

## Background:

Some members of the Community Design Team have proposed that the Community Steering Committee for the Richmond/San Pablo AB 617 Emission Reduction Plan be operated as a Brown Act committee. **The Brown Act only applies to advisory committees that are appointed by the BAAQMD Board of Directors.** Under the Air District's procedures, such appointments are made at the recommendation of the Personnel Committee.

There is nothing preventing the Steering Committee from adopting certain Brown Act requirements into their charter. But, if the CDT wants the Brown Act to be a binding, legal requirement, the only way that can happen is through Board appointment of the community steering committee members.

If it is the will of the CDT to pursue Board appointment of the steering committee members in order to ensure that there is a legally binding requirement of compliance with the Brown Act, Air District staff will work with the CDT to bring their recommendations for the appropriate Board committees. The Board committees will make recommendations to the full Board on key policy issues such as industry participation in the decision-making process, size of the committee, conflicts of interest, recusal procedures and how the steering chair will be determined. Air District Staff will also work with the CDT to bring their recommendations to the Personnel Committee regarding who should be appointed to the steering committee.

The table below is an outline of the requirements of the Brown Act, along with some Air District staff interpretation. As mentioned above, there's nothing preventing these from being incorporated into the Steering Committee charter. Taking that approach would preserve some flexibility and would probably be faster than pursuing Board appointment of committee members. Air District staff are happy to accommodate whichever path the community design team would like to take.

## Brown Act Write-up for the R/SP Community Design Team:

<b>What This Brown Act Section Would Mean for the R/SP Steering Committee</b> <small>(SOURCE: staff interpretation of Brown Act, using resources linked in Columns 2 and 3 and reviewed by Legal)</small>	<b>Brown Act Section Brief Description</b> <small>(SOURCE: From the <a href="#">CA League of Cities Guide</a>)</small>	<b>Brown Act Section and Title</b> <small>(SOURCE: from the <a href="#">Legislation</a>; <a href="#">CA Attorney General's Office Summary</a>; and <a href="#">CA League of Cities Guide</a>)</small>
<b>Chapter 1: It is the People's Business</b>		
<p>A Brown Act Steering Committee appointed by the Air District Board of Directors would be a Legislative Body.</p>	<p>This section describes the purpose and legislative bodies covered by the Brown Act, including members of virtually every type of local government body, elected or appointed, decision-making or advisory.</p>	<p><a href="#">54950</a>. Purpose of the Brown Act.</p> <p><a href="#">54951</a>. It is the People's Business.</p>
<b>Chapter 2: Legislative Bodies</b>		
<p>A Brown Act Steering Committee would be a Legislative Body appointed by the BAAQMD Board of Directors. The number of members and the appointment and application process would be decided by the Air District Board with input from the CDT.</p> <p>Administration and operation of Brown Act committees has historically been under the purview of the Clerk of the Boards and the Executive Office of BAAQMD. Staff isn't certain what the process would be for a community steering committee acting as an appointed Brown Act body. There may be some firm requirements about the process tied to the Air District's legal obligations under the Brown Act that would limit the community's flexibility.</p>	<p>This section of the Brown Act describes what is and what is not a "legislative body".</p> <p>Appointed bodies—whether permanent or temporary, decision-making or advisory—created by formal action of the governing body are legislative bodies.</p> <p>Standing committees of a legislative body, even if comprised of less than a quorum of the governing body, is subject to the Brown Act.</p>	<p><a href="#">54952</a>. Legislative Bodies.</p>

<p>Members of a Brown Act body are also subject to the requirements of AB 1234, including periodic ethics training obligations and the requirements to file assuming office, annual, and leaving office statements of financial interest (Form 700) as required by the FFPC implementing the Political Reform Act.</p>		
<p><b>Chapter 3: Meetings</b></p>		
<p>Brown Act Steering Committee meetings would follow the public meeting rules as outlined in the Brown Act, including being open to the public, ADA accessible, able to be recorded and broadcasted.</p> <p>Appointed or standing bodies of the governing body would also follow the public meeting rules as outlined in the Brown Act, including Restrictions on Committee Discussions.</p> <p>For example, if a quorum of members of a Brown Act body is present, the meeting must comply with all Brown Act requirements including 72 hours of advance posting of agenda. Committee members cannot discuss topics that are related to committee business with a majority of the Committee members outside of an official meeting. This includes conference calls, communication through other people, emails, text messages, social events, etc.</p>	<p>This section of the Brown Act defines a meeting as: “... any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body.” Under the Brown Act, the term “meeting” is not limited to gatherings at which action is taken but includes deliberative gatherings as well.</p> <p>Committee members cannot discuss topics that are related to committee business with a majority of the Committee members outside of an official meeting. This includes conference calls, communication through other people, emails, text messages, social events, etc. If a majority of the Committee members gather to discuss Committee business, members of the public must be included, and all provisions of the Brown Act followed.</p> <p>This section also prohibits serial meetings even if unintentional. A serial meeting occurs when there is a series of communications (whether in</p>	<p><u>54953</u>. Meetings.</p>

	person, by phone, or other media) each of which individually involves less than a quorum, but which taken as a whole involves a majority of board members.	
<b>Chapter 4: Agendas, Notices, and Public Participation</b>		
<p>A Brown Act Steering Committee, and any of its standing committees, would need to post an agenda at least 72 hours in advance before the meeting in a location “freely accessible to members of the public,” and follow all guidelines for agendas, notices, and public participation, as outlined in the Brown Act.</p> <p>Any written materials given to a Brown Act Steering Committee, and connected to an agenda item, in advance of the meeting, or at the meeting, must be made available to the public.</p> <p>The Air District’s ability to provide stipends for participation and preparation time may be limited by statute.</p>	<p>Every regular meeting of a legislative body must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.</p> <p>A legislative body may discuss or act on some matters without considering written materials. If writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public.</p>	<u>54954.</u> Agendas, Notices, and Public Participation.
<b>Chapter 5: Closed Sessions</b>		
A Brown Act Steering Committee may have a closed session upon meeting the requirements for a closed session as outlined in the Brown Act.	Meetings of a legislative body are either fully open or fully closed; there is nothing in between.	<u>54955.</u> Closed Sessions.
<b>Chapter 6: Remedies</b>		
A Brown Act Steering Committee must self-regulate to ensure there aren’t any violations of the Brown Act. If violations occur, certain	Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions	<u>54956.</u> Remedies.

<p>violations are designated as potential misdemeanors.</p>	<p>to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations.</p>	
<p><b>Chapter 7</b></p>		
<p>A Brown Act Steering Committee can have closed sessions with the Governor, and others, due to threats.</p>	<p>This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or security matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.</p>	<p><u>54957.</u> Regarding Closed Sessions with the Governor, Attorney General, District Attorney, etc. regarding Matters Posting a Threat.</p>
<p><b>Chapter 8</b></p>		
<p>The provisions of this chapter shall apply to the a Brown Act Steering Committee.</p>	<p>The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.</p>	<p><u>54958.</u> Provisions of this Chapter Apply to the Legislative Body of Every Local Agency.</p>
<p><b>Chapter 9</b></p>		
<p>A Brown Act Steering Committee would be subject to a misdemeanor if in violation of any provision of this chapter.</p>	<p>Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.</p>	<p><u>54959.</u> Misdemeanor Penalty for Violation of Any Provision of this Chapter.</p>

<b>Chapter 10</b>		
<p>The District Attorney and others' have the ability to take actions regarding potential violations or threatened violations of this chapter by a Brown Act Steering Committee</p>	<p>The District Attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.</p>	<p><u>54960.</u> District Attorney and Others: Rules for Commencing an Action by Mandamus, Injunction, or Declaratory Relief.</p>
<b>Chapter 11</b>		
<p>A Brown Act Steering Committee shall not conduct any meeting in a facility that prohibits the admittance of any person on the basis of ancestry, or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.</p>	<p>No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.</p>	<p><u>54961.</u> Facilities for Meetings and Admittance.</p>
<b>Chapter 12</b>		

<p>A Brown Act Steering Committee must follow guidelines for closed sessions and exceptions as outlined in this section.</p>	<p>Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.</p>	<p><u>54962.</u> Closed Sessions and Exceptions.</p>
<p><b>Chapter 13</b></p>		
<p>The provisions of this chapter shall apply to the Brown Act Steering Committee.</p>		<p><u>54963.</u> A person may not disclose confidential information that has been acquired by being present in a closed session authorized</p>