



**THE RALPH M. BROWN ACT
CALIFORNIA'S OPEN MEETING LAW
California Government Code
sections 54950-54963**

CITIZENS EQUAL OPPORTUNITY COMMISSION

June 3, 2015

Deputy City Attorney Lara Easton



Overview of the Act

“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.” Cal. Gov’t Code § 54950.



Overview of the Act

“The people have the right of access to information concerning the conduct of the people’s business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” Cal. Const. art. 1, § 3(b)(1); San Diego Charter § 216.1(b)(1).



Overview of the Act

- All meetings of a legislative body of a local agency shall be open and public. Cal. Gov't Code § 54953.
- All persons shall be permitted to attend the meetings ("open meeting"), except as otherwise provided by the Act ("closed session"). Cal. Gov't Code § 54953.
- No secret ballots allowed. Cal. Gov't Code § 54953(c).
- Meetings must be conducted in accordance with an agenda available in advance of the meeting. Cal. Gov't Code § 54954.2(a). The agenda must be made available at least 72 hours prior to a regular meeting.



What is a “Local Agency”?

“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.” Cal. Gov’t Code § 54951.



What is a “Legislative Body”?

Cal. Gov’t Code § 54952:

“(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....”



What is a “Legislative Body”?

NOT subject to the Brown Act:

“Ad Hoc” Advisory Committees”“Advisory committees, composed solely of the members of the legislative body that 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.” Cal. Gov’t Code § 54952(b).



What is a “Meeting”?

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. Cal. Gov't Code § 54952.2(a).



What is a “Meeting”?

- Not limited to gatherings where action is taken.
- Also applies to gatherings involving only discussion or deliberation.
- Includes informal meetings such as retreats and workshops.



What is a “Meeting”?

SERIAL MEETINGS:

“A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

Cal. Gov’t Code § 54952.2(b)(1).



What is a “Meeting”?

SERIAL MEETINGS:

- Hub & Spoke Communication: “A to B,” “A to C,” “A to D,” can lead to collective concurrence.
- Chain Communication: “A to B” and “B to C,” “C to D,” can lead to collective concurrence.
- Beware of email communications. A majority cannot email each other to discuss a matter within the Commission’s subject matter jurisdiction.



What is NOT a “Meeting”?

- Individual contacts between a member of the legislative body and other persons.
- Conferences or similar gatherings, open to the public.
- Community Meetings.
- Meetings of another Agency.
- Social or Ceremonial Events.

Members cannot discuss official business among themselves at the gathering.



What is “Open and Public”?

- All meetings of a legislative body of a local agency shall be open and public.
- All persons shall be permitted to attend and participate in the meetings.
- Effective notice must be given.
- The agenda must adequately describe the items to be considered.



What is “Open and Public”?

- REGULAR MEETINGS:

- Agenda must be posted at least 72 hours in advance of meeting, in a location freely accessible to the members of the public 24 hours a day.
- Agenda must include the time and place of the meeting, and a brief description of items to be discussed/business to be transacted, usually in 20 words or less.



What is “Open and Public”?

- Legislative bodies must publicly report:
 - Any action taken; and
 - The vote or abstention on each action taken by each member present for the action at a meeting.
 - Names of each individual who dissented or abstained should be stated so there is a clear record of how the entire body voted.
 - Information should be included in the minutes.



What is “Open and Public”?

- SPECIAL MEETINGS:
 - Must be called by the Chair or a majority of the members.
 - Written notice must be sent to each member, and to each newspaper, television and radio station which made a written request to receive such notice.
 - Notice must be posted in a location freely accessible to the public at least 24 hours in advance.



What is “Open and Public”?

- EMERGENCY MEETINGS:
 - What is an emergency? Cal. Gov’t Code § 54956.5(a) and (b).
 - 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, or
 - Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.
 - Notice
 - Presiding officer to notify all media who previously requested notice one hour prior to the emergency meeting by phone. Cal. Gov’t Code § 54956.5(b).



“Attend and Participate”

- Member of the public must be allowed to attend meetings.
- Non-Agenda public comment: Members of the public must be allowed to speak on any item of interest, within the subject matter jurisdiction of the legislative body, during Non-Agenda public comment. Cal. Gov’t Code § 54954.3.
 - The legislative body may not discuss or take action on any items not included on the agenda.
 - In response to public comment on non agenda items, members may make brief comment, such as to indicate that a subject will be included on a future agenda, but may not take any action. Cal. Gov’t Code § 54954.2(a).
 - Exception: If 2/3 of the members present, or if less than 2/3 of the members are present, a unanimous vote of those present, determine there is an urgent need to take action on an item which came to the attention to the members after the meeting agenda was posted. Taking action on a non agenda item is subject to challenge and should be approached with caution. Cal. Gov’t Code § 54954.2(b).
- Agenda related public comment: Public testimony related to agenda items must be allowed, before or during the consideration of the agenda item. Reasonable regulations, such as time limits, are allowed. Cal. Gov’t Code § 54954.3.



“Closed Session”

- Exception to Open Meeting Law
- Specific subject areas that are confidential or sensitive:
 - Personnel Matters (appointment, evaluation, discipline of public employees, not elected officials or appointees). Cal. Gov’t Code § 54957.
 - Pending Litigation. Cal. Gov’t Code § 54956.9.
 - Real Estate Negotiations. Cal. Gov’t Code § 54956.8.
 - Labor Negotiations. Cal. Gov’t Code § 54957.6.
 - Public Security (threats to public buildings or essential public services). Cal. Gov’t Code § 54957.



Remedies for Non-Compliance

- Invalidation of the action taken.
- Civil and criminal penalties.
- Court costs and attorneys fees.



Council Policy 000-16

- City policy for City boards, commissions, and committees.
- Purpose: reaffirm that the Brown Act is followed by City boards, commissions, and committees.
- Policy: all business conducted by City commissions, or by committees thereof, be in full view of the public, and closely adhere to the requirements of the Brown Act.



SUMMARY

- All meetings must be open and public.
- Actions and deliberations must be taken openly.
- All persons shall be permitted to attend and participate in the meetings.