

Conducting a Board Meeting in Accordance with the Bagley-Keene Open Meeting Act

California Architects Board Training
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Resources

- Legal Affairs Division's Guide to the *Bagley-Keene Open Meeting Act*
- Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.)
- Architects Practice Act (Bus & Prof. Code, §§ 5500 – 5610.7)
- Robert's Rules of Order, Newly Revised (12th Edition)

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The Rights of the Public

The people have a right to instruct their representatives.

The people have the right of access to information concerning the conduct of the people's business. A statute, court rule, or other authority shall be broadly construed if it furthers the people's right to access, and narrowly construed if it limits the right of access.

(Cal. Const., art. I, § 3.)

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State Policy

"It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed. [...] it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly."



(Gov. Code, § 11120.)

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State Policy

"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."

(Gov. Code, § 11120.)

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Compliance is Critical

- Civil suits are authorized by any "interested person" for violations of the Bagley-Keene Open Meeting Act.
- "Each member of a state body who attends a meeting of such body in violation of any provision of this article, 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, is guilty of a misdemeanor."

(Gov. Code, §§ 11130.3, 11130.7.)

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Three Main Duties

1. Give proper notice of meetings and items that may be discussed.
2. Conduct meetings in open session unless a closed session meeting is authorized by law.
3. Provide the public an opportunity to comment.

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"Meetings"

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When is a Meeting a "Meeting"?

- A meeting "includes any congregation of a **majority** of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains."

(Gov. Code, § 11122.5(a)(1).)



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"Meeting"

- Includes a "series of communications" to discuss, deliberate, or take action on any item of business within the Board's jurisdiction.
 - Directly or through intermediaries
 - Includes texting, telephone calls, etc.

(Gov. Code, § 11122.5(b)(1).)

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When is a Meeting NOT a "Meeting"?

- The attendance of a majority of the members at an event open to the public that involves a discussion of issues of general interest ...
- The attendance of a majority of the members at a purely social or ceremonial occasion ...

... as long as a majority of the members do not discuss issues under the Board's jurisdiction.

(Gov. Code, § 11122.5(c).)

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What is Quorum?

- The minimum number of members who must be present at a meeting for business to be legally transacted.
 - When voting on a motion, only voting members entitled to vote are counted towards a quorum to conduct business.
 - A member with a conflict of interest is not entitled to vote.
 - If removal of a member results in less than quorum of entitled voters, the "rule of necessity" applies.
 - The rule of necessity allows the minimum number of persons to reestablish a quorum be brought back to an eligibility to vote. It is then recommended that the persons announce that they have a conflict and abstain from the vote. (Gov. Code § 11512(c); *Aluisi v. Fresno County* (1960) 178 Cal.App.2d 443, 452.)

(62 Ops.Cal.Atty.Gen. 698 (1979).)

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CAB Meeting Quorum



- Board meeting quorum:
 - The Architects Board has 10 seats.
 - The Board has specific authority dictating a quorum. Business and Professions Code section 5524 sets quorum at 6.
 - To pass a vote, the Board must have five members in agreement for a vote, six if all ten seated members are present at the meeting.
 - More than 5 is a quorum, and the discussion(s) becomes an unnoticed Board meeting.

Practice Tip: Take roll and establish a quorum at the beginning of the meeting. Keep track of who is actually present at the meeting for each item.

(Busn. & Prof. Code, § 6511; Robert's Rules of Order Newly Revised (12th ed.))

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Before the Meeting: Notice

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Behind the Scenes

- Members are responsible for properly noticed meetings.
 - If curious or unsure about effective notice or other requirement of a meeting, please ask.
- However, the Executive Officer, Board staff, Legal, and Office of Information Services work to ensure every meeting is compliant with Bagley-Keene.

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Notice For All Meetings

- Notice of the meeting must include an agenda, "containing a brief description of the items of business to be transacted or discussed in either open or closed session."
 - This "is intended to nullify the need for ... guesswork or further inquiry on the part of the interested public."
- No item may be added to the agenda after notice unless specifically permitted by law.
- Locations of the meeting or teleconference location must be on the agenda, and agendas must be posted at each physical location.
- Legal approves all agendas prior to posting.

(Gov. Code, § § 11123, 11125; 67 Ops.Cal.Atty.Gen. 85.)

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Proper Notice

- Regular meetings:
 - Notice and Agenda must be posted on the internet and mailed or emailed upon request at least 10 days prior to a meeting.
- Special Meetings:
 - Notice and Agenda must be posted on the internet, posted in newspapers and to radio/television stations via the national press wire services at least 48 hours prior to a meeting.
- Emergency Meetings:
 - Notice and Agenda must be posted on the internet, posted in newspapers and to radio/television stations via the national press wire services at least 1 hour prior to a meeting.

(Gov. Code, § § 11125, 11125.4, 11125.5; Busn. & Prof. Code, § 101.7(d).)

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Meetings Via Webcast or Teleconference

- Members are at different locations, connected by electronic means.
- All members must attend a publicly noticed location.
- Roll call vote required.
- Additional locations may be listed on the agenda that allow the public to observe or address the Board by electronic means (audio and/or video). (A staff location recommended).

(Gov. Code, §§ 11123, 11133.)

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Hybrid Meetings

As of 2024, if a quorum of the Board is together at a noticed physical location, members above quorum may appear virtually without noticing their location.

Committees may meet fully virtually or any combination of virtually and in person without noticing members' location, but a physical location with a staff member present must be noticed.

(Gov. Code, § § 11123.2, 11123.5)

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Public Right to Privacy

No one is required to register their name or other information to attend or participate at a meeting.

The Board may ask for information to know how to address the speaker or for follow up information, but it cannot be required.

Virtual access permits the use of pseudonym or fake information (i.e. xxxx@email.com) to obtain access.

(Gov. Code, § 11124)

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ADA Compliance

- All meeting locations, must be:
 - Open to the public
 - ADA accessible
- Meeting notice and written materials must be made available in "appropriate alternative formats" (ADA compliant) upon request by any person with a disability.
 - The notice and agenda posted on the website are ADA compliant.



(Gov. Code, §§ 11123, 11123.1, 11125, 11125.1.)

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Meeting Materials

- Materials distributed to the Members by staff before or during the meeting must be available at the meeting for the public.
- Materials introduced at the meeting must be available after the meeting.
- Hardcopy formats or available on the internet meet the "available" requirement.

(Gov. Code, § 11125.1.)

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Open Session

Open Session: General Rules

- **All meetings are public, unless specifically authorized.**
- All meetings shall provide the public an opportunity to address the Board on each agenda item
- All discussion and actions must take place in open session, unless authorized to hold a closed session.
- All votes must be made publicly.
- No secret ballots or votes, except mail votes on closed session disciplinary or enforcement matters.
- No proxy votes.

(Gov. Code, §§ 11123, 11125.7, 11126, 11526; 68 Ops.Cal.Atty.Gen. 65 (1989).)

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Webcast and Teleconference Meetings: Tips



- Keep panelist conference call number and passcodes confidential.
- Consider noticing additional locations where staff is present.
- Take roll before opening the meeting and request each member announce their location as part of that roll call.
- Roll Call votes are required.

(Gov. Code, §§ 11123)

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Facilitating Discussion

1. Call the Agenda item
2. If a member needs to recuse themselves, the member will leave here, unless required to maintain quorum.
3. Board Chair / Staff presents the item
4. Discussion
5. Ask for a motion
6. Ask for a second
7. Ask for Board discussion on the motion
8. Ask for public comment
8. If public comment stirs additional substantive Board comment, ask for public comment again before taking the vote

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Discussion

- Discussion must remain on the noticed topic.
- Discussion of items not on the agenda is a violation of Bagley-Keene notice requirements.

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Motions

- "Making a motion:" Announcing the proposal of a decision or action.
- The motion must be seconded.
- Restate motions: "It is moved and seconded that..."
- Clarify the motion if it is vague.
- If a motion is changed, the second must concur, or a new second is required.
- Once a motion is made and seconded, the Board *shall* vote on the motion unless the motion is withdrawn.

(Robert's Rules of Order Newly Revised (12th ed.).)

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Ending Debate

- The Chair may ask for final comments from members.
- The Chair may ask for public comment to weigh in on the controversy. If public comment is offered, check for additional member comment.
- Confirm no further discussion, call for the vote.
- A member may also request to halt further discussion by requesting to "move the previous question" or "call for the question."
 - Translation – request to vote on the pending motion.
 - This halt of discussion requires a second, public comment, and vote by two-thirds of the members.
 - If the request to call for the question is adopted, the Chair requests public comment, then the Board votes on the original pending motion.
 - If the request to call for the question is denied, discussion on the pending motion resumes.

(Robert's Rules of Order Newly Revised (12th ed.).)

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Counting Votes

- Voting options:
 - (1) Support/in Favor/Yes (**Vote cast**)
 - (2) Oppose/Against/No (**Vote cast**)
 - (3) Abstain
- Business and Professions Code section 5524 requires five members/six if all seats filled to support a vote for it to pass.
 - Abstentions are treated as aligning with the majority rule of the cast votes, unless a law provides otherwise.
- The minutes will record how each member voted.

(Gov. Code 11123; 62 Ops.Cal.Atty.Gen. 698 (1979); Robert's Rules of Order Newly Revised (12th ed.).)

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Recusals

- When the Chair announces the agenda item, a member unable to be or appear impartial due to a conflict may leave *before discussion begins*.
 - Conflicts include a financial interest, involvement in an activity that violates Bagley-Keene such as a serial meeting, or a conflict of interest (real or by perception)
- If the Board no longer has quorum in the member's absence, the member will return and announce there is a conflict prior to discussions.
 - Due to the conflict, the member is expected to remain silent during the discussion and vote "abstain."
- If a member realizes a conflict during discussion, the member may announce, "I have/may have a conflict," and leave, or may ask for a break to discuss with counsel.

(Gov. Code § 11512(c); *Aluisi v. Fresno County* (1960) 178 Cal.App.2d 443, 452; 62 Ops.Cal.Atty.Gen. 698 (1979); Robert's Rules of Order section 46)

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Public Comment

Public comment must be allowed before or during the Board's discussion or consideration of each open session agenda.

(Gov. Code, § 11125.7.)



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Public Comment

- Public comment must be permitted before, during or after each agenda item.
 - When in doubt – ask for public comment.
- The Chair may set reasonable time limitations.
 - Recommend regulation if standardized.
 - Member of the public using a translator gets twice the allotted time.

(Gov. Code, § 11125.7.)



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Public Comment: Items Not on the Agenda

- An opportunity for the public to make a comment or raise an item for a future discussion is offered at every meeting.
- The Board may not discuss or take action on any matter raised during public comment, except when exercising the option to decide whether to place the matter on the agenda of a future meeting.
- Discussion of items that are not on a noticed agenda violates the Act's advance notice provisions.

(Gov. Code, §§ 11125, 11125.7.)



**MEETING
AGENDAS**

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Public Comment: Items Not on the Agenda

If a matter is not on the agenda and the Board does not initiate a vote to place on a future agenda:

- The Chair may refer the public to staff or the Executive Officer to address questions.
- The Chair may coordinate with the Executive Officer to add the matter on a future agenda – no vote required.



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Disorderly Conduct

Bagley Keene does not permit willful interruption of the public's business.

Willful interruption of the meeting that renders the orderly conduct of the meeting unfeasible, and order cannot be restored by the removal of the individuals who are willfully interrupting the meeting, the Board may order the meeting room be cleared and continue the meeting.

(Gov. Code, § 11126.5.)

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Disorderly Conduct

- The Board cannot prevent criticism and must be sensitive to a public member's right to comment.
- The Board must also maintain order.
- The Board may take steps to protect the public meeting from personal, impertinent, slanderous, or profane comments.

(Gov. Code § 11125.7; *White v. City of Norwalk* (1990) 900 F.2d 1421.)

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Disruptive Persons

1. Request the person to speak slowly and refrain from inappropriate language.
2. Request that the person stop the disruptive behavior.
3. Request that the person leave the room.
4. Clear the room of public attendance if necessary.
5. Recess the meeting until law enforcement assistance can be secured if necessary.

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Technical Disruptions

Members may encounter technical difficulties at their location, including losing the connection to the meeting.

- Remain calm and confident – confer with staff publicly that the issue is being resolved.
- The Chair may recess the meeting while the problem is addressed.
- Announce to the public the reason for pauses.

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Preparing for Technical Issues

- Have staff member contact information handy to call/email for assistance as soon as possible.
- Attend web platform practice sessions.
- Know how to call into a meeting if web service becomes unavailable.
- Advise staff or the members publicly if there is an issue with the meeting, including an inability to hear.

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Unique Meetings

"Special" Meetings

- May be called by the Chair or two Board members with 48-hour notice.
- May only be called to conduct specific items of business permitted by law and when:
 - Compliance with the 10-day notice of regular meetings would impose a substantial hardship, or
 - Immediate action is required to protect the public interest.
- At the start of the special meeting, the Board must make findings that the reason for the meeting meets the requirements for a special meeting and the supporting facts.
 - A vote to adopt the findings requires 2/3^{ds} of members, or a unanimous vote if less than 2/3^{ds} of the members are present.
- Specified circumstances include:
 - To consider "pending litigation."
 - To consider "proposed legislation."

(Gov. Code, §§ 11125.4.)

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"Emergency" Meetings

- May be called upon an emergency situation with one hour notice.
- "Emergency situation" exists only when:
 - Work stoppage or other activity that severely impairs public health or safety, or both.
 - Crippling disaster that severely impairs public health or safety, or both.
- A finding of an emergency situation must be made by a majority of the members during a meeting prior to the emergency meeting or at the beginning of the emergency meeting.

(Gov. Code, § 11125.5.)

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Closed Session

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Closed Session Rules



- Closed session is allowed only as permitted in Government Code section 11126, including:
 - To discuss and vote on disciplinary or enforcement matters under the Administrative Procedure Act (APA).
 - To prepare, approve, or grade examinations.
 - To confer with or receive advice from legal counsel regarding pending litigation.
 - To appoint, employ, or dismiss the Executive Officer unless the EO requests such action to be held in public.

(Gov. Code, § 11126.)

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Closed Session: Agenda

- The closed session general nature of the item or items must be specifically noticed on the agenda, including legal authority,
- Other notes:
 - The name of the licensee subject to discipline is generally not provided for the privacy of the licensee.
 - The case name of litigation is typically provided but may be omitted if listing the litigation on the agenda would jeopardize service or settlement negotiations.
 - If litigation issues arise after the agenda is posted, the presiding officer may announce closed session will include the litigation matter.

(Gov. Code, §§ 11125.2, 11126.3(a), (d).)

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Closed Session Reporting

- Items of discipline will be reported or eliminated from a licensee's verification page in accordance with due process.
- If the item involves Executive Officer's employment, appointment, dismissal and action is taken in closed session, Board must report the action taken, then take a roll call vote in open session
 - At next public meeting, or
 - After reconvening into open session and before adjournment.

(Gov. Code, §§ 11125.2, 11126.3(f).)

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Questions?



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