

Understanding the Ralph M. Brown Act



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The Brown Act

Governing Law: Ralph M. Brown Act
California Government Code sections
54950 through 54962



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Intent and Purpose

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.



California Government Code Section 54950

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Intent and Purpose

- Public bodies in California exist to aid in the conduct of the people's business.
- Deliberations of public bodies should be conducted openly and their actions should be taken openly.
- The Brown Act is "intended to ensure that the deliberations and actions of the governing bodies of local agencies are open and public and that provision is made for meaningful access to their decisionmaking." *Wolfe v. City of Fremont* (2006) 144 Cal. App. 4th 533, 541.
- The Act is broadly interpreted to effect its purposes.



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Who Does It Cover?

“Legislative bodies” are subject to the Brown Act. The term “legislative body” is defined to include:

1. Governing body of the local agency (e.g., City Council). (Cal. Gov. Code §54952(a))
2. Commissions, committees, boards or other bodies, whether temporary or permanent or advisory or decision-making, created by ordinance, resolution, or other formal action of a legislative body. (Cal. Gov. Code §54952(b)). Example: the Board of Ethics.



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Meeting

“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.

California Government Code Section 54952.2(a)



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Meeting

Examples of “meetings” covered by the Brown Act:

- Discussions or receipt of information by the legislative body that takes place before a final decision is made, or a final vote is taken.
- Internal gatherings such as lunches or social gatherings if issues under the subject matter jurisdiction of the body are discussed or decided by the members of the body.
- Any use of direct communication, personal intermediaries or technological devices (e.g. telephone, email, etc.) employed by a majority of the members of a legislative body to develop a collective concurrence as to the action to be taken on an item.



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Meeting

Serial meetings to develop a collective concurrence are prohibited.

California Government Code Section 54952.2(b)

1. Example of a **prohibited** serial meeting: use of e-mail among a majority of members of the body to reach a shared view about an item that will be on their agenda.
2. Example of **permissible** communication not at a meeting: communication by a non-member (e.g., staff or member of the public) of information to each member of a legislative body, as long as staff is not acting as a “personal intermediary” among the members. *Wolfe v. City of Fremont, supra*, 144 Cal. App. 4th at 546.



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Meeting

- Staff may have separate individual conversations or communications with members of a legislative body in order to answer questions or provide information regarding a matter that is within subject matter jurisdiction of local agency.
- These conversations may occur outside a meeting if staff member does not communicate to members of legislative body the comments or position of any other member(s) of the body.



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Meeting

Circumstances that are not considered “meetings” under Brown Act:

- Individual Contacts - individual contacts or conversations between non-member and member of the legislative body (as long such contact is not serial meeting). “Lobbying” of members by individuals is allowed.
- Conferences and Seminars/Other Legislative Body Meetings/Social and Ceremonial Events - attendance of a majority of members of a legislative body at a conference open to the public or other similar gathering, at another noticed meeting of the local agency, or 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 their subject matter jurisdiction.



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Action

- “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 upon a motion, proposal, resolution, order, or ordinance (Cal. Gov. Code Section 54952.6)
- No action may be taken by secret ballot. (Cal. Gov. Code Section 54953(c))



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Basic Rules

- Meetings must be open to the public. (Cal. Gov. Code §54953(a)). Deliberation and action are to occur open and publicly
- Limited exception: Closed session is allowed only for expressly authorized statutory exceptions (e.g., certain personnel issues, pending or anticipated litigation, and real property negotiations.) (Cal. Gov. Code §54962)
- Member of public shall not be required, as a condition to attendance at meeting, to register his/her name, provide other information, complete a questionnaire, or otherwise fulfill any condition precedent to his/her attendance.



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Basic Rules

- Any sign-in sheets must clearly state that signing, registering, or completion of document is voluntary, and that all persons may attend meeting regardless of whether a person signs, registers, or completes document. (Cal. Gov. Code §54953.3)
- Meetings must be held within the boundaries of territory over which local agency exercises jurisdiction (Cal. Gov. Code §54954(b))
- Meetings must be accessible to the public (Cal. Gov. §Code 54961(a))



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Agenda

- Post an agenda at least 72 hours before the meeting
 - now must also be posted on the local agency's Internet Web site, if local agency has one. (Cal. Gov. Code §54954.2(a))
- The agenda must specify the time and place of the meeting and be posted in a location that is freely accessible to the public. (Cal. Gov. Code §54954.2)
- If requested, agenda and documents in agenda packet must be available in appropriate alternative formats to persons with a disability. (Cal. Gov. Code §54954.1)



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Agenda

- Agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting. (Cal. Gov. Code §54954.2(a))
- No action or discussion of any item not appearing on the agenda. (Cal. Gov. Code §54954.2(a)). Exceptions:
Legislative body and/or its staff may:
 - a. Briefly respond to statements made or questions posed by public
 - b. Ask questions for clarification
 - c. Make brief announcements or brief reports on his/her activities
 - d. Request for staff or other resources to provide factual information
 - e. Request to place a matter on the agenda for a future meeting



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Agenda

Items may be added to the agenda after agenda posting deadline only under limited circumstances:

- A. emergency situation ("crippling disaster which severely impairs public health or safety")
- B. urgency add-on: requires 2/3 vote and finding that there is a need to take immediate action and the need for action came to the attention of the local agency after the agenda was posted
- C. the matter was posted at a prior meeting held not more than five calendar days previous and the item was continued to the meeting in question



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Public Comment

- The agenda must provide an opportunity for members of the public to comment on agenda items before or during consideration of the item. (Cal. Gov. Code §54954.3.)
- Regular meetings must include time for the public to comment on any other matters within the subject matter of the legislative body.
- The local agency may adopt “reasonable regulations” related to testimony (e.g., time limits for speakers). (Cal. Gov. Code §54954.3.)



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Special Meetings

- Post call and notice of special meeting at least 24 hours before the special meeting. (Cal. Gov. Code §54956)
- Deliver call and notice of special meeting at least 24 hours before the time of the meeting to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. (Cal. Gov. Code §54956)
- Call and notice must specify the time and place of the special meeting and the business to be transacted or discussed. (Cal. Gov. Code §54956)



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Special Meetings

- No other business may be considered at a special meeting by the legislative body. (Cal. Gov. Code §54956)
- No special meeting allowed to discuss executive compensation. (Cal. Gov. Code §54956(b))
- Members of the public have the opportunity to directly address the legislative body concerning any item that has been described in the notice for the special meeting before or during consideration of that item. (Cal. Gov. Code §54954.3(a))



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Agenda Packet

- Mail agenda and copy of all documents constituting the agenda packet to any person upon written request. (Cal. Gov. Code §54954.1)
- May establish a fee for mailing agenda or agenda packet.
 - Fee may not to exceed actual cost of providing the service.
- Provide copies of agenda materials and documents to public when documents are provided to a majority of all members of the legislative body. (Cal. Gov. Code §54954.1)
- Applies only to disclosable public records. (Cal. Gov. Code §54957.5(a))



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Closed Session

- Limited to reasons authorized by statute.
- Exceptions to open meetings are narrowly construed.
- “Safe harbor” descriptions of closed session items.
Deemed to have properly noticed closed session items if use language specified in statute. (Cal. Gov. Code §54954.5)
- Appointment, employment, evaluation of performance, discipline, or dismissal of public employee. (Cal. Gov. Code §54957)
- Complaints or charges brought against public employee. (Cal. Gov. Code §54957)



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Closed Session

- Meet with negotiator prior to the purchase, sale, exchange, or lease of real property regarding the price and terms of payment. (Cal. Gov. Code §54956.8)
- Meet with legal counsel to confer with or to receive advice regarding existing, pending, or potential litigation. (Cal. Gov. Code §54956.9)
- Meet with designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees and any other matter within the statutorily provided scope of representation for represented employees. (Cal. Gov. Code §54957.6(a))



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Consequences

- Individual criminal liability
- Invalidation of the action of the legislative body
- Attorneys fees and costs awarded to plaintiff
- Criminal misdemeanor if member of legislative body attends a meeting where action is taken in violation of the Act 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. (Cal. Gov. Code §54959)
- Civil action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of the Act. (Cal. Gov. Code §549560(a))



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Consequences

- Civil action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body in violation of the Act is null and void. (Cal. Gov. Code §54960.1(a))
- Requires written demand in advance to cure or correct action. (Cal. Gov. Code §54960.1(b))
- Court may award court costs and reasonable attorney fees to the plaintiff in any civil action where it is found that the legislative body violated the Act.



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Resources

- The Brown Act: Open Meetings for Local Legislative Bodies, pamphlet published by the California Office of the Attorney General, 2003, available at:
ag.ca.gov/publications/2003_Intro_BrownAct.pdf
- Institute for Local Government – www.ca-ilg.org
- State law, case law, and Attorney General opinions
<http://www.leginfo.ca.gov/calaw.html>
<http://oag.ca.gov>
- City Attorney's Office
General - (951) 826-5567



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