

THE BROWN ACT'S LIMITATIONS ON DISCUSSIONS BY NEIGHBORHOOD COUNCIL BOARD MEMBERS

Office of the City Attorney – Neighborhood Council Advice Division

Are there limits on the ability of board/committee members to communicate with one another outside of Neighborhood Council meetings?

Yes. The Brown Act prohibits Neighborhood Council board members and committee members from engaging in any form of communication among one another outside of a public meeting that leads to a majority developing a concurrence on an action to be taken. The Brown Act states “any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a concurrence as to action to be taken on an item by members of the legislative body is prohibited.” (Gov. Code § 54952.2.)

Why does the Brown Act prevent communications outside of public meetings?

The purpose of the Brown Act is to avoid secrecy in government. Neighborhood Council board members and committee members are representatives of the stakeholders in their area. The discussions and actions of the Neighborhood Council must be conducted at publicly noticed meetings. (Gov. Code § 54952.2.) Government Code section 54950 states:

“In enacting this chapter, 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.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

What are examples of communications that trigger a concern under the Brown Act?

The Brown Act applies broadly to any type of discussion or communication. Communications may include oral or written discussions, the use of personal intermediaries, agents, family members or messengers to convey information, or the use of technological devices, such as e-mail or website conferencing to disseminate information. Communication includes sharing or distributing information, hearing a proposal, or communicating information that allows members of the body to gather information or formulate a point of view on an issue that is within the subject matter jurisdiction of the legislative body.

What is a “serial communication?”

The Brown Act prohibits serial communications that lead to a concurrence among the majority of the members of the legislative body. Any type of communication is prohibited if that communication allows the majority of the members of the body to engage in a communication

that should instead occur at a public meeting. The term “serial communication” is often used because it describes a communication that, for practical purposes, results in a meeting of the members although the members are not present at a publicly posted and conducted Brown Act meeting. The serial communication may involve a series of communications, each communication involving less than a quorum of the board, but when taken as a whole, involve a majority of the board.

A serial communication may arise under a number of circumstances. For example, a serial communication occurs when one board member contacts all or a majority of the other board members. A serial communication occurs if one board member contacts another board member, then that board member contacts another board member, then that board member contacts another ... *etc.* A serial communication also occurs if a board member’s representative, agent, or intermediary directly or indirectly contacts the other board members, *e.g.*, a spouse, a messenger, or an alternate board member communicates with the majority of the other board members.

The concern under the Brown Act is not *how* the discussion was communicated among the board. Instead, the concern is whether an inappropriate number of persons received the serial communication and whether that serial communication led to a concurrence among the majority of the members on an issue that is likely to be considered by the legislative body.

What does the term “developing a concurrence” mean?

The Brown Act prohibits serial communications that lead to “developing a concurrence.” Developing a concurrence on an item is broadly construed. It means any discussion or information that assists you in voting. It means any information that assists or clarifies your understanding of an issue. It means any information that leads to an agreement or compromise among the members. It means any discussion or information that advances the resolution of an item that is on the agenda or within the board’s subject matter jurisdiction. (*California Attorney General, The Brown Act: Open Meetings for Local Legislative Bodies, 2004, p. 11.*)

How many board members are allowed to communicate outside of a meeting before an improper serial communication occurs?

The number will depend on the Neighborhood Council’s bylaws. The *least number* of people who could make a decision at a public meeting should not be engaging in communications outside of the public meeting. For example, if the Neighborhood Council bylaws state that the board is 21 members, the quorum is 11, and the board takes action by a majority of those members present at the meeting, then if 6 people engaged in a discussion that led to a concurrence on an item there would be a Brown Act violation. This concern also applies to the board’s committees. For example, if the committees are comprised of 5 members, the quorum is 3 and decisions are made by a majority vote of the entire committee, then 3 committee members may not engage in a discussion that leads to a concurrence on an item outside of their committee meeting.

What are some examples of prohibited serial communications?

- E-mails among a majority of the board or committee members that discuss or argue a member’s opinion or point of view.

A meeting with the majority of the board or committee members that discusses or seeks clarification on an issue that will be heard by the board or committee.

A majority of members participating in a website conference, internet list service or chat room where opinions or information are discussed on a matter that lies within the jurisdiction of the board or the committee.

- Circulation of minutes or other documents for approval by the board outside of a public meeting.

What are some examples of proper communications?

- The board or committee members may discuss their availability for an upcoming meeting, e.g., the dates and times of an upcoming meeting.
- Providing information to the other members on an upcoming matter on the agenda by distributing reading materials, information necessary to prepare for a meeting, newspaper articles, scientific journals, or magazines. (However, the Neighborhood Council should adopt a rule that allows the distribution of information by one board member, e.g., the Board Secretary, and the information should be distributed by the Board Secretary along with distributing of the agenda for the public meeting.)
- Distributing legal advice to the board/committee from the Office of the City Attorney.
- Distributing general public announcements. For example, notifying the other board members of a City Council meeting or a community event.

What should a board member do if it is believed that there are serial communications occurring among the board?

If a board member becomes aware of improper communications, the board member should notify the Neighborhood Council President of the improper discussions. The President should notify the board regarding the prohibition against serial communications and provide this handout along with the warning that the matter being discussed should be reserved for discussion at a public meeting.

The Department and the Office of the City Attorney have prepared a video regarding the Brown Act that should be reviewed by each board/committee member. In addition, the Department offers regional training on the Brown Act to those groups requesting assistance.

What are the penalties for engaging in serial communications?

Violations of the Brown Act may result in civil and criminal penalties. There are a number of civil remedies that a person may pursue if it is believed that there are impermissible serial communications occurring by board/committee members, including making a demand to cure upon the Neighborhood Council or filing a complaint with the Department of Neighborhood Empowerment. A demand to cure might include requesting that a meeting item be set aside and re-hear that item with a disclosure of the improper communications. Also, a decision made in violation of the Brown Act is subject to being set aside as void. The Neighborhood Council may be required to remedy its improper actions and pay attorney fees and costs from its own funds to a person who brings a challenge. In addition, individuals may be criminally prosecuted for misdemeanor violations of the law.