



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Brown Act & Conflict of Interest Primer



Presented by Seth Eckstein, OUSD Staff Attorney

Presented to Measure G1 Commission

May 2, 2017

www.ousd.org



@OUSDnews

What is the Brown Act?

The Brown Act seeks to ensure transparency in public governance by requiring public agency actions “be taken openly and that their deliberations be conducted openly.”



Who does the Brown Act apply to?

The Brown Act applies to “legislative bodies.” Generally, a legislative body is any local government board, commission, committee, or other body, whether permanent or temporary, decision-making or advisory, created by the State, the State Constitution, charter, ordinance, resolution, or formal action of a legislative body. Cal. Govt. Code § 54952(b).

The Brown Act applies to the Measure G1 Commission.



Meetings

The Brown Act requires “legislative bodies” to hold meetings openly and in public.

WHAT IS A “MEETING?”

With limited exceptions, a meeting occurs whenever a majority of the members of the Commission come together at the same time and place. The majority is calculated based on all seats on the body, including vacant seats.



Meetings

Tip: Be careful about informal conversations.

A casual conversation with another Commission member or even attending the same social event would likely not be considered a “meeting” under the Brown Act. However, if the nature of conversation/event is to discuss substantive Commission-related business, it could qualify as a meeting under the act.



Meetings

Tip: Safety in (fewer) numbers.

A gathering/communication is not a meeting if less than the majority of members are present. This means you can communicate with other Commission members or meet for study sessions provided there is less than a majority.

Meetings

Tip: HOWEVER, Serial communications are unlawful.

A serial communication (seriatum meeting) occurs when someone on the commission communicates with a majority of members through separate chains. **This is illegal.**

Sub-tip: When receiving a communicating to all commission members, do not 'reply all.'



Notice

A gathering/communication that qualifies as a “meeting” under the Brown Act triggers notice requirements. Specifically, the Commission must post a written agenda at least 72 hours prior to the meeting.

Notice

Tip: Give the OUSD Board's office staff enough time to ensure meetings are properly posted.

This includes coordinating translation services if necessary and ensuring the meeting is accessible to all.



Notice

Tip: Agendas must contain a meaningful description of each item of business.

The description must be sufficiently clear and specific to alert people of average intelligence and education whose interests are affected that they may have reason to attend the meeting or seek more information on the item. The description should be brief, concise, and written in plain English. Cal. Govt. Code § 54954.2(a).

Notice

Tip: Attach all exhibits to the public notice (and bring copies for the public to the meeting).

Notice

Tip: If a topic is not on the agenda, you shouldn't talk about it.

Rights of the Public

Members of the public have the right to:

- Access a public meeting (e.g., through translation services; accessible forums)
- Video or recording commission meetings
- Make general and/or topic-specific comments



Penalties

Violating the Brown Act can result in bad consequences.

- Willful violations can carry criminal penalties.
(Misdemeanor; Cal. Govt. Code § 54959)
- Even inadvertent violations can result in actions being voided.
- The public could petition a court for injunctive and declaratory relief to stop the Commission from acting. Court costs and attorney fees may be awarded.



Summary (Brown Act)

Bottom line:

- Avoid communications that could unintentionally trigger Brown Act requirements.
- Always provide adequate notice (72 hours) before any meeting.
- The public has the right to attend and to speak.
- There are serious consequences for violating the Brown Act.
- When in doubt, contact the Office of the General Counsel for guidance.

Conflicts of Interest

As public officials, Commission members may not participate in a decision if the official's financial interests might be materially affected by the decision.

If you have an economic interest, you must publicly disclose your interest, recuse yourself and then leave the room.

Conflicts of Interest

Tip: Be aware of gifts, including nonmonetary items such as tickets to events or covered travel. Gifts cannot exceed \$440 or more in a year from a single source.



Conflicts of Interest

Tip: Declare all gifts over \$50.00 on Form 700.



Conflicts of Interest

Tip: Do not use District resources for personal benefit.



Conflicts of Interest

Summary:

- Avoid economic conflicts of interest
- No gifts from one source over \$440 per year
- Declare all gifts over \$50
- Non-monetary gifts are still reportable

EVERY STUDENT THRIVES!



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

1000 Broadway, Suite 680, Oakland, CA 94607

www.ousd.org



@OUSDnews

Contact us for additional information Seth Eckstein
Phone: 510.879.8535 | Email: seth.eckstein@ousd.org