A user's guide to the Ralph M. Brown Act

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OPEN & PUBLIC III

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A USER'S GUIDE TO THE
RALPH M. BROWN ACT

FOREWORD

This guide is a joint project of organizations that represent diverse views and constituencies—but share a common interest in the open meeting laws for local governments.

One goal with this publication is to put the Ralph M. Brown Act in lay language, so it can be readily understood by local officials, by the public and by the news media.

Another goal is to identify problem areas in an effort to reduce controversy over the Act. As a consequence, we have tried not only to cover all aspects of the Act, but to also pay extra suggestions on how to minimize potential problems; these are primarily practical ways for officials to stay out of hot water.

However, this guide is not intended to provide legal advice, and it should not be taken as a legal standard by which to judge the propriety of official conduct. We are confident that no court would lend it such authority, and it is only in that confidence that the guide has been ventured as a common project.

A public agency's legal counsel is responsible for advising its staff, board or council on Brown Act requirements and prohibitions, and should always be consulted when issues arise.

To lessen confusion, we have adopted a format in which:

- Most text will look like this.
- *But suggestions will be italicized.(I)*
- And for hypothetical examples, the typeface will look like this. (T)

ACKNOWLEDGEMENTS

The League thanks the following attorneys for their work on this update to the original guide. The League also thanks the organizations listed on the back cover for their contributions.

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"THE PEOPLE DO NOT YIELD THEIR SOVEREIGNTY"

In late 1951, San Francisco Chronicle reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June of 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted a bill and Modesto Assemblyman Ralph M. Brown agreed to carry it. The bill passed the Legislature and was signed into law in 1953 by Governor Earl Warren.

The Ralph M. Brown Act (the "Brown Act"), as it is known, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws—such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Ralph Brown served in the Assembly for 19 years starting in 1942, the last three years as its Speaker. He then became an appellate court justice. But, he is best known for the open meeting law, which carries his name.

The basic law

Two key parts of the Brown Act have not changed since its passage. One is the intent section with which it begins:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

"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 their 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."[1]

Not all intent language in statutes has an impact on the judiciary. But the courts have leaned on the intent section of the Brown Act to narrowly construe exceptions to the law and liberally construe provisions, which further openness and access.[2]

That opening is the soul of the Brown Act. Its heart comes later, a section that declares:

"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."[3]

That one sentence is by far the most important of the entire Brown Act, and it is the basis for the next five chapters.

Change and expansion

Although these two key provisions have remained intact, very little else in the Brown Act has. Changes have been adopted in numerous sessions of the Legislature. Examples include requirements for agendas and public notice, creation of new exceptions, and addition of a mechanism to invalidate certain actions if the Brown Act has been violated.

Over the years, a number of appellate court decisions and Attorney General Opinions have interpreted key elements of the Brown Act, such as what constitutes a "meeting." In 1994, many of these holdings were enacted into law. In addition, the 1994 changes extensively revised provisions about sessions that can be closed to the public.

The Brown Act now covers virtually every type of local government body, elected or appointed, decision-making or advisory, permanent or temporary. Even some types of private organizations are covered.

Similarly, meetings subject to the Brown Act are not limited to formal gatherings. They also include any communication or device by which a majority develops "a collective concurrence as to action to be taken."

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Limitations

Except for closed sessions, the Brown Act requires all aspects of the decision-making process by legislative bodies—including discussion, debate and acquisition of information—to be conducted in public.

But the law is limited to multi-member government bodies, and only they can violate its provisions. The Brown Act does not apply to individual decision-makers. It also exempts *ad hoc* advisory committees—as distinguished from standing committees—made up solely of less than a quorum of a legislative body. The law does not restrict local agency staff or employees except to the extent that they act as a conduit for collective action or discussion by the members.

The law on the one hand recognizes the need of individual legislators to meet and discuss matters with their constituents. On the other hand, it requires—with certain specific exceptions to protect the community and preserve individual rights—that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

California has concluded more is to be gained than lost by the public meeting process.

The Brown Act allows a legislative body to adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech. Otherwise, individual citizens, lobbyists, and members of the news media possess the right to attend, broadcast and participate in public meetings.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media members often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that the closed sessions are being misused.

Public officials,[4] on the other hand, complain that the Brown Act makes it difficult to respond to constituents, and requires public discussions of items better discussed privately—such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act unnatural. The techniques that serve so well in business—the working lunch, the private lobbying and compromises, the slow evolution of a project or decision—are no longer possible. Closed meetings can be more efficient; they eliminate grandstanding and promote candor.

As a matter of public policy, California has concluded more is to be gained than lost by the public meeting process. Government behind closed doors may well be efficient and business-like. But invisible government is often unresponsive. It is invariably distrusted.

The Brown Act has without question had a major impact on the way public bodies conduct business. Closed door meetings are now the exception.

Notes

1. California Government Code section 54950
2. In reviewing these endnotes, keep in mind that the Brown Act itself has the greatest force and effect. Next in order are appellate court decisions, which interpret the Brown Act and if published serve as precedent for trial courts. Published opinions of the Attorney General do not have the force of law but are persuasive to the courts; letter opinions of the Attorney General are usually narrower in scope and less influential.
3. California Government Code section 54953(a)
4. As used in this publication, "public official" includes both elected and appointed officials.

Chapter 2: Meetings

"ALL MEETINGS OF . . ."

For most of its history, the Brown Act referred to various kinds of meetings but deferred to the courts and the California Attorney General to determine whether a particular gathering was a "meeting." That ended in 1994, when the term "meeting" was first defined in the Brown Act. There was no change in the clear distinction between a legislative body member's contacts with individuals on the one hand and collective gatherings of a legislative body majority on the other hand. With few exceptions, the Brown Act applies only to collective gatherings.

Specifically, 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 or the local agency to which it pertains."[1]

Thus, the term "meeting" is not limited to gatherings at which action is taken but also includes deliberative gatherings as well.

Except for teleconferencing discussed below, the Brown Act specifically prohibits "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body."[2]

After the above very inclusive language, the Brown Act creates six exceptions:[3]

♦ INDIVIDUAL CONTACTS

The first exception is individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff or a colleague.

Individual contacts, however, cannot be used to do by stages what cannot be done in one step. For example, a series of individual contacts that leads to a "collective concurrence" is prohibited. Such serial meetings are discussed below.

♦ CONFERENCES

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college and other local agency officials, so long as those meetings are open to the public. A majority of members, however, cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

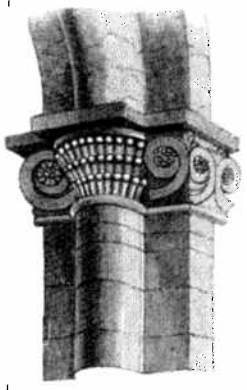
♦ COMMUNITY MEETINGS

The third exception allows a legislative body majority to attend an open and publicized meeting organized by another organization to address a topic of local community concern. Again, a majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates night if the meetings are open to the public.

"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition.

"I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if the majority engages in a collective deliberation process outside a scheduled meeting of the body. In the above example, a discussion by the majority encouraging citizen input on the issues would be permissible. A majority discussion about each member's support of or opposition to such an ordinance would violate the Brown Act.



The term "meeting" is not limited to gatherings at which action is taken but also includes deliberative gatherings.

♦ OTHER LEGISLATIVE BODIES

In 1997 the fourth exception was expanded to allow a legislative body majority to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.[4] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example, a city council majority to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business.

In response to a 1996 opinion of the Attorney General, the Legislature created a fifth exception. That exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body provided that the legislative body members who are not members of the standing committee attend only as observers,[5] meaning that they cannot speak or otherwise participate in the meeting.

♦ SOCIAL OR CEREMONIAL EVENTS

Finally, an exception permits a legislative body majority to 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 local agency.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception or farewell. The test is not whether a majority attends the function, but whether business of a specific nature within the subject matter jurisdiction of the local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

A hub-and-spoke process in which a chief executive briefs board members prior to a formal meeting and reveals information about the members respective views violates the Brown Act.

Collective briefings

None of these six exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings involving a majority of the body in the same place and time must be open to the public and satisfy the notice and agenda requirements of meetings.

Retreats or workshops of legislative bodies

Formerly, there was disagreement among local agency attorneys whether the Brown Act applied to retreats or workshops of legislative bodies. The consensus today is that such gatherings by a majority of legislative body members are covered. This is the case whether the retreat or workshop focuses on long-range agency planning, discussion of critical local issues or on team building and group dynamics.[6]

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. Such meetings at any one time involve only a portion of a legislative body, but eventually involve a majority.

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 legislative body decision making.

The serial meeting may be a daisy-chain in which Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. A hub-and-spoke process in which, for example, a local agency attorney (the hub) telephones members of a redevelopment agency (the spokes) one by one for a decision on a proposed action,[7] or in which a chief executive briefs board members prior to a formal meeting and, in the process, reveals information about the members respective views, also violates the Brown Act.

A member has the right, if not the duty, to meet with constituents to address their grievances. That member also has the right to confer with a colleague about local agency business. But if in that process a "collective concurrence as to action to be taken" is reached among a majority, the Brown Act has been violated. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.[8]

On the other hand, a unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[9] Such a memo, however, may be a public record.[10]

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

Well, I dunno," replied Board Member Adams. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Baker and Charles lined up and another vote leaning. With you I'd be over the top..."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

Neither the lobbyist nor the reporter has done anything wrong. But the board member may have violated the Brown Act by hearing about the positions of other board members. The prudent course is to try to stop lobbyists, staff and news media from revealing such positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items.

"Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

The Brown Act may or may not prohibit such briefings. The Attorney General concludes that staff briefings are per se illegal.[11] That point of view notwithstanding, the consensus among local agency attorneys is that staff briefings of legislative body members are allowed if staff is not used as a conduit for achieving collective concurrence, and if during the briefing staff does not disclose the views and positions of other members. Members should be cautious about discussions about local agency business with developers, advocates, or opponents and proponents on issues if such discussions could achieve a collective concurrence.

"Thanks for the information," said Council Member Smith. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

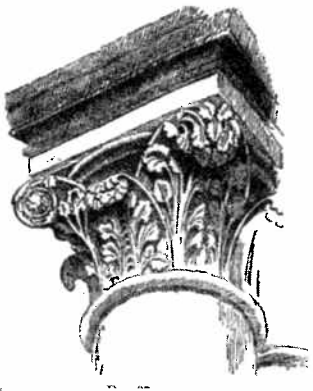
The planning director should not ask, and the member should not answer. A one-on-one meeting that involves a member of a legislative body takes a step toward collective concurrence if either person reveals or discusses the views of other members.

INFORMAL GATHERINGS

Often members are tempted to mix business with pleasure—for example, by holding a post meeting gathering. Informal gatherings at which local agency business is discussed or transacted are meetings under the Brown Act.[12] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

Thursday, 11:30 a.m. As they did every week, the board of directors of Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they nothing to hide. Whenever he could, the managing editor of the weekly newspsper down the street hurried over to join the board...

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues. But it is the kind of situation that should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.



Technological conferencing

The Brown Act has been amended in 1994, 1997 and 1998 to allow local agencies to use information age technologies to conduct meetings.[13]

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The Brown Act now specifically allows a legislative body to use any type of teleconferencing to receive public comment, testimony, to deliberate or conduct a closed session.[14]

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."[15] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:[16]

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body shall participate from locations within the local agency's jurisdiction.
- Additional teleconference locations may be made available for the public.

- Each teleconference location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at each teleconference location.
- Each teleconference location must be accessible to the public.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

The use of teleconferencing to conduct a legislative body meeting presents a variety of new issues beyond the scope of this booklet to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

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Location

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[17]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is to:

- Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party.
- Inspect real or personal property, which cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property.
- Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice.
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or at its principal office if that office is located outside the territory over which the agency has jurisdiction.
- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[18]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[19] A board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[20]

Finally, if a fire, flood, earthquake or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media which have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[21]

Notes:

1. California Government Code section 54952.2(a)
2. California Government Code section 54952.2(b)
3. California Government Code section 54952.2(c)
4. California Government Code section 54952.2(c)(4)
5. California Government Code section 54952.2(c)(6)
6. "The Brown Act" California Attorney General, 1994, p. 9
7. *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal. App. 3d 95, 214 Cal. Rptr. 561
8. *Common Cause v. Stirling* (1983) 147 Cal. App. 3d 518, 195 Cal. Rptr. 163
9. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
10. California Government Code section 54957.5(a)
11. "The Brown Act" California Attorney General, 1994, p.12
12. California Government Code section 54952.2; 43 Op. Cal. Att'y Gen. 36 (1964)
13. California Government Code section 54953(b)
14. California Government Code section 54953(b)(1)
15. California Government Code section 54953(b)(4)
16. California Government Code section 54953
17. California Government Code section 54954(b)
18. California Government Code section 54954(b)(1)-(7)
19. California Government Code section 54954(c)
20. California Government Code section 54954(d)
21. California Government Code section 54954(e)

"... THE LEGISLATIVE BODY OF A LOCAL AGENCY..."

What is the "... legislative body of a local agency ...?"

The Brown Act defines "legislative body" broadly[1] to include:

- The **governing body** of a local agency or any other local body created by state or federal statute, such as an air pollution control district or housing authority.[2]
- **Advisory committees**, such planning commissions and other subsidiary bodies. Also covered are citizen volunteer groups, task forces, and "blue ribbon committees" created by formal action of the governing body. However, there is an exception for advisory committees consisting solely of less than a quorum of the legislative body (see discussion under "What is not a 'legislative body' for purposes of the Brown Act?" below).[3]

A subset of the advisory committee is the "unitary" body. The less-than-a-quorum exception for advisory committees can be used by two or more bodies to create an entirely separate advisory group—which may or may not be subject to the Brown Act.

In one case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a "unitary body" subject to the Brown Act. Had the two committees remained separate, and met only to exchange information, they would have been exempt from the Brown Act.[4] (See discussion of *ad hoc* committees below.)

The prudent assumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Standing committees**, which have either: 1) a continuing subject matter jurisdiction or 2) a meeting fixed by charter, ordinance, resolution, or other formal action of the legislative body.[5] Standing committees comprised of less than a quorum of the governing body are covered by the Brown Act. For example, if a governing body creates long-term committees on budget and finance, or public safety, those are standing committees subject to the Brown Act.
- Any **private organization** created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity is covered.[6] This includes nonprofit corporations created by local agencies. However, if a local agency **contracts** with a private firm for a service (for example, data processing or providing food services), the private firm is not covered by the Brown Act. Other private organizations receiving public funds are subject to the Brown Act if two elements are present: (1) receipt of public money from a local agency and (2) the presence on the organization's governing body of a member of the legislative body appointed as a full voting member by the local agency.[7] However, if a member of a legislative body sits on the board of a private organization as a private citizen rather than in his or her official capacity, the board will not be subject to the Brown Act.[8]

Suppose a chamber of commerce is funded in part by a city and the mayor sits on the chamber's board of directors. If the mayor was appointed to that position by the city council, the chamber is subject to the Brown Act and must hold open and public meetings. If the chamber independently appoints the mayor to its governing board, or if the mayor attends chamber meetings only in an advisory capacity, the chamber is probably not subject to the Brown Act.

Another is an auxiliary organization created to run a community college bookstore or cafeteria. (However, if the college *contracts* with a private firm to operate its bookstore or provide food services, the firm is not covered by the Brown Act.

- **Special district hospital boards.** A lessee assuming "material authority" over a special district hospital is not covered by the Brown Act.[9] However, this provision only applies to leases created after January 1, 1994.
- **Newly elected members of legislative bodies.**

Individual decision makers are not covered by the Brown Act.

In 1994, the Brown Act was extended to cover newly-elected members of legislative bodies who have not yet assumed office.[10] This amendment requires newly elected individuals to conform their conduct to the requirements of the Brown Act. For purposes of enforcement, these persons are to be treated as if already in office. Thus, meetings between incumbents and newly-elected members could constitute a majority subject to the Brown Act. Even a meeting between two outgoing members and their successors would violate the law.

What is not a "legislative body" for purposes of the Brown Act?

- An *ad hoc*, advisory committee **composed solely** of less than a quorum of the legislative body is exempted from the Brown Act.[11] The exception covers advisory committees that are *ad hoc* in nature — meaning that they serve a limited or single purpose, are not perpetual, and are to be dissolved once their specific task is completed. An example would be an advisory committee composed of less than a quorum created to interview candidates for a vacant position.

It can be difficult to determine whether a committee falls into the category of a standing committee or an exempt ad hoc committee. Suppose a subcommittee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration? Is it a standing committee or an exempt ad hoc committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the group persists long enough to have "continuing jurisdiction."

- Committees not created by formal action of the legislative body are not covered. For example, groups advisory to a single decision-maker appointed by a city manager or single city council member or otherwise not created by formal action of the legislative body are not covered by the Brown Act.[12] It is thus possible that a committee advising to a county superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the county board of education, would be covered.[13]
- Individual decision makers are not covered by the Brown Act. For example, an employee's administrative hearing with a manager regarding discipline is not a meeting.[14]
- County central committees of political parties are also not Brown Act bodies.[15]

Notes

1. California Government Code sections 54951 and 54952; *Torres v. Board of Commissioners* (1979) 89 Cal. App. 3d 545, 152 Cal. Rptr. 506
2. California Government Code section 54952(a)
3. California Government Code section 54952(b); 79 Op. Cal. Att'y Gen. 69 (1996)
4. *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 178 Cal. Rptr.299
5. California Government Code section 54952(b)
6. California Government Code section 54952(c)(1)(A)
7. California Government Code section 54952(c)(1)(B); *see also International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App. 4th 287, 81 Cal. Rptr. 2d 456
8. 67 Op. Cal. Att'y Gen. 487 (1984)
9. California Government Code section 54952(d)
10. California Government Code section 54952.1
11. California Government Code section 54952(b); *see also Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal. 4th 821, 25 Cal. Rptr. 2d 148
12. 56 Op. Cal. Att'y Gen. 14 (1973)
13. 56 Op. Cal. Att'y Gen. 14 (1973)
14. *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal. App. 3d 870, 105 Cal. Rptr. 855
15. 59 Op. Cal. Att'y Gen. 162 (1976)

Chapter 4: Notices and Agendas

"... SHALL BE OPEN AND PUBLIC ..."

There are two essentials for an open and public meeting. One is effective notice; whether the meeting is open or not is academic if no one knows about it. The other is an agenda which adequately describes the items to be considered.

Every meeting of the legislative body of a local agency—including advisory committees, commissions or boards, as well as standing committees of legislative bodies—must have public notice and a written agenda. The specifics vary by type of meeting.

Regular meetings

Legislative bodies must set the time and place for their regular meetings by ordinance, resolution, bylaws or similar formal rule for conducting business. Advisory committees or standing committees may but need not require regular meetings by their own rules. Meetings of these latter two categories of bodies for which an agenda is posted 72 hours in advance are considered a regular meetings.[1]

An agenda must be posted at least 72 hours before a regular meeting in a location "freely accessible to members of the public." It shall state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[2]

Brief descriptions of agenda items were first required in 1987. A letter placed in the *Senate Daily Journal* explained that the intent was for agendas to "contain sufficient descriptions . . . to enable members of the general public to determine the general nature of subject matter of each agenda item, so that they may seek further information on items of interest. It is not the purpose of this bill to require agendas to contain the degree of information required to satisfy constitutional due process requirements." There remained some disagreement over the detail necessary in an agenda. The 1994 amendments revised the section to specify that a brief description "generally need not exceed 20 words."[3]

With three exceptions (see the end of this chapter), no action or discussion can take place on an item not on the posted agenda.[4] However, there can be brief responses to questions, or some other limited, routine comments, also as discussed at the end of this chapter.

Special meetings

The presiding officer or a majority of a legislative body, including an advisory or standing committee, may call a special meeting at any time. For the majority to act, there is implied authority for them to communicate to determine if they want to call a special meeting.

Written notice must be sent, and received by, each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station which has requested such notice in writing.[5]

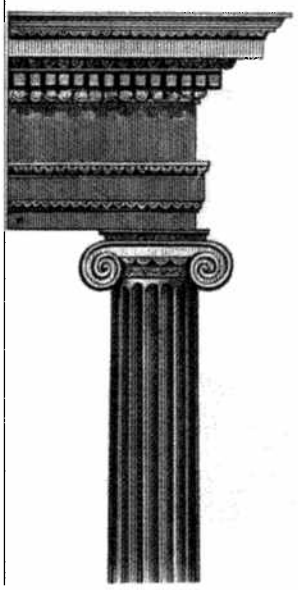
The notice must state the time and place of the meeting, and all business to be transacted or discussed. It must be posted at least 24 hours prior to the special meeting in a site freely accessible to the public. Media notice must be delivered by personal delivery or any other means which ensures receipt, at least 24 hours before the time of the meeting. The body cannot consider business not in the notice.[6]

Adjourned meetings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment. If no time is stated, the meeting is continued to the hour for regular meetings. Less than a quorum may so adjourn a meeting; and if no member of the legislative body is present, the clerk or secretary may adjourn the meeting.[7] If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[8] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.[9]

Closed sessions

Part or all of a regular or special meeting, or one which has been adjourned, may be closed to the public under special conditions (discussed in Chapter 6). But notice is still required, even if no action is contemplated.[10]



The Brown Act provides a series of "safe harbor" examples—so called because descriptions that substantially comply with them cannot be challenged as not accurately describing the action. (These examples appear in Section 54954.5 in the text at the end of this guide.)

The legislative body in a closed session can consider only matters covered in its agenda descriptions. After closed session, the legislative body must reconvene to open session and may be required to disclose actions taken. The requirement for a public report of action varies depending largely on whether the action of the agency renders the matter final or whether action of a third party is necessary. When announcements are required, they may be made at the location of the closed session announced in the agenda, or where the agency holds its open sessions, as long as the public is allowed to be present.[11]

Continued hearings

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[12]

Emergency meetings

An agency can hold an emergency meeting when prompt action is needed due to the actual or threatened disruption of public facilities. An "emergency situation" exists if the legislative body determines a work stoppage, crippling disaster, or other activity severely impairs public health, safety or both.[13]

The legislative body may not meet in closed session during emergency meetings.

The special meeting provisions apply to emergency meetings, except for the 24-hour notice. News media which have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However the news media must be notified as soon as possible of the meeting and any action taken.

The legislative body may not meet in closed session during emergency meetings.

Minutes of emergency meetings, a list of persons notified or attempted to be notified, a copy of the roll call vote, and any actions taken must be posted for a minimum of 10 days in a public place as soon after the meeting as possible.[14]

It behooves the news media to make sure written requests are on file for notification of special or emergency meetings. The written requests should also be periodically renewed—especially if phone numbers or addresses have been changed. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings—although notification may be advisable in any event to avoid controversy.

Mailed agenda upon written request

The legislative body, or its designee, shall mail a copy of the agenda or copies of all the documents in the agenda packet, to any person who has filed a written request for such materials. The mailed copies of the agenda, or agenda packets, shall be mailed at the time the agenda is posted.

A request for notice is valid for one calendar year and renewal requests must be filed January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[15]

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions,[16] however, they are generally consistent with the Brown Act. An item is apparently void if not posted.[17] A school district must also adopt regulations to make sure the public can place matters affecting district business on meeting agendas, and to address the board on those items.[18]

Notice requirements for tax or assessment meetings and hearings

The Brown Act contains specific procedures a city, county, special district or joint powers authority must take before adopting any new or increased general tax or assessment.[19]

At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days' notice of a public hearing at which public testimony may be given before the legislative body

proposes to act on the tax or assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.[20] The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of articles XIIIC or XIIID of the Constitution,[21] which was added by Proposition 218 in 1996.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda.[22]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings).
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted."
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

As seen in the above-described instances, the exceptions are narrow. The first two require a specific determination by the legislative body. That determination can be challenged in court, and if unsubstantiated can lead to invalidation of an action.

The second exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A "new" need does not arise because staff forgot to put an item on the agenda, or because an applicant missed a deadline.

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back or to place a matter of business on the agenda for a subsequent meeting (subject to its own rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.[23] However, caution should be used to avoid any discussion or action on such items.

"I'd like a two-thirds vote of the board, so we can go ahead and act on pahse two of the East Area Project," said chairman Jones.

"It's not on the agenda. But we learned two days ago that we're ahead of schedule—believe it or not—and I'd like to keep it that way. Do I hear a motion?"

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled citizen. If possible, the prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two step process:

- *First, make the finding that there is an immediate need to take action that arose since the posting of the agenda and the matter is then "placed on the agenda."*
- *Second, discuss and act on the item.*

The Brown Act generally prohibits any action or discussion of items not on the posted agenda.

Notes

1. California Government Code section 54954(a)
2. California Government Code section 54954.2(a)
3. California Government Code section 54954.2(a)
4. California Government Code section 54954.2(a)
5. California Government Code section 54956
6. California Government Code section 54956
7. California Government Code section 54955
8. California Government Code section 54954.2(b)(3)
9. California Government Code section 54955
10. California Government Code section 54957.7(a)
11. California Government Code section 55957.7(b) and (c)
12. California Government Code section 54955.1
13. California Government Code section 54956.5
14. California Government Code section 54956.5
15. California Government Code section 54954.1
16. California Education Code section 35144 and 35145
17. *Carlson v. Paradise Unified School District* (1971) 18 Cal. App. 3d 196, 95 Cal. Rptr. 650
18. California Education Code section 35145.5
19. California Government Code section 54954.6
20. California Government Code section 54954.6(g)
21. California Government Code section 54954.6(a)(1)
22. California Government Code section 54954.2(b)
23. California Government Code section 54954.2(a)

"...ALL PERSONS SHALL BE PERMITTED TO ATTEND..."

A number of the Brown Act's provisions protect the public's right to attend and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire or other document circulated at a meeting must clearly state that its completion is voluntary, and that all persons may attend whether or not they fill it out.[1]

No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry or sex, or which is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[2] (This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[3])

Action by secret ballot, whether preliminary or final, is flatly prohibited.[4]

There can be no "semi-closed" meetings, which some members of the public are permitted to attend as spectators while others are not; meetings are either open or closed.[5]

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[6]

Finally, no notice, agenda, announcement or report required by the Brown Act need identify a victim of sexual misconduct or child abuse, unless the identity of the person has been publicly disclosed.[7]

"Are there any comments from the public?" asked the Mayor during the city council meeting.

A man stepped forward from the audience, and the Mayor continued, "Please give us your name and address for the record."

"I don't have to, and I'd rather not," came the reply.

"You don't have to give us your name to attend the meeting," said the Mayor, "but you do if you want to testify."

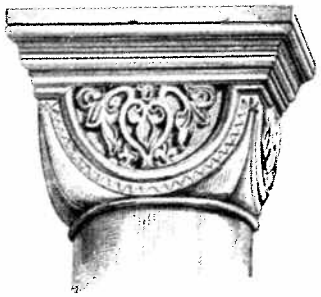
It is unclear whether members of the public can be required to provide their names, addresses or other information as a condition to participating in (as opposed to attending) a meeting. If such information is relevant and necessary to the subject matter of a public hearing or evidentiary proceeding, it probably can be required. On the other hand, it seems less likely that such information can be required as a prerequisite to addressing the legislative body during oral communication on general matters within the subject matter jurisdiction of the agency.[8]

Records and recordings

The public has the right to review agendas and other writings distributed to a majority of the legislative body. Except for privileged documents, those materials are public records and must be made available.[9] A fee or deposit may be charged for a copy of a public record.[10]

To ensure action is not taken on documents not available for public review, writings must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body, or
- After the meeting if prepared by some other person.



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Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is also subject to the Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[11]The agency may impose its ordinary charge for copies.[12]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting, absent a reasonable finding by the legislative body that recorders or cameras would persistently disrupt proceedings.[13]

A local agency cannot prohibit or restrict the public broadcast of its open and public meetings without reasonable finding that the noise, illumination or obstruction of view will be a "persistent" disruption.[14]

Finally, governing bodies can go beyond these minimal standards to require greater access to their meetings and to those of their appointed bodies.[15]

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[16]

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But, the Brown Act provides no immunity for defamatory statements.[17]

The legislative body may adopt reasonable regulations, including time limits, on public comments.[18] Such regulations should be enforced fairly and without regard to speakers' viewpoints.

The public need not be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item but need not allow members of the public an opportunity to speak on nonagendized items.[19]

Reactive discussion

The public can talk about anything, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

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Notes
1. California Government Code section 54953.3
2. California Government Code section 54961(a)
3. California Government Code section 54952.2(c)(2)
4. California Government Code section 54953(c)
5. 46 Op. Cal. Att'y Gen. 34 (1965)
6. California Government Code section 54957.9
7. California Government Code section 54961(b)
8 California Government Code section 54954.3(b)
9. California Government Code section 54957.5
10. California Government Code section 54957.5
11. California Government Code section 54953.5(b)
12. California Government Code section 54957.5(c)
13. California Government Code section 54953.5(a)
14. California Government Code section 54953.6
15. California Government Code section 54953.7
16. California Government Code section 54954.3(a)
17. California Government Code section 54954.3(c)
18. California Government Code section 54954.3(b); 75 Op. Cal. Att'y Gen. 89 (1992)
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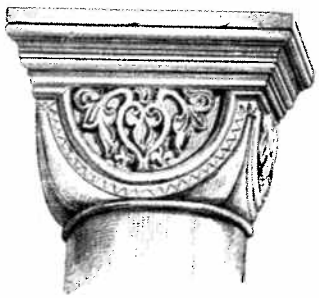

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6. California Government Code section 54957.9
7. California Government Code section 54961(b)
8 California Government Code section 54954.3(b)
9. California Government Code section 54957.5
10. California Government Code section 54957.5
11. California Government Code section 54953.5(b)
12. California Government Code section 54957.5(c)
13. California Government Code section 54953.5(a)
14. California Government Code section 54953.6
15. California Government Code section 54953.7
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Chapter 6: Closed Sessions

"...EXCEPT AS OTHERWISE PROVIDED..."

Meetings of a legislative body are either open or closed.

The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[1]

Meetings of a legislative body are either open or closed. A legislative body cannot invite selected members of the public to attend a meeting while excluding others.[2] Closed sessions should involve only the members of the body, plus any additional support staff required, legal counsel, a supervisor involved in a disciplinary matter, consultants, a labor negotiator or any witnesses in the case where the legislative body is hearing complaints and charges against an employee. Individuals who do not have an official role in advising the legislative body on closed session subject matters should be excluded from closed session discussions.[3]

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind. In this chapter, the grounds for convening a closed session are called "exceptions," because they are exceptions to the general rule that meetings must be conducted openly.

Agendas and reports

The legal authority for a closed session must be included on the posted agenda, with the same kind of brief description required of a regular meeting item.

The Brown Act supplies a series of fill-in-the-blank samples, which provide a "safe harbor" from legal attacks. These samples cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional drug cases, hospital boards of directors, and medical quality assurance committees. (For details, see section 54954.5 of the Brown Act text at the end of this guide.)

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[4]

Following a closed session, if action is taken, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session.[5] The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

In addition, if there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[6]

A confidential "minute book" may be kept to record actions taken at closed sessions.[7] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict-of-interest.[8] Minute books must also be disclosed to a court if a lawsuit claims an open meeting violation. Minutes of an improper closed session are not confidential.

Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions, and legislative bodies do well to

resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

Personnel

Meetings can be closed for "personnel matters"—a term used more for convenience than for accuracy. The text of the Brown Act never mentions "personnel."

The law instead says a meeting can be closed "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."[9] The purpose of the personnel exception is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[10]

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her, and has the right to have the specific complaints and charges discussed in a public session. If the employee is not given notice, any disciplinary action is null and void.[11] However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation, as distinguished from consideration of specific complaints and charges made against an employee. In recent opinions, the Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[12] The opinions say that the Brown Act's notice and hearing requirements apply when the legislative body is reviewing evidence of specific complaints and charges and adjudicating conflicting testimony offered as evidence.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, department head or chief engineer. An example of the latter is a legal counsel hired on contract to act as local agency attorney.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[13] Action on individuals who are not "employees" must also be public—including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter.)

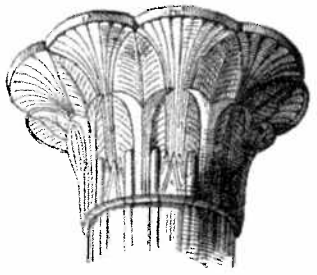
The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session. Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[14] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[15]

"I have some important news to announce," said board chairman Jones. "We've decided to terminate the contract of the chief executive, effective immediately. The board has met in closed session, and we've negotiated six months' severance pay."

"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."

This may be an improper use of the personnel closed session. Any action on individual compensation must be taken in open session. However, if an employee has filed a claim or had threatened litigation the governing body may hold a potential litigation closed session and approve a severance package in connection with a settlement agreement.



Protection of the attorney/client privilege cannot by itself be the reason for a closed session.

Pending litigation

There is an attorney/client relationship, and legal counsel may use it for privileged written and verbal communications—outside of meetings—to members of the legislative body. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[16]

The Brown Act expressly authorizes closed sessions to discuss what is considered "pending litigation." The rules that apply to holding a pending litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in pending litigation.[17] While the issue is not absolutely clear, the Attorney General believes that if the agency's attorney is not a participant, a "pending litigation" closed session cannot be held.[18] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda, in order to be certain that it is being done properly.

"Litigation" that may be discussed in closed session includes the following three types of matters:

(1) Existing litigation,
(2) Threatened or anticipated litigation, and
(3) Potential litigation.

Existing litigation

Existing litigation includes any adjudicatory proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops or to consider alternatives for resolution of the case.

Threatened or anticipated litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of specific facts and circumstances which suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances. The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff.

Potential litigation initiated by the local agency

A closed session may be held under the pending litigation exception when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

In certain cases, the circumstances and facts justifying the closed session must be publicly noticed on the agenda or announced at an open meeting. Before holding a closed session under the pending litigation exception, the legislative body must publicly state which of the three basic situations apply. It may do so simply by making a reference to the posted agenda. Certain actions must be reported in open session at the same meeting following the closed session.

Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person. Each agency attorney is aware of and should make other disclosures that may be required in specific instances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator or negotiators on price and terms of payment.[19]

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, the legislative body must identify its negotiator, the real property which the negotiations may concern and the names of the persons with whom its negotiators may negotiate.[20]

After real estate negotiations are concluded, the approval of the agreement and the substance of the agreement must be reported. If its own approval makes the agreement final, the body must

report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval as soon as informed of it, as well as the substance of the agreement, upon the inquiry of any person.

"Our population is exploding, and we have to think about new school sites," said Board Member Baker.

"Not only that," interjected Board Member Charles, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member Doe. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites—which must be identified at an open and public meeting. However, a legislative body can make a final decision on real property in a closed session.

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[21] on employee salaries and fringe benefits for both union and non-union employees; for represented employees, it may also consider working conditions which by law require negotiation. These sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[22]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[23] The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an "employee" includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

Labor negotiations—school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Act:

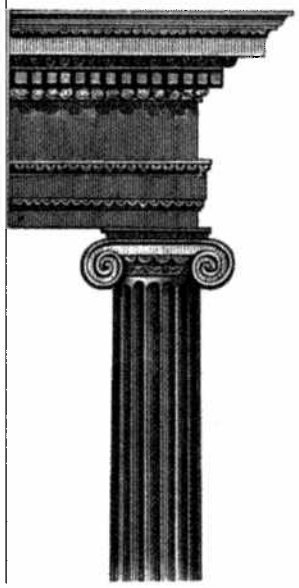
(1) a negotiating session with a recognized or certified employee organization;
(2) a meeting of a mediator with either side;
(3) a hearing or meeting held by a fact finder or arbitrator; and
(4) a session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[24]

Public participation under the Rodda Act also takes another form.[25] All initial proposals of both sides must be presented at public meetings and are public record. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[26] The final vote must be in public.

Other Education Code exceptions

Student disciplinary meetings by boards of school districts and community college districts are governed by the Education Code. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing

Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.



would reveal personal, disciplinary or academic information about students contrary to state and federal pupil privacy law. The pupil's parent or guardian may request an open meeting.

Final action concerning kindergarten through 12th grade students must be taken at a public meeting, and is a public record.[27] In the case of community colleges, only expulsions need be made public.

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[28] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[29]

Grand jury testimony

A legislative body, including its members as individuals, may specifically testify in private before a grand jury, either individually or as a group.[30] Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act, since the body would not be meeting to make decisions or reach a consensus on issues within the body's subject matter jurisdiction.

Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license.

If the body as a result decides to deny the license, the applicant may withdraw the application. In that case, no record is to be kept of the decision and all elements of the closed session are confidential.

If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[31]

Public security

Legislative bodies can meet in closed session to discuss matters posing a threat to the security of public buildings, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with either the Attorney General, district attorney, sheriff or chief of police, or their deputies.[32] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional drug law enforcement agency

A joint powers agency formed to provide drug law enforcement services to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[33]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[34]

- One is to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
- The other allows district or municipal hospitals to hold closed sessions to discuss "reports involving trade secrets"—provided no action is taken.

A trade secret is defined as information which is not generally known to the public or competitors and which (1) "derives independent economic value, actual or potential" by virtue of its restricted

knowledge, (2) is necessary to initiate a new hospital service or program or facility, and (3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[35]

Maintaining the confidentiality of closed session discussions

The Brown Act lacks guidance on whether remedies are available to prohibit or punish closed session "leaks." The law remains unsettled in this area. Agency attorneys and the Attorney General believe that officials have a fiduciary duty to protect the confidentiality of closed session discussions. This duty, of course, must give way to the obligation to disclose improper matters or discussions which may come up in closed sessions.

The Attorney General has issued an opinion that it is "improper" for officials to publicly disclose information received during a closed session regarding pending litigation, though he also concludes that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions.[36] The opinion includes a list of sanctions that could apply to a person who discloses closed session information, including

- an injunction barring the person's attendance at future closed sessions,
- an injunction against future public disclosures, and
- a formal accusation filed against the person for willful or corrupt misconduct in office.[37]

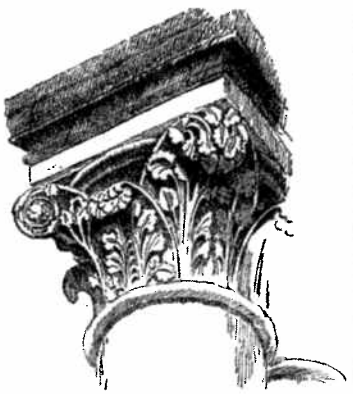
The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[38] This holding supports the notion that there is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

"I want the press to know that I voted in closed session against settlement and will continue to do so as long as these discussions progress," said Council Member Arnold.

"Don't settle," reveals Council Member Baker to the plaintiff, over coffee. "The city's offer coming your way is not our bottom line."

The Brown Act expressly permits—in fact, requires—that final votes taken in closed session be reported publicly.[39] *Disclosure of other closed session information is risky, at best. The only completely safe way to divulge closed session discussions is pursuant to a court order issued under section 54960(a) of the Brown Act. That section provides a remedy to a member of a legislative body to determine by court order whether the legislative body's efforts to discourage the official's disclosure of information is passes muster under federal or state law.*



There is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

Notes
1. 61 Op. Cal. Att'y Gen. 220 (1978)
2. 46 Op. Cal. Att'y Gen. 34 (1965)
3. 98 Op. Cal Attorney Gen. 1011 (1999)
4. California Government Code sections 54956.9 and 54957.7
5. California Government Code section 54957.1(a)
6. California Government Code section 54957.1(b)
7. California Government Code section 54957.2
8. *Hamilton v. Town of Los Gatos* (1989) 213 Cal. App. 3d 1050, 261 Cal. Rptr. 888
9. California Government Code section 54957
10. 63 Op. Cal. Att'y Gen. 215 (1980)
11. California Government Code section 54957
12. 78 Op. Cal. Att'y Gen. 218 (1995); *Furtado v. Sierra Community College* (1998) 68 Cal. App. 4th 876, 80 Cal. Rptr. 2d 589; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal. App. 4th 87, 82 Cal. Rptr. 2d 452
13. California Government Code section 54957
14. *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal. App. 4th 1165, 79 Cal. Rptr. 2d 649
15. California Government Code section 54957.1(a)(5)
16. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
17. California Government Code section 54956.9
18. "Open Meeting Laws," California Attorney General, 1989, p. 41
19. California Government Code section 54956.8
20. California Government Code section 54956.8
21. California Government Code section 54957.6
22. 57 Op. Cal. Att'y Gen. 209 (1974)
23. California Government Code section 54957.1(a)(6)
24. California Government Code section 3549.1
25. California Government Code section 3540
26. California Government Code section 3547
27. California Education Code section 48918
28. California Education Code section 72122
29. California Education Code section 60617
30. California Government Code section 54953.1
31. California Government Code section 54956.7
32. California Government Code section 54957
33. California Government Code section 54957.8
34. California Government Code section 54962
35. California Health and Safety Code section 32106
36. 76 Op. Cal. Att'y Gen. 289 (1993)
37. 80 Op. Cal. Att'y Gen. 231 (1997)
38. *Kleitman v. Superior Court* (1999) 74 Cal. App. 4th 324, 327, 87 Cal. Rptr. 2d 813, 815
39. California Government Code section 54957.1

Chapter 7: Remedies

The Brown Act had no penalties or methods for enforcing compliance when first enacted. However, subsequent amendments have put teeth into enforcement. Specifically, the Brown Act was amended in 1961 to make violations a crime, and to authorize civil action to stop or prevent violations. A provision went into effect in 1987 permitting invalidation of some actions taken in violation of the law. The 1994 amendments extended the time limits for starting an invalidation action, and altered the definition of a misdemeanor violation.

As discussed below, persons wishing to invoke the Brown Act's civil remedies must first provide the legislative body the opportunity to cure its actions.

Even with safeguards such as posting a specific agenda, closed session parameters, and new remedies to enforce these provisions, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. In other words, compliance ultimately requires a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any person, including the district attorney, may seek to invalidate a legislative body's actions that violate the Brown Act. Not all actions can be challenged; and in any case the legislative body has a chance to cure or correct its actions.[1]

A legislative body should cure and correct a challenged action whenever feasible.

Only actions taken in violation of certain provisions of the Brown Act may be invalidated. Invalidation is limited to actions which violate the following sections of the Brown Act: Section 54953 (the basic open meeting provision); Sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); and 54956 (special meetings).

Even violations of these provisions cannot be invalidated if they involve the following types of actions:

- those in substantial compliance with these provisions;
- those involving sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- those connected with the collection of any tax; or
- those in which the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

The challenger to the action must also show prejudice as a result of the alleged violation.[2]

Violations of sections not listed here cannot give rise to invalidation actions, but are subject to the other remedies.[3]

Before filing a court action, the aggrieved party must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action, the nature of the alleged violation, and the "cure" sought, and it must be sent within 90 days of the alleged violation. (However, the time limit is 30 days if the action was taken in open session but in violation of Section 54952.2, which defines "meetings.")[4]

The legislative body then has up to 30 days to cure and correct its action. If it does not act, any law suit must be filed within the next 15 days.

Despite its limitations, the invalidation language means legislative bodies should be even more careful not to violate the Brown Act. Challenges are likely to come from the general public and news media as well as from unexpected quarters—such as disgruntled business people. Some violations, such as inadequate agenda descriptions or posting, may be relatively easy to cure and correct. Other violations—such as inappropriate closed sessions—may be more difficult to correct.

A legislative body should cure and correct a challenged action whenever feasible. Two items should be placed on the next agenda, the first for a decision on whether to correct or cure an action, and the second for consideration of the action if the answer to the first item is "yes." The recommended action in the latter case is not to rescind a previous action but to supersede it. The record of the earlier meeting can be incorporated, but new public testimony should be allowed.

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Civil action

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- 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 under state or federal law; or
- Compel the legislative body to tape record its closed sessions. The court may later review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant sections.[5]

Costs and attorney's fees

Someone from the agency who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. However, the award is only against the local agency and not the individual members of the legislative body. A local agency may be awarded court costs and attorney's fees if the court finds the law suit was clearly frivolous and lacking in merit.[6]

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[7]

A criminal violation has two components. The first is that there must be an overt act—a member of a legislative body must attend a meeting at which **action is taken** in violation of the Brown Act.[8]

"Action taken" is defined elsewhere as not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[9] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[10] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act—not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[11] As with other misdemeanors, the filing of a complaint is up to the district attorney.

Informal resolution

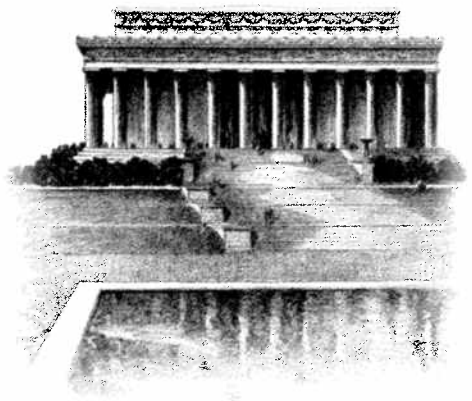
Public agencies always have the opportunity to re-notice and re-hear items of significant public interest. Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy citizens fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down.

The best solution is prevention.

The best solution is prevention.

Notes

1. California Government Code section 54960.1
2. *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547, 556, 35 Cal. Rptr. 2d 782, 786
3. California Government Code section 54960.1(a)
4. California Government Code section 54960.1, subds. (b) and (c)(1)
5. California Government Code section 54960
6. California Government Code section 54960.5
7. California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
8. California Government Code section 54959
9. California Government Code section 54952.6
10. 61 Op. Cal. Att'y Gen. 283 (1978)
11. California Government Code section 54959



Chapter 8: Beyond the Law

This guide has focused not only on the Brown Act, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices for itself and its subordinate committees and bodies that are more stringent than the law itself requires. Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act is insufficiently precise. As with any other significant policy, public comment should be solicited.

Local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act is insufficiently precise.

A local policy could reflect:

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

Many agencies may have specific constituencies with other expectations. An explicit and comprehensive public meeting and information policy, especially if reviewed periodically could be an important element in maintaining or improving public relations.

Such a policy exceeds the absolute requirements of the law—but if the law were enough this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. It may be well for an agency to go beyond the law, to look at its unique circumstances and determine if there is a better way to prevent potential problems.

At the very least, local agencies need to think about how their agendas are structured, and to work at making compliance with the Brown Act easier. They need to plan carefully to make sure public participation fits smoothly into the process.

The Brown Act should be neither an excuse for bureaucratic obfuscation nor a mechanism for public filibusters. And it should not preclude efficient and orderly meetings.

The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for the maximum degree of openness in local government, yet should allow government to function responsively and productively.

On the one hand, there must be adequate notice of what discussion and action is to occur during a meeting; on the other there must be a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, the Brown Act must assure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

Twenty Frequently Asked Questions and Answers

1. The agency's web-site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act? *Yes, because it is a technological device that may serve to allow for the development of a collective concurrence as to action to be taken.*

2. A member of the legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting? *No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

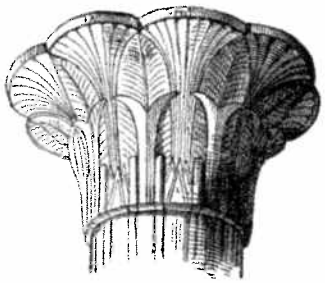
3. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question? *Yes, because the incumbents should not be constrained from participating in the political process as any other candidate.*

4. The entire legislative body intends to travel to Sacramento to testify against a bill before the Senate Local Government Committee. Must this activity be noticed as a meeting of the body? *No, because the members are attending and participating in an open meeting of another governmental body to which the public may attend.*

5. The members in question #4 then proceed upstairs to the office of their local assemblyperson to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public? *Yes, because the entire body may not meet behind closed doors except for proper closed sessions.*

6. A member on vacation desires to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she? *She probably may participate, but she may not vote because she is not in a noticed and posted teleconference location.*

7. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference at city hall in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal? *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken by the council and the press conference is open to the public, it seems harmless.*



8. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go? *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be able to attend.*

9. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors? *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

10. A member of the legislative body informally establishes an advisory committee of five residents to advise her on issues as they arise. Is this committee covered by the Brown Act? *No, because the committee has not been established by formal action of the legislative body.*

11. On the morning following the election to a five-member legislative body of a local agency, the three successful candidates, none incumbents, meet for a celebratory breakfast. Does this violate the Brown Act? *It might, and absolutely would if the conversation turns to*

agency business. Even though not officially sworn in, the Brown Act applies to these individuals. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.

12. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she? *She may attend, but only as an observer; she may not participate.*

13. The agenda for a regular meeting of the legislative body contains the following item of business under New Business:

"Consideration of a report regarding traffic on Eighth Street."

Is this description adequate? *If it is, it is barely adequate. A better description would provide the reader with some idea of what the report is about, and what is being recommended.*

14. The agenda always includes an opportunity for the "Chief Executive Officer's Report," during which time the officer provides a brief report on notable topics of interest, none of which are listed on the agenda. Is this permissible? *Yes, as long as it does not result in legislative body discussion or action.*

15. Must the legislative body allow members of the public to show videos during the "audience participation" part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit? *Probably, though the agency is under no obligation to provide equipment.*

16. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during audience comments? *No, as long as the criticism pertains to job performance.*

17. During the audience comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech? *No, for Brown Act purposes, the speech is relevant to the governing of the agency and an implicit criticism of the incumbents.*

18. May the legislative body agree to settle a lawsuit in a properly noticed closed session, without placing the settlement agreement on an open session agenda for public approval? *Yes, but the settlement agreement is a public document and must be disclosed on request.*

19. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer? *No, attendance in closed sessions is reserved exclusively to the agency's advisors.*

20. Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session? *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

The Ralph M. Brown Act

California Government Code Sections 54950-54962

As Amended January 1, 2000

Intent

54950. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. 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.

Title

54950.5. This chapter shall be known as the Ralph M. Brown Act.

"local agency": public agencies

54951. As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

"legislative body": governing body

54952. As used in this chapter, "legislative body" means:

body created by formal action

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

private corporation: exercises delegated authority

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation or entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity.

private corporation: receives public funds/ appointed legislative body member on its governing board

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

status change from voting member to nonvoting member: public meeting requirements

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation or entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation or entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

lessee of a hospital

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

newly-elected members

54952.1. Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

"meeting" defined

54952.2. (a) As used in this chapter, "meeting" includes 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 or the local agency to which it pertains.

majority cannot use direct communication, personal intermediaries or technological devices

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

exceptions:

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

1. individual contacts

(1) Individual contacts or conversations between a member of a legislative body and any other person.

2. conferences

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, 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 subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

3. community meetings

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

4. another body of the local agency

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

5. social or ceremonial events

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

6. standing committee meeting

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

"action taken"

54952.6. As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

copies of the Brown Act for members, appointees

54952.7. A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

all meetings must be open and public

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

video teleconferencing

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

public access

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

no secret ballots

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

grand jury testimony

54953.1. The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

public cannot be required to register to attend meeting

54953.3. A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

voluntary registration

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

public can tape meetings

54953.5. (a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without

noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

recordings are public record

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the local agency.

broadcast of open meetings

54953.6. No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

local agencies can impose stricter requirements on themselves

54953.7. Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

regular meetings set by ordinance or other rule

54954. (a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

meetings must be within local agency's territory

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

exceptions

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of the superintendent of that district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

mailed notice

54954.1. Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

regular meeting agendas: 72-hour notice and posting

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

action on non-agenda items

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other

resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

item continued from meeting less than 5 days earlier

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

public opportunity to address the legislative body

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

reasonable constraints on public testimony

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

public criticism of policies, procedures, programs or services

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

reimbursement of costs

54954.4. (a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the

reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

"safe harbors" for closed session agendas

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

license and permit determinations

LICENSE/PERMIT DETERMINATION
Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

real estate negotiations

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)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

existing litigation

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
(Subdivision (a) 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)

anticipated litigation

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide

additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

liability claims

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

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

threats to public services

THREAT TO PUBLIC SERVICES OR FACILITIES
Consultation with: (Specify name of law enforcement agency and title of officer)

public employees

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.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

labor negotiation conference

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)

—or—

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

(g) With respect to closed sessions called pursuant to Section 54957.8:

multijurisdictional drug law enforcement agency

CASE REVIEW/PLANNING
(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

hospital exceptions

REPORT INVOLVING TRADE SECRET
Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

hearings

HEARINGS
Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

federal law

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW
(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

tax or assessment hearings

54954.6. (a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

new or increased taxes

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of

subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

new or increased assessments

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The estimated amount of the assessment per parcel. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIIIC or XIIID of the California Constitution is not subject to the notice and hearing requirements of this section.

adjourned meetings

54955. The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any

meeting 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 by ordinance, resolution, bylaw, or other rule.

continued hearings

54955.1. Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

special meetings

54956. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

emergency meetings

54956.5. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

For purposes of this section, "emergency situation" means any of the following:

(a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting by telephone and all telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

Notwithstanding Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

no fees except those specifically authorized

54956.6. No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

closed sessions: license applicants with criminal records

54956.7. Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

closed sessions: conference with negotiator over real property

54956.8. Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall 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.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

closed sessions: health plan charge or complaint

54956.86. Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

disclosure exemption for health plan records

54956.87. (a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act

of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (c) of Section 32106 of the Health and Safety Code, shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

closed session: pending litigation

54956.9. Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

litigation formally initiated

(a) Litigation, to which the local agency is a party, has been initiated formally.

significant exposure to litigation

meeting to decide if closed meeting is authorized

(b) (1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) 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, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created 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.

(F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

initiating litigation

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency 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, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

closed session: claims against joint powers agencies

54956.95. (a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

closed sessions: threats to public buildings or to public access

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public' s right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

personnel matters

As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this section shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

public reports on closed session actions, votes

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

real estate negotiations

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall 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 local agency of its approval.

pending litigation

(2) 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 as the result of a consultation under Section 54956.9 shall 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. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) 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.

(B) 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.

joint powers authority claims

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

personnel actions

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

labor negotiations

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

copies of closed session documents

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester

is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

closed session minute book

54957.2. (a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

writings distributed to a majority of a body are public records

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

closed session minute book

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

closed sessions: meeting with representatives on labor negotiations

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's 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.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

advance announcement of closed session items

54957.7. (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

closed session: multijurisdictional drug law enforcement agency

54957.8. Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional drug law enforcement agency, or an advisory body of a multijurisdictional drug law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional drug law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

"Multijurisdictional drug law enforcement agency," for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services for the parties to the joint powers agreement.

The Legislature finds and declares that this section is within the public interest, in that its provisions are necessary to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and informants, and to permit the discussion of effective courses of action in particular cases.

willful interruptions of meetings

54957.9. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

provisions apply not withstanding conflicts of law

54958. The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

misdemeanor violations of the Act

54959. 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.

civil actions to prevent violations

54960. (a) 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 actions or threatened future action of the legislative body, 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 tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.

(ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

action to invalidate

54960.1. (a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, and 54956.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

court may award attorney fees

54960.5. A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

meeting sites must be free of discrimination and accessible to disabled

54961. (a) 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 race, religious creed, color, national origin, ancestry, or sex, 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.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

no closed meetings except as expressly authorized

54962. Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 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.

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