic device such as cell phones and personal computers are subject to disclosure as public records.

These communications are subject to the department's retention policy.

Consider using City-issued email addresses to conduct Committee business.

Consider forwarding any Committee business from your private email address to City-issued email address.

Communicate Committee business through the Committee secretary.

# You do not have to remember all of this information!

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This presentation is intended to answer most of the questions we commonly hear from departments, boards and commissions.

If you have any questions, feel free to ask us now or contact us in the future as needed.

Thank you for your time!