



Office of the President  
San Bernardino Valley College  
701 South Mount Vernon Avenue  
San Bernardino, CA 92410

# MEMORANDUM

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**To:** Gilbert J. Contreras, Ph.D., President, College Council Co-Chair  
Andrea Hecht, Academic Senate President, College Council Co-Chair

**From:** Jesse Neimeyer-Romero, Ed.D., Executive Assistant to the President

**Cc:** Noel Arciero, Administrative Assistant II, Office of the President

**Date:** October 10, 2025

**Re:** The Brown Act: Alternates vs. Proxies & Additional Issues

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## Background

- The Brown Act is a California law that ensures local government meetings, like city councils, school boards, and county boards, are open and easy for the public to access. It says these groups must post their meeting agendas ahead of time and do their work in public meetings. People have the right to attend, record, and take part in these meetings. The law only allows private (closed) meetings in certain situations and gives ways to challenge or undo decisions if the rules are broken.<sup>1</sup>
- San Bernardino Valley College maintains a standing College Council. This committee plays a central role in guiding campus-wide planning, addressing key institutional issues, and ensuring effective communication across all governance groups. SBVC College Council is made up of various members of the college's constituent groups, including the Academic Senate, Classified Senate, Associated Students, etc.<sup>2</sup>
- The San Bernardino Valley College Council is governed by the processes and procedures outlined in the Brown Act.<sup>3</sup>

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<sup>1</sup> California Office of the Attorney General. (2003). *The Brown Act: Open meetings for local legislative bodies* [Pamphlet]. Sacramento, CA. Retrieved from <https://oag.ca.gov/system/files/media/the-brown-act.pdf>

<sup>2</sup> San Bernardino Valley College. (n.d.). *College Council*. San Bernardino Valley College. Retrieved September 12, 2025, from <https://www.valleycollege.edu/about-sbvc/campus-committees/college-council/index.php>

<sup>3</sup> As per the SBVC President's Executive Assistant's investigation into the question of the SBVC College Council as a Brown Act body, summarized in the September 18, 2025 Memorandum.

- During the September 10, 2025 meeting of the San Bernardino Valley College Council, the issue of proxies was discussed. It was stated by a College Council voting member that the Brown Act allows for proxy attendance and voting.<sup>4</sup>
- Research about this provision and the question of proxies was requested by the President. A memorandum dated September 18, 2025 was prepared and submitted to the College Council Co-Chairs that answered questions about proxies in relation to Brown Act bodies. That memorandum was shared at the September 24, 2025 convening of the College Council and entered into the record.
- Based on the ensuing discussion that took place, additional issues/questions were raised.<sup>5</sup> This memo seeks to address those issues/questions and to provide more information for consideration of the College Council.

## Issues/Questions

- During the discussion, the terms “proxy” and “alternate” were used interchangeably. This memorandum seeks to define those terms.
- This memorandum seeks to examine alternates in the context of Brown Act bodies and to define their roles & responsibilities.
- During the discussion, members continued expressing the desire to use proxies, though it is established that the Brown Act does not allow them. This memorandum seeks to explore the consequences that could occur if a Brown Act body deviated from the provisions within the Brown Act.

## Defining Terms

- Proxy
  - A *proxy* is someone designated by a regular member (the “principal”) to attend, deliberate, and vote *in place of* that member at a meeting. The proxy may follow instructions (a “specific proxy”) or may act more generally (a “general proxy”).<sup>6</sup>
  - Proxies are *not permitted* under the Brown Act and local open-meeting rules in California. This is because proxies allow a non-member to act in

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<sup>4</sup> College Council Minutes, September 10, 2025

<sup>5</sup> College Council Minutes, September 24, 2025

<sup>6</sup> EGM Consulting, LLC. (2020, April 27). *Use of alternates and proxy voting by RWHAP planning councils/planning bodies* [Reference tool]. Planning CHATT. <https://targethiv.org/sites/default/files/file-upload/resources/PlanningCHATT-ProxyVoting-27APR2020.pdf> (targethiv.org)

place of a body member, circumventing the requirement that decisions be made by the actual elected/appointee representative.<sup>7</sup>

- Alternate Member
  - An *alternate member* (sometimes called an associate or substitute) is a person who is formally designated (by ordinance, bylaw, charter, or agreement) to step into the role of a regular member when that regular member cannot attend. When the alternate is serving, the alternate is treated as a full member for that meeting.<sup>8</sup>
  - An alternate member *is permitted* in a Brown Act body, but only under limited and carefully defined circumstances.

### Alternate Members in Brown Act Bodies

- When is an alternate member allowed?
  - Specifically, an alternate is allowed only if the governing law or body's rules explicitly authorize it (e.g. legislative body bylaws, charter, or ordinance). The alternate, when acting, must themselves be subject to the Brown Act (i.e. must satisfy open meeting, disclosure, conflict-of-interest, and reporting obligations).<sup>9</sup>
- What may allow for an alternate member?
  - In short, an alternate member is allowed to be used by a Brown Act body of that body allows it as a part of its processes & procedures (e.g. bylaws). For example, in the context of joint powers agencies, The Brown Act, via § 54956.96, expressly refers to a “designated alternate member.” There, an agency may authorize an alternate by its bylaws or agreement to attend closed session in lieu of a regular member (so long as certain confidentiality and membership conditions are met).<sup>10</sup>
  - Importantly, the Brown Act does not itself mandate alternates, but does *not forbid* them, where authorized.<sup>11</sup>
- What is required for an alternate member to attend a meeting?
  - Alternate members must be properly designated in advance (i.e. the public must know who the alternates are). Many codes or charters require the

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<sup>7</sup> Oakland, CA. (2021). *Brown Act and Sunshine Ordinance training* [PDF]. City of Oakland. <https://cao-94612.s3.us-west-2.amazonaws.com/documents/Brown-Act-and-Sunshine-Ordinance-Training.pdf>

<sup>8</sup> EGM Consulting, LLC. (2020, April 27).

<sup>9</sup> Riverside County Transportation Commission. (2017). *Chapter 9: The Ralph M. Brown Act* [PDF]. [https://www.rctc.org/wp-content/uploads/2017/03/CHAPTER-9\\_Brown-Act.pdf](https://www.rctc.org/wp-content/uploads/2017/03/CHAPTER-9_Brown-Act.pdf)

<sup>10</sup> Lozano Smith. (2021). *2021 LS Brown Act handbook* [PDF]. [https://cdns5-ss8.sharpschool.com/UserFiles/Servers/Server\\_222705/File/Parcel%20Tax/2021-2022%20PT%20Apps/2021%20LS%20Brown%20Act%20Handbook%20%28SC267858xAAE13%29.PDF](https://cdns5-ss8.sharpschool.com/UserFiles/Servers/Server_222705/File/Parcel%20Tax/2021-2022%20PT%20Apps/2021%20LS%20Brown%20Act%20Handbook%20%28SC267858xAAE13%29.PDF)

<sup>11</sup> Ibid.

names of alternates to be on file, such as the ordinance governing the proceedings of the Sonoma County Transportation Authority.<sup>12</sup>

- What can an alternate member do in a meeting?
  - If an alternate member attends a meeting, they must perform all duties (vote, deliberate, disclosure, etc.) just as a regular member would.<sup>13</sup>

### Summary of Proxies vs. Alternates

	Proxy	Alternate
<b>Definition</b>	Person temporarily sent to act/vote on behalf of a member.	Officially appointed substitute who becomes a member when serving.
<b>Authorized by Brown Act?</b>	No.	Yes, if formally established.
<b>Acts as:</b>	The absent member.	A separate, authorized member.
<b>Participation Validity</b>	Invalid — action could be void.	Valid, if properly designated.

### Deviation from the Brown Act

- Civil Enforcement Actions
  - Mandamus, Injunction, or Declaratory Relief
    - Any “interested person” (such as a district attorney) may bring suit under Gov. Code § 54960(a) to (i) prevent ongoing or threatened violations, or (ii) determine the applicability of the Brown Act to particular actions.<sup>14</sup>
    - In summary, a court can order the agency to comply going forward or settle disputes about whether a proposed action violates the Act.
  - Voiding, or Nullification, of Past Actions
    - Under Gov. Code § 54960.1, a court may declare void or invalidate an action taken in violation of certain Brown Act provisions (e.g. meeting notice or open meeting requirements).<sup>15</sup>
    - But note: not every Brown Act violation permits voiding. The Brown Act and case law limit nullification to violations of the “open and public meeting provisions or the notice requirements.”
    - Also, before suing to void, the challenging party usually must send a “cure and correct” demand to the legislative body. The body then has an opportunity (often 30 days) to cure or correct the violation.

<sup>12</sup> Sonoma County Transportation Authority. (2020). *SCTA administrative code: Draft 2020 update — Ordinance No. 4* [PDF]. <https://scta.ca.gov/wp-content/uploads/2020/07/4.1.3.b-Draft-2020-update-SCTA-Administrative-Code-2016-Ordinance-No-4.pdf>

<sup>13</sup> Lozano Smith. (2021).

<sup>14</sup> California Office of the Attorney General. (2003).

<sup>15</sup> Ibid.

- Limitation / Restriction on Voiding Past Actions (§ 54960.2)
  - The law includes a limitation on relief for past actions if the body publicly and unconditionally commits to cease and desist the offending practice. In that case, some remedies (like nullification) may no longer be available.<sup>16</sup>
  - Also, § 54960.2 imposes procedural requirements (notice, deadlines) before a court will intervene for past violations
- Attorney Fees and Costs (§ 54960.5)
  - If a plaintiff prevails under §§ 54960, 54960.1, or 54960.2, the court may award reasonable attorney's fees and costs to the plaintiff.<sup>17</sup>
- Criminal Penalties
  - Misdemeanor Liability for Members
    - Under Gov. Code § 54959, each member of a legislative body who attends a meeting in which an action is taken in willful violation of the Brown Act (and who intended to deprive the public of information) may be guilty of a misdemeanor.<sup>18</sup>
    - However, in practice criminal prosecutions are extremely rare, and there are very few (if any) known convictions under § 54959.<sup>19</sup>
- Reputational, Political, and Practical Consequences
  - Loss of Public Trust / Reputation
    - Violating open-meeting norms can erode confidence in the agency's transparency and integrity, making it harder to maintain legitimacy or community cooperation.
  - Operational Disruption / Remediation Costs
    - The body may need to repeat meetings, re-notice agenda items, or re-vote on actions, thereby incurring administrative cost, delay, and inefficiency.
  - Injunctions on Future Actions
    - If a court enjoins a body from continuing certain practices, the body must adjust procedures to avoid contempt, including revising agenda rules, meeting protocols, etc.
  - Litigation Risk / Budget Exposure
    - The agency may incur legal fees, liability exposure, and internal resource burdens as it defends or settles enforcement actions.
- In summary, there are multiple ways in which a body that is governed by the Brown Act may find itself in legal jeopardy, earn itself reputation harm, and incur monetary obligations if they choose to deviate from the protocols dictated by the Brown Act.

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<sup>16</sup> California Office of the Attorney General. (2003).

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> First Amendment Coalition. (2021, January 20). *How can we obtain criminal charges against our community service district for violations of the Brown Act?* Retrieved from <https://firstamendmentcoalition.org/asked-and-answered/how-can-we-obtain-criminal-charges-against-our-community-service-district-for-violations-of-the-brown-act/>

## Conclusion

As established by the Brown Act and discussed in the September 18, 2025 Memorandum, there is a prohibition on the use of proxies by public bodies that are governed by the Brown Act.

However, the Brown Act allows public bodies to make use of alternate members if they are used under limited and defined circumstances, such as the body's bylaws that explicitly authorize their use. Alternate members are subject to the Brown Act and bear the full weight of responsibility when attending in place of a regular member.

## Recommendation

As the San Bernardino Valley College Council is governed by the Brown Act<sup>20</sup>, the College Council cannot use proxies as they are prohibited.<sup>21</sup>

It is recommended that in order to avoid any consequences for deviating from the provisions within the Brown Act the College Council should abandon the possible use of proxies and re-center discussions on the use of alternate members, as alternate members may be used if they are authorized by the College Council's bylaws.<sup>22</sup>

If alternate members are an option that the San Bernardino Valley College Council would like to explore, a review of the College Council's bylaws should be conducted to see if the use of alternate members is permissible. If they are not currently provided for and the College Council decides that alternate members should be used, the College Council should take the procedurally established steps to amend the bylaws to allow their legal use.

For further examination on these issues, if still unsettled by the College Council membership, it is recommended that the San Bernardino Valley College Council seek legal counsel.

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<sup>20</sup> The SBVC President's Executive Assistant's investigation.

<sup>21</sup> EGM Consulting, LLC. (2020, April 27).

<sup>22</sup> Ibid.