



LAW OFFICES OF
QUINTANILLA & ASSOCIATES

“Transparent and Open Government”

**USERS GUIDE
TO THE
THE RALPH M. BROWN ACT**

2018 Edition

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I. HISTORICAL OVERVIEW OF THE ACT

The Brown Act, officially known as the Ralph M. Brown Act (Government Code sections 54950-54963¹) after its author, Assemblyman Ralph M. Brown (Turlock), was enacted in 1953 in response to mounting public concerns that local elected officials were avoiding requirements for providing the public with advance notice of public meetings by conducting secret "workshops" or "study sessions".

The stated intent of the Brown Act (also referred to herein as the "Act") is to ensure that public agencies deliberate and conduct their business in open public meetings that are open and accessible to the public.

The Act solely applies to local public agencies, boards, and councils, whereas the comparable Bagley-Keane Act mandates open meetings for State government agencies.

II. SUMMARY OF SUBJECTS COVERED BY THE BROWN ACT

A. APPLICABILITY

1. Governing Bodies Subject to the Act

The governing bodies of general law and charter cities, boards of supervisors and district boards are subject to the Brown Act.² A governing body is referred to herein as the "governing body" or the "body"; the governmental entity that is governed by the body is referred to herein as the "agency". The officials of governing bodies subject to the Brown Act are referred to herein as "public officials" or "members".

2. Subsidiary Bodies Subject to the Act

Subsidiary boards, commissions or advisory bodies created by agencies (i.e., Planning Commissions, Finance Authorities, etc.) are subject to the Act, whether permanent or temporary.³

3. Standing Committees Subject to the Act

A standing committee of a governing body is subject to the Act. A standing committee is one that has a continuing subject matter jurisdiction or a meeting schedule that has been fixed by formal action of the governing body, regardless of the number of members.⁴

4. Private or Nonprofit Entities Subject to the Act

The governing body of a private or nonprofit⁵ entity formed by an agency to exercise authority that may lawfully be delegated by the governing body is subject to the Act.⁶

The governing body of a private or nonprofit entity that receives funds from an agency and whose body includes a member with full voting rights who also serves as a member of the governing body of the contributing agency is also subject to the Act.⁷

5. Exempt Entities

The following entities are exempt from the Brown Act:

- An ad hoc advisory committee of a governing body comprised of less than a quorum of members of the body⁸; and
- Businesses operating in the private sector.

6. Newly Elected Officials

Any person elected to serve as a member of the governing body who has not yet assumed the duties of office must conform his or her conduct to the requirements of the Brown Act.⁹

B. MEETINGS, DEFINED

1. What is a Meeting?

A "meeting" is any congregation of a majority of the governing members of a covered body, at the same time and location including a teleconferenced location, to hear, discuss, deliberate or take action on any item that is within the covered body's subject matter jurisdiction.¹⁰

2. What is Not a Meeting?

Nothing in the Brown Act prevents a majority of members of a governing body from attending a function. The test is not whether a majority attends the function, but whether business of a specific nature within the subject matter jurisdiction of the agency is discussed. So long as the members do not discuss agency business, there is no violation of the Brown Act.

Following are the five exceptions that permit a majority of members of a body to gather without prompting the Brown Act meeting requirements:

- A majority of the body may attend a public conference or similar gathering that addresses issues of general interest to the public, provided that a majority of the body do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the body's subject matter jurisdiction.¹¹
- A majority of the body may attend an open and publicized meeting organized by another organization to address a topic of concern to the community provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the body's subject matter jurisdiction.¹²
- A majority of the body may attend a meeting of a governing body of another local agency, or a legislative body of another local agency. Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their agency's subject matter jurisdiction, again provided that it is an open and publicized meeting.¹³
- A majority of the body may attend an open and noticed meeting of a standing committee of the governing body. The governing body members who are not standing committee members may attend only as observers, meaning that they cannot speak or otherwise participate in the meeting. A majority of the members must not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the governing body's subject matter jurisdiction.¹⁴
- A majority of the body may attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the agency.¹⁵

Example: A local organization is sponsoring the first of many candidates' forums. Each candidate will present his or her platform in the upcoming Municipal election. Candidates include four of the existing members of the City Council. Result: The forum is not a meeting, provided it is open and publicized and organized by a person or organization other than the agency to address a topic of local community concern, and provided a majority of the governing body do not discuss agency business among themselves, other than as part of the scheduled program.

3. Teleconferenced Meetings

The Brown Act provides for the audio or video teleconferencing of any meeting subject to the following conditions:

- A teleconferenced meeting must comply with all other Brown Act requirements.¹⁶
- All votes taken during a teleconferenced meeting must be accomplished by roll call.¹⁷
- The notice and agenda of the meeting must identify the teleconference location and must provide the public with the opportunity to address the members at the teleconferenced location.¹⁸
- A meeting agenda must be posted at the teleconferenced location.¹⁹
- The teleconferenced location must be accessible to the public.²⁰
- During the teleconference, at least a quorum of the members of the body must participate from locations within the body's jurisdictional boundaries.²¹

4. Prohibited Serial Meetings

A series of private meetings (known as "serial meetings") by which majority of members of the body commit themselves to decision concerning public business or engage in collective deliberation on public business violates open meeting requirement imposed by the Brown Act. There may be nothing improper about the substance of a serial meeting; the problem is the process, which deprives the public of an opportunity for meaningful participation in decision-making.

The Brown Act prohibits a majority of the members of a legislative body, outside a public meeting, from using a series of communications of any kind,

directly or through intermediaries, "to discuss, deliberate, or take action" on any item of business within its jurisdiction.²² "Taking action" means a collective decision by a majority of the body, a collective commitment or promise by a majority to make a decision, or an actual vote of the body upon a motion, proposal, resolution, order or ordinance.²³

The Brown Act does not prohibit public agency employees or officials from engaging in separate conversations or communications with members of a legislative body outside of a meeting to answer questions or provide information regarding a matter, as long as that employee or official does not communicate a member's comments or position on a matter to any other member.²⁴ Officials must be cognizant of the difference between informational exchanges and prohibited consensus-building; officials must take great care to neither elicit information from council or board members nor share the comments or position of one council or board member with other members of the board or council outside of a public meeting.

Example 1: Council member A contacts Council member B to discuss a proposed building project that the council will act upon in the future. Council member B later contacts Council member C and discusses the project, and reveals Council member A's opinions regarding the project to Council member C. Result: A prohibited serial meeting has been conducted since there was discussion between a quorum of council members outside of an open, public meeting concerning a matter within the City Council's subject matter jurisdiction.

Example 2: One by one, a developer telephones and speaks with each council member for a decision on the developer's proposed project. During the phone conversation, the developer reveals to a majority of the council members the opinions of other members. Result: With the developer acting as the intermediary, a prohibited serial meeting has been conducted since there was discussion between a quorum of council members outside of an open, public meeting concerning a matter within the City Council's subject matter jurisdiction.

Example 3: A staff member briefs each council member about a pending project prior to a formal meeting and, in the process, reveals information about each member's respective views. Result: With the staff member acting as the intermediary, a prohibited serial meeting has been conducted since there was discussion between a quorum of council members outside of an open, public meeting concerning a matter within the City Council's subject matter jurisdiction.

Example 4: Council member A sends an email to a developer with a pending project congratulating him on the merits of the project. The developer forwards the email to all the remaining council members. Council members B and C confer in private about the opinion expressed by Member A. Result: A prohibited serial meeting has been conducted since there was discussion between a quorum of council members outside of an open, public meeting concerning a matter within the City Council's subject matter jurisdiction.

Example 5: One by one, the Mayor telephones the other council members to inquire as to whether to schedule a special meeting to discuss a pending project. Result: No serial meeting has been conducted, provided the Mayor avoids soliciting the opinions of the other members regarding the merits of the project.

C. NOTICE, AGENDA AND MEETING REQUIREMENTS

1. Regular and Adjourned Regular Meetings

A meeting of the governing body must be conducted within the local agency's jurisdiction except in limited circumstances.²⁵ The meeting place must not prohibit the admittance of any person on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. Members of the public must be able to gain admittance without making a payment or purchase.²⁶

Notice of the meeting must be mailed at the time the agenda is posted or mailed when the agenda is distributed to all or a majority of the legislative body, whichever occurs first, to those who request it, including each local newspaper, radio and television station that has requested it.²⁷

At least seventy-two hours in advance of the meeting, notice of the meeting and the meeting agenda must be posted in areas that are freely accessible to the public at all times and on the local agency's website, if the local agency has one.²⁸

The agenda must describe each item of business to be transacted or discussed and must provide the time, and location of the meeting.²⁹ Action or discussion on any item not described in the agenda is prohibited, unless one of the urgency exemptions is applicable.³⁰ However, members may briefly respond to statements made or questions asked by the public.³¹

Additionally, members may³²:

- ask a question for clarification
- make a brief announcement
- make a brief report on activities
- provide a reference to staff or other sources for factual information
- request staff report to the body at a future meeting
- direct staff to place a matter of business on a future agenda

The governing body may take action on items of business not described in the agenda under any one of the following urgent conditions:

- A majority of the members determine that an emergency exists, such as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both.³³
- Two-thirds of the members present (or all of the members if less than two-thirds are present) determine that there is a need to take immediate action and the need for that action came to the attention of the body after the agenda was posted.³⁴
- The item appeared on the agenda of a meeting of the governing body held not more than five days earlier and the item was continued from that meeting.³⁵

The governing body may conduct only public votes, with no secret ballots. The governing body must publicly report any action taken and the vote on that action of each member present.³⁶

Prior to taking final action, the governing body must orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive during the open meeting in which the final action is to be taken.³⁷

For a meeting occurring on and after January 1, 2019, local agencies that have a website must comply with additional notice requirements. In general, the agenda must be posted on the local agency's primary website homepage, accessible through a prominent, direct link. The direct link to the agenda cannot be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.³⁸

In lieu of providing a direct link to the agenda, a local agency may provide a direct link to an integrated agenda management platform on its primary website homepage. The integrated agenda management platform is a website which is dedicated to providing the entirety of a local agency's agenda information.³⁹ The direct link to the integrated agenda management platform cannot be in a contextual menu.⁴⁰

Regardless of whether a local agency provides a direct link to the agenda or to an integrated agenda management platform, the online copy of the agenda must be formatted in the following manner:⁴¹

- Retrievable, downloadable, indexable, and electronically searchable by commonly used internet search applications.
- Platform independent and machine readable.
- Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

2. Special Meetings

A special meeting may be called by the governing body's presiding officer or a majority of the body.⁴² A special meeting of the governing body must be conducted within the agency's jurisdiction except in limited circumstances.⁴³ The meeting place must not prohibit the admittance of any person based on race, religious creed, color, national origin, ancestry, or sex and must be accessible to disabled persons.⁴⁴ Members of the public must be able to gain admittance without making a payment or purchase.⁴⁵

At least twenty-four hours prior to the meeting, the following must be accomplished:

- The call and notice of the meeting must be posted in a location that is freely accessible to the public at all times, and on the local agency's website, if the local agency has one.⁴⁶
- Written notice of the meeting must be delivered to, and received by each member of the governing body, unless the member has filed a written waiver of the notice or if the member is actually present at the meeting when it convenes.⁴⁷
- Written notice of the meeting must be delivered to and received by each local newspaper of general circulation and each radio or television station that requested written notice.⁴⁸

The call and notice of the meeting agenda must describe each item of business to be transacted or discussed.⁴⁹ Action or discussion on any item not described in the agenda is prohibited.⁵⁰ The governing body may conduct only public votes, with no secret ballots.⁵¹

A special meeting may not be called regarding salaries, salary schedules, or fringe benefits of a local agency executive. However, this prohibition does not apply to a local agency calling a special meeting to discuss the local agency's budget.⁵²

3. Emergency Meetings

The governing body may conduct an emergency meeting if the majority of the body determines there is a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both.⁵³ All special meeting requirements are applicable to the emergency meeting, except for the twenty-four hour notice requirement.⁵⁴

One hour prior to the emergency meeting, the presiding officer or his or her designee must notify by telephone each local newspaper of general circulation and radio or television station that has requested notice of special meetings. If telephone services are not functioning, the notice requirement is waived. As soon after the emergency meeting as possible, the media must be informed of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting.⁵⁵

During an emergency meeting, the body may meet in closed session if agreed to by a two-thirds vote of the members present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.⁵⁶

As soon after the emergency meeting as possible, the minutes of the meeting, a list of persons who the agency notified or attempted to notify, a copy of the roll call vote and any actions taken at the meeting must be posted in a public place and must remain posted for a minimum of ten days.⁵⁷

4. Simultaneous Meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body (such as a city council and housing authority board) may convene a meeting of the subsequent legislative body, simultaneously or in serial order, only if a clerk or member of the convened legislative body verbally announces the amount of compensation or stipend (not including reimbursements), if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body.⁵⁸

The announcement need not be made if the amount of compensation is determined by statute and no additional compensation is authorized by the local agency.⁵⁹

D. CLOSED SESSIONS

As discussed below, closed meetings are the exception and are permitted by the Brown Act only if they meet defined purposes and follow special requirements.⁶⁰

1. Personnel

The governing body may convene into closed session to discuss the appointment, employment, performance evaluation, discipline and complaints about or dismissal of a specific employee, unless the employee requests a public session.⁶¹

Prior to conducting a closed session on specific complaints or charges brought against an employee by another person or employee, the agency must provide the employee written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session. The notice must be delivered to the employee personally or by mail at least twenty-four hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the governing body against the employee based on the specific complaints or charges in the closed session is null and void.⁶²

The agenda must describe the closed session in the following manner:⁶³

- Public Employee Appointment Title: (Specify description of position to be filled)
- Public Employment Title: (Specify description of position to be filled)
- Public Employee Performance Evaluation Title: (Specify position title of employee being reviewed)
- Public Employee Discipline/Dismissal/Release (No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

The governing body must report action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session at the public meeting during which the closed session is held. The report must identify the title of the position. The report of a dismissal or of the nonrenewal of an employment contract must be deferred until the first public meeting following the exhaustion of administrative remedies, if any.⁶⁴

2. Litigation

The governing body may convene into closed session to discuss with its legal counsel pending litigation when discussion in open session concerning

those matters would prejudice the agency's position in the litigation.⁶⁵ Litigation is pending when any of the following circumstances exist:

- Litigation, to which the agency is a party, has been initiated formally.⁶⁶
- A point has been reached where, in the opinion of the governing body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the agency.⁶⁷
- Based on existing facts and circumstances, the governing body is meeting only to decide whether a closed session is authorized under the Act.⁶⁸
- § Based on existing facts and circumstances, the governing body has decided to initiate or is deciding whether to initiate litigation.⁶⁹

An agency is considered to be a "party" or to have a "significant exposure to litigation" if an agency officer or employee is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment. This includes litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.⁷⁰

The facts and circumstances that indicate significant exposure to litigation are as follows:⁷¹

- Facts and circumstances that might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs. Such facts and circumstances need not be disclosed.
- Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs. Such facts or circumstances must be publicly stated on the agenda or announced.
- The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation. The claim or communication must be available for public inspection.
- A statement made by a person in an open and public meeting

threatening litigation on a specific matter within the responsibility of the governing body.

- A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the governing body so long as the official or employee of the agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting. That record must be available for public inspection. The record need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

The agenda must describe the closed session in the following manner:⁷²

- Conference With Legal Counsel--Existing Litigation (Paragraph (1) of Subdivision (d) of Section 54956.9) Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers) or Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)
- Conference With Legal Counsel--Anticipated Litigation Significant exposure to litigation pursuant to Paragraph (2) or (3) of Subdivision (d) of Section 54956.9: (Specify number of potential cases)
- Initiation Of Litigation Pursuant To Paragraph (4) of Subdivision (d) of Section 54956.9: (Specify number of potential cases)

Agency approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation must be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. If the approval is to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but must specify that the direction to initiate or intervene in an action was given and that the action, the defendants, and the other particulars must be disclosed to any person upon inquiry, once the litigation is formally commenced, unless the disclosure would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or if

disclosure would jeopardize its ability to conclude existing settlement negotiations to its advantage.⁷³

The governing body must report approval given to its legal counsel of a settlement of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding after the settlement is final, as specified below.⁷⁴

- If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.⁷⁵
- If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.⁷⁶

3. Property Negotiations

The governing body may convene into closed session to discuss with the agency's identified bargaining agent, the purchase, sale, exchange or lease of real property by or for the agency.⁷⁷ A lease includes renewal or renegotiation of a lease. Prior to the closed session, the governing body must hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate. Negotiators may be members of the governing body.⁷⁸

The agenda must describe the closed session in the following manner:⁷⁹

- **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent)) Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

The governing body must report its approval of an agreement concluding real estate negotiations after the agreement is final.⁸⁰ If the body's own approval renders the agreement final, it must report that approval and the substance of the agreement in open session at the same public meeting during which the closed session is held.⁸¹ If final approval rests with the other party to the negotiations, the agency must disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the agency of its approval.⁸²

4. Labor Negotiations

The governing body may convene into closed session with designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.⁸³ The closed session with the agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of the agency's available funds and funding priorities, but only insofar as those discussions relate to providing instructions to the agency's designated representative.⁸⁴

The term "employee" includes an officer or an independent contractor who functions as an officer or an employee, but does not include any elected official, member of the governing body, or other independent contractors.⁸⁵

Prior to the closed session, the governing body must hold an open and public session in which it identifies its designated representatives.⁸⁶ The agenda must describe the closed session in the following manner:⁸⁷

- **CONFERENCE WITH LABOR NEGOTIATORS**

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

The closed session must be for the purpose of reviewing the body's position and instructing the agency's designated representatives⁸⁸ and may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.⁸⁹ The closed sessions must not include final action on the proposed compensation of one or more unrepresented employees.⁹⁰

The governing body must publicly report (orally or in writing) the action taken in closed session and the vote or abstention of every member present and voting concerning the approval an agreement that concludes labor negotiations with represented employees. The report must be made after the agreement is final and has been accepted or ratified by the other party and must identify the item approved and the other party or parties to the negotiation.⁹¹

5. Liability Claims

The governing body may convene into closed session to discuss a claim for the payment of tort liability losses and public liability losses.⁹² The agenda must describe the closed session in the following manner:⁹³

- **LIABILITY CLAIMS**

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name).

The governing body must report disposition of claims discussed in closed session as soon as reached in a manner that identifies the name of the claimant, the name of the agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.⁹⁴

6. Joint Powers Agencies

When the controlling joint powers agency agreement or the joint powers agency's regulations or bylaws permit, any person who serves as both a member of the governing body of a joint powers agency and as a member of the governing body of a member agency may disclose information to the member agency's legal counsel, or to other agency members in a closed session when the information was obtained in a JPA closed session and has direct financial or liability implications for the member agency.⁹⁵

If the controlling joint powers agency agreement or the joint powers agency's regulations or bylaws permit, any person who serves as both a designated alternate member of the JPA and as a member of the governing body

of a member agency may attend the JPA closed session in lieu of the member agency's primary representative.⁹⁶

When the controlling joint powers agency agreement or the joint powers agency's regulations or bylaws permit, the governing body of a member agency, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a JPA closed session.⁹⁷ The agenda must describe the closed session in the following manner:⁹⁸

- CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name).

Discussion will concern: (Specify closed session description used by the joint powers agency.) Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

7. Other Permissible Closed Session Topics

- Security of public buildings and services or a threat to the public's right of access to public services or facilities.⁹⁹
- License applications for people with criminal records.¹⁰⁰
- Threats to public services or facilities.¹⁰¹

8. Disclosure and Reporting of Items

Prior to holding a closed session, the governing body must disclose, during open session, the item or items to be discussed in closed session. The disclosure may be by reference to the item as listed by number or letter on the agenda. During the closed session, the governing body may consider only those items covered in the disclosure.¹⁰²

After the closed session, the governing body must reconvene into open session and make the required reports of action taken and the vote or abstention of the members in closed session.¹⁰³ The required reports may be made orally or in writing.¹⁰⁴

The governing body shall provide to anyone who has submitted a written request within 24 hours of the posting of the agenda, or to anyone who has made

a standing request for all documentation, copies of any documents that were finally approved or adopted in the closed session, if the requester is present at the time the closed session ends.¹⁰⁵ If the documents require substantive amendments and retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the governing body, or his or her designee orally summarizes the substance of the amendments for the benefit of the requester or any other person present and requesting the information.¹⁰⁶

Documents finalized in closed session must be made available to the public on the next business day following the meeting. If the documents require substantial amendment or retyping, copies must be made available as soon as completed.¹⁰⁷

9. Permitted Closed Session Attendees

Only the members of the governing body and the support staff necessary to conduct business regarding a specified item (i.e., legal counsel, consultants, and negotiators) may attend a closed session.¹⁰⁸

10. Confidentiality of Closed Session Discussions

A person may not disclose confidential information that has been acquired by being present in a closed session to a person not entitled to receive it, unless the governing body authorizes disclosure of that confidential information.¹⁰⁹

"Confidential information" is defined by the Brown Act as a communication made in a closed session that is specifically related to the basis for the governing body to meet lawfully in closed session under the Act.¹¹⁰

Violations of the confidentiality provision may be addressed by the use of the remedies currently available by law, including, but not limited to the following:¹¹¹

- Injunctive relief to prevent the disclosure of confidential information.
- Disciplinary action against an employee who has willfully disclosed confidential information, provided the employee in question has received training as to the requirements of either this section or otherwise has been given notice of the requirements of this section.
- Referral of a member of a legislative body who has willfully disclosed confidential information to the grand jury.

It is not a violation of the confidentiality prohibition for a person to do any of the following:¹¹²

- Make a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.
- Express an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.
- Disclose information acquired by being present in a closed session that is not confidential.

E. ADJOURNED MEETINGS

1. Adjournment Permitted

The governing body may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment.¹¹³ When a regular or adjourned regular meeting is adjourned, the resulting adjourned regular meeting is a regular meeting for all purposes.¹¹⁴

2. Adjournment by the Clerk or Secretary

If all the members of the governing body are absent from any regular or adjourned regular meeting, the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place.¹¹⁵ The clerk must give written notice of the adjournment in the same manner as is provided for special meetings. If the order of adjournment fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.¹¹⁶

Within twenty-four hours after the time of the adjournment, a copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the adjourned meeting was held.¹¹⁷

F. CONTINUED HEARINGS

1. Authority

Any hearing being held during a meeting, and any hearing that was noticed or ordered to be held during a meeting, may be continued by the

governing body to a subsequent meeting of the governing body.¹¹⁸

2. Notice

The clerk must give written notice of the continuance in the same manner as for giving notice of a special meeting.¹¹⁹ Within twenty-four hours after the time of the continuance, a copy of the notice of continuance must be conspicuously posted on or near the door of the place where the continued hearing was held. However, if the hearing is continued for a period of less than twenty-four hours after the time specified in the hearing notice or order, a copy of the notice of continuance must be posted immediately following the meeting at which the governing body ordered the continuance.¹²⁰

G. RIGHTS OF THE PUBLIC AT MEETINGS

1. Attendance

An agency cannot require the public to register their names, provide other information, complete a questionnaire, or otherwise fulfill any condition to attend a meeting of the governing body.¹²¹ If an attendance list, register, questionnaire or similar document is circulated to the public present at the meeting, the document must clearly state that signing, registering or completing the document is voluntary and all persons may attend regardless of filling out the document.¹²²

An agency's meeting place must not prohibit the admittance of any person based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation and must be accessible to disabled persons. Members of the public must be able to gain admittance without making a payment or purchase.¹²³

2. Access to Meeting Records

If a writing is a public record and relates to an agenda item for an open session of a regular meeting of the agency's legislative body and the writing is distributed less than 72 hours prior to the meeting, the writing must be made available for public inspection when the writing is distributed to all, or a majority of all, of the members of the legislative body.¹²⁴

The agency must make the writing available for public inspection at a public office or location that the agency designates for that purpose. The agency must list the address of the office or location on the agendas for all meetings of the legislative body. The agency may also post the writing on its website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.¹²⁵

3. Right to Record Proceedings

Any person attending an open and public meeting of the governing body has the right to record the proceedings with an audio or video tape recorder or a still or motion camera providing the recording can proceed without noise, illumination or obstruction of views that would be a persistent disruption to the meeting.¹²⁶ Any person may inspect any audio or film recording of an open and public meeting of the governing body. The inspection must be provided without charge on a video or tape player made available by the agency.¹²⁷ The agency may erase or destroy the recording thirty days after the taping or recording.¹²⁸ Any inspection of an audio or video recording shall be provided without charge on equipment made available by the Agency.

4. Participation

Every regular meeting agenda must provide an opportunity for the public to address the governing body on any item of interest to the public that is within the governing body's subject matter jurisdiction.¹²⁹ At a regular meeting, the public must be provided an opportunity to address the governing body concerning any item described on the meeting agenda before or during consideration of that item.¹³⁰ However, an agenda for a regular meeting need not provide the public with the opportunity to address the body on any item that has already been considered by a committee composed exclusively of members of the body at a public meeting at which the public was given an opportunity to address the committee before or during its consideration of the item, unless the item has been substantially changed since the committee heard the item.¹³¹

Every notice for a special meeting must provide an opportunity for the public to address the governing body concerning any item described in the notice before or during consideration of that item.¹³²

The governing body may adopt reasonable regulations regarding public participation, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. However, the governing body must provide at least twice the allotted time to a member of the public who utilizes a translator, unless the governing body uses a simultaneous translation equipment in a manner that allows the governing body to hear the translated public testimony simultaneously.¹³³

5. Disorderly Conduct of the Public

The members of the governing body may order the meeting room cleared, in the event a group or groups of individuals willfully interrupt the meeting and orderly conduct is unfeasible and cannot be restored by removal of individuals.¹³⁴

News media representatives must be permitted to attend the session, except those who participated in the disturbance.¹³⁵ Only matters appearing on the agenda shall be considered at a meeting which has been ordered cleared.¹³⁶

III. REMEDIES AND PENALTIES FOR VIOLATIONS OF THE ACT

A. Criminal Penalties

A member of the governing body may be charged with a misdemeanor if he or she attends a meeting of the body where action is taken in violation of the Act provided the member intended to deprive the public of information to which it is entitled under the Act.¹³⁷

B. Civil Penalties

The district attorney or any interested person may file an action requesting the court do any of the following:¹³⁸

- Stop or prevent violations or threatened violations of the Act by members of a governing body.
- Determine the applicability of the Act to ongoing actions or threatened future action of the body.
- Determine whether any rule or action by the body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under state or federal laws.
- Compel the body to audio-record its closed sessions as ordered by the court. The court has the discretion, upon a judgment of a violation of any of the closed session provisions of the Act, to order the body to audio record its closed sessions and preserve the recordings for the period and under the terms of security and confidentiality the court deems appropriate.¹³⁹

The district attorney or any interested person may also file an action to determine the applicability of the Act to past actions of the body only if the person alleging the violation first submits a cease and desist letter by mail or fax to the clerk or secretary of the body, or if the agency does not have a clerk or secretary, to the chief executive officer, clearly describing the past action of the body and nature of the alleged violation. The letter must be submitted within nine months of the alleged violation. If the body responds within thirty (30) days with an unconditional commitment to cease and desist, and not repeat the past action, in a form specified by the Act, no action may be brought against the entity. The response must be approved by the body during open session at a regular or

special meeting as a separate item of business, and not on the consent agenda.¹⁴⁰

If the body fails to respond within the time limit, or responds without an unconditional commitment to cease and desist and not repeat the action, the district attorney or interested person may file an action within sixty (60) days of the expiration of the thirty day period or receipt of the response from the body. Failure to file the action within sixty days shall thereafter bar commencement of the action.¹⁴¹

The legislative body may rescind an unconditional commitment to cease, desist, and not repeat the action by a majority vote at an open session at a regular meeting as a separate item of business, not on the consent agenda. Written notice must be provided at least thirty (30) days prior to the meeting to each person to whom the unconditional commitment was made, and to the district attorney. Upon such rescission, the district attorney or any interested person may again file an action against the entity.¹⁴²

Additionally, the district attorney or any interested person may file an action seeking a judicial determination that an action taken by the body is null and void under the Act.¹⁴³ However, prior to such action, the Act provides the body up to thirty days in which to cure or correct the defect.¹⁴⁴

The court may award court costs and reasonable attorney fees to the successful plaintiff who is successful in filing an action against the agency and/or its members under the Act. The costs and fees must be paid by the agency and are not a personal liability of any public officer or employee of the agency.¹⁴⁵ If the agency successfully defends the action, the court may award it court costs and reasonable attorney fees if the court finds that the action was clearly frivolous and totally lacking in merit.¹⁴⁶

When an action brought to determine the applicability of the Act to a past action of the body is dismissed because the body has provided an unconditional commitment to cease and desist made after the initial thirty (30) day period permitted for doing so, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of the action caused the legislative body to issue the unconditional commitment.¹⁴⁷

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¹ Unless otherwise specified, all statutory references are to the California Government Code.
² § 54951, 54952(a)
³ § 54952(b)
⁴ § 54952(b)
⁵ Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist. (2001), 87 Cal. App. 4th 862, 873
⁶ § 54952(c)
⁷ § 54952(c), §5492(c)(B)

8 § 54952(b)
9 § 54952.1
10 § 54952.2(a)
11 § 54952.2(c)(2)
12 § 54952.2(c)(3)
13 § 54952.2(c)(4)
14 § 54952.2(c)(6)
15 § 54952.2(c)(5)
16 § 54953(b)(1)
17 § 54953(b)(2)
18 § 54953(b)(3)
19 § 54953(b)(3)
20 § 54953(b)(3)
21 § 54953(b)(3)
22 § 54952.2(b)(1)
23 § 54952.6
24 § 54952.2(b)(2)
25 § 54954(b)-(e)
26 § 54961
27 § 54954, § 54954.1
28 §§ 54954(a), 54954.2(a)
29 § 54954.2(a)(1)
30 § 54954.2(a)(3), § 54954.2(b)
31 § 54954.2(a)(3)
32 § 54954.2(a)(3)
33 § 54954.2(b)(1)
34 § 54954.2(b)(2)
35 § 54954.2(b)(3)
36 § 54953(c)
37 § 54953(c)(3)
38 § 54954.2(a)(2)(A)
39 § 54954.2(a)(2)(D)
40 § 54954.2(a)(2)(C)
41 § 54954.2(a)(2)(B)
42 § 54956
43 § 54954(b)
44 § 54961(a)
45 § 54961(a)
46 § 54956
47 § 54956
48 § 54956
49 § 54956
50 § 54956
51 § 54953(c)
52 § 54956(b)
53 § 54956.5(a)(1)
54 § 54956.5(d)
55 § 54956.5(b)(2)
56 § 54956.5(c)
57 § 54956.5(e)
58 § 54952.3
59 § 54952.3(a)
60 § 54962

61 § 54957(b)(1)
62 § 54957(b)(2)
63 § 54954.5(e)
64 § 54957.1(a)(5)
65 § 54956.9(a)
66 § 54956.9(d)(1)
67 § 54956.9(d)(2)
68 § 54956.9(d)(3)
69 § 54956.9(d)(4)
70 § 54956.9(h)
71 § 54956.9(e)
72 § 54954.5(c)
73 § 54957.1(a)(2)
74 § 54957.1(a)(3)
75 § 54957.1(a)(3)(A)
76 § 54957.1(a)(3)(B)
77 § 54956.8
78 § 54956.8
79 § 54954.5(b)
80 § 54957.1(a)(1)
81 § 54957.1(a)(1)(A)
82 § 54957.1(a)(1)(B)
83 § 54957.6(a)
84 § 54957.6(a)
85 § 54957.6(b)
86 § 54957.6(a)
87 § 54954.5(f)
88 § 54957.6(a)
89 § 54957.6(a)
90 § 54957.6(a)
91 § 54957.1(a)(6)
92 § 54956.95(a)
93 § 54954.5(d)
94 § 54957.1(a)(4)
95 § 54956.96(a)(1)
96 § 54956.96(a)(2)
97 § 54956.96(b)
98 § 54954.5(j)
99 § 54957(a)
100 § 54956.7
101 § 54957(a)
102 § 54957.7(a)
103 § 54957.7(b)
104 § 54957.1(b)
105 § 54957.1(b)
106 § 54957.1(b)
107 § 54957.1(c)
108 86 Ops. Cal. Atty. Gen. 210, 215 (2003).
109 § 54963(a)
110 § 54963(b)
111 § 54963(c); (d)
112 § 54963(e)
113 § 54955

114	§ 54955
115	§ 54955
116	§ 54955
117	§ 54955
118	§ 54955.1
119	§ 54955.1
120	§ 54955.1
121	§ 54953.3
122	§ 54953.3
123	§ 54961
124	§ 54957.5(b)(1)
125	§ 54957.5(b)(2)
126	§ 54953.5(a)
127	§ 54953.5(b)
128	§ 54953.5(b)
129	§ 54954.3(a)
130	§ 54954.3(a)
131	§ 54954.3b)
132	§ 54954.3(a)
133	§§ 54954.3(b)(1-3)
134	§ 54957.9
135	§ 54957.9
136	§ 54957.9
137	§ 54959
138	§ 54960(a)
139	§ 54960(b)
140	§ 54960.2
141	§ 54960.2
142	§ 54960.2
143	§ 54960.1(a)
144	§ 54960.1(c)
145	§ 54960.5
146	§ 54960.5
147	§ 54960.5