

Brown Act Training and Presentation

Citizens Advisory Committee
November 20, 2024



Caltrain Citizens Advisory Committee

- The Citizens Advisory Committee (CAC) was formed by the Board via Resolution No. 1992-28, and Bylaws were introduced via Resolution No. 2002-13, which made the CAC subject to the Brown Act
- The CAC is comprised of volunteer members who serve in an advisory capacity to the Board and convey community information, ideas, and comments to the Board
- Members of the CAC also provide input on the needs of current and potential rail customers, and review and comment on staff proposals and actions as requested by the Board
- The CAC does not have independent duties or authority to take actions that will bind the Joint Powers Board of Directors

Purpose of the Brown Act

- The Act promotes:
 - Government transparency by: ensuring deliberations of local government are open and public; exceptions to right of access narrowly construed to promote meaningful access
 - Public Participation – Requires public notice of items to be considered, public access to materials, and preserves right of public to participate in decision making
- Courts rely heavily upon these purposes when interpreting the Brown Act and determining if violations have occurred

Application of the Act

- Applies to all meetings of “legislative bodies” of local agencies
- Brown Act bodies include the governing bodies, subsidiary bodies, and any other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body that is itself a legislative body, including committees
- Specifically applies to the CAC per its authorizing resolution and Article III, Section 2 of its Bylaws

Requirements of the Act

- Notice for agenda posted in publicly accessible location 72 hours before a regular meeting; 24 hours before special meetings and one hour before emergency meetings
- Open and public: all persons must be permitted to attend
- Public has the right to address Committee via public comment with reasonable time limitations; cannot prohibit criticism but may prohibit personal attacks and disruptive comment
- Prohibits serial meetings, i.e., a majority of members of a legislative body outside of a lawful meeting may not directly or indirectly use a series of meetings to discuss, deliberate or take action on any item of business within the subject matter jurisdiction of the body

Serial Meetings

- Serial meetings prohibited because they deprive the public of an opportunity for meaningful participation in legislative body decision-making
- Typically, serial meetings occur when:
 - 1) members contact one another individually until a quorum has discussed, deliberated, or taken action on an item within the body's subject matter jurisdiction; or
 - 2) a staff member speaks to multiple members one by one to share opinions or seek a decision on a proposed action until a quorum has discussed, deliberated, or taken action on an item within the body's subject matter jurisdiction
- Communication technologies present Brown Act challenges related to serial meetings
 - Forwarding or replying to emails
 - Text messages
 - Participation on social media, chatrooms, forums, or blogs

Use of Social Media

- May use social media platforms such as Facebook and Twitter to engage in communications with the public regarding matters within CAC's jurisdiction:
 - Answer questions
 - Provide information
 - Solicit information
- Prohibited from using social media platforms to engage in communications with a majority of their colleagues regarding matters within CAC's jurisdiction, including through the use of emojis
- Members are prohibited from using social media platforms to:
 - Respond to a colleague's post about matters within CAC's jurisdiction
 - Share a communication posted by a colleague about matters within CAC's jurisdiction

Recent Amendments to Brown Act

- Assembly Bill 557 (AB 557) allows members to participate in meetings remotely via teleconference without noticing their location or providing public access during a declared state of emergency
- Assembly Bill 2449 (AB 2449) allows members to participate remotely in meetings for just cause or due to emergency circumstances for a limited number of meetings per year without noticing their location or providing public access
- Assembly Bill 2302 (AB 2302, effective January 2025) clarifies the number of meetings that a member may rely on the just cause and emergency circumstances exceptions
- Senate Bill 1100 (SB 1100) clarifies when a legislative body may permissibly remove disruptive individuals from meetings in order to allow the meeting to continue

Board Meetings Pursuant to AB 2449

A member of a local legislative body may participate in a meeting remotely without having to identify the member's location in the agenda or make the location accessible to the public if:

- 1) a quorum of members participate in person from a singular physical location
- 2) the singular location is clearly identified on the agenda, open to the public, and situated within the local agency's jurisdiction; and
- 3) the member participating remotely has just cause or made a request to participate remotely based on emergency circumstances, which must be approved by the legislative body

Just Cause and Emergency Circumstances

- “Just cause” is defined as one or more of the following:
 - (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely
 - (ii) a contagious illness that prevents a member from attending in person
 - (iii) a need related to a physical or mental disability as defined by statute; or
 - (iv) travel while on official business of the legislative body or another state or local agency
- "Emergency circumstances" is defined as a physical or family medical emergency that prevents a member from attending in person

Participation Pursuant to AB 2449

- Allow members to participate in meetings remotely, i.e., when sick or potentially contagious, or other emergency circumstances prevent in-person attendance
- Members may rely upon the just cause exception no more than two times per calendar year
- Members must use both audio and visual technology and must publicly disclose whether any individual over the age of 18 is present at the remote location
- Pursuant to AB 2302, members may not participate remotely for just cause or emergency circumstances more than:
 - Two meetings per year, if the body regularly meets once per month or less
 - Five meetings per year, if the body regularly meets twice per month
 - Seven meetings per year, if the body regularly meets three or more times per month

JPB Remote Meeting Policy

- Members may participate in Board or Committee meetings: (1) in person; (2) remotely provided location is identified on agenda and is accessible to the public; or (3) remotely under AB 2449 exceptions for just cause and emergency circumstances
- Members of the public will have the opportunity to participate in Board and Committee meetings in person, or via a two-way audiovisual platform, or a two-way telephonic service and a live webcasting of the meeting
- The California Attorney General provided recent guidance on intersection of the Brown Act and Americans with Disabilities Act
 - Remote meeting participation may serve as a reasonable accommodation for a member with a qualifying disability (Cal. Att. Gen. Op. 23-1002, Jul. 24, 2024)
 - Must be connected in real time through both audio and visual means
 - Must disclose the identities of any adults present with them at the remote location.

JPB Remote Meeting Policy

- Board Secretary or Staff Liaison will alert the Board or Committee Chair and members if it appears that a quorum of members will not be physically present at the meeting; the Board or Committee may deny the request for emergency circumstances or cancel the meeting if there will be no quorum
- Upon notice of remote participation for just cause or approval of a request for remote participation due to emergency circumstances, the Board Secretary shall post a revised agenda if there is sufficient time to do so given the nature and timing of the emergency or just cause request

JPB Code of Conduct for Public Meetings

The Chair or other presiding member may remove a disruptive attendee if:

- Preceded by a warning to the individual that the individual's behavior is disrupting the meeting and that the individual's failure to cease the behavior may result in removal
- The individual does not promptly cease the disruptive behavior
- The warning requirement does not apply to behavior that constitutes a use of force or a true threat of force

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