



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY COUNSEL

THE BROWN ACT

Open Meetings
for Local Legislative Bodies

California Government Code
Sections 54950-54963



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WHAT IS THE BROWN ACT?

California's open meeting law:
Government Code sections 54950-54963.



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PURPOSE OF THE BROWN ACT

- Generally, all meetings of the legislative body of a local agency are open and public, and all persons must be permitted to attend any meeting of the legislative body of a local agency.



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WHO MUST COMPLY?

Legislative Bodies

- ✓ Governing body of a local agency
- ✓ Advisory committees (with exceptions)
- ✓ Citizen volunteer groups, committees/commissions, task forces, etc. created by formal action of the governing body
- ✓ Standing committees of legislative body with either (a) continuing subject matter jurisdiction or (b) a fixed schedule set by formal action of the legislative body
- ✓ Multi-member body that governs a private corporation that is created by legislative body to exercise delegable authority; or receives public funds and includes a full voting member of the legislative body.



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WHEN DOES THE BROWN ACT APPLY?

MEETINGS!

- ✓ Congregation of the majority of members of a legislative body:
 - same time and place
 - to hear, discuss or deliberate
 - agency business

“Meetings” are not limited to gatherings at which action is taken, but also include deliberative gatherings.

Meetings require a quorum to get started and stay in business



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WHEN DOES THE BROWN ACT NOT APPLY?

- Other legislative bodies (e.g., members of city council attending meeting of planning commission.)
- Conferences open to the public (e.g. annual association conferences.)
- Social/ceremonial events (e.g. football games, wedding, retirement party, etc.)

BUT.... DON'T DISCUSS AGENCY BUSINESS!



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SERIAL MEETINGS

The Brown Act expressly prohibits serial meetings that are conducted through direct communications, personal intermediaries or technological devices such as e-mail for the purpose of developing a concurrence as to action to be taken.



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SERIAL MEETING NOT ALLOWED

Serial Meeting = series of communications, each of which involves less than a quorum of the legislative body, but when taken as a whole, involve a majority of the body's members.

Examples:

- @ 5 member body- Member A talks to Member B, who then talks to Member C about the same topic.
- @ 5 member body- Member A talks to Member B and then Member A talks to Member D about the same topic.



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SERIAL MEETINGS

The prohibited communications are those used to develop a concurrence as to the action to be taken, such as:

Substantive conversations among members concerning an agenda item prior to a public meeting.

Conversations which advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members.



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INFORMAL GATHERINGS

Informal gatherings are meetings subject to the Brown Act if issues under the subject matter jurisdiction of the body are discussed or decided by the members of the body.



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TYPES OF MEETINGS

There are three types of meetings:

Regular,
Special, and
Emergency.

A meeting that is held at a time or place other than that specified in ordinance, resolution or bylaws, is either a special or emergency meeting.



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TYPES OF MEETINGS

Special

- ✓ Presiding officer or a majority may call a special meeting.
- ✓ Requires 24 hours posted notice and written notice to each member and to media outlets that have requested notice.
- ✓ Notice must state time and place of meeting and all business to be discussed.
- ✓ Business is limited to subjects listed on agenda.



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TYPES OF MEETINGS

Emergency

- ✓ May be called when prompt action is needed (e.g., work stoppage, crippling disaster, or other activity that severely impairs public health or safety.
- ✓ Emergency meetings are very rare.
- ✓ One-hour telephone notice to media outlets that have requested notice in writing.
- ✓ Notice must provide time, place and business to be transacted at the meeting.
- ✓ Business is limited to subjects listed on agenda.



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REQUIREMENTS FOR MEETINGS

Agenda

- ✓ Except emergency meetings, all meetings must have an agenda posted in advance (Regular – 72 hours, Special – 24 hours).

Open and public

- ✓ All persons must be permitted to attend, no secret ballots.

No conditions on attendance

- ✓ May not require to sign-in, cannot charge for attendance.



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AGENDAS

- Must post in a location “freely accessible to members of the public” 24/7.
- Must state time and place of meeting and a “brief general description of each item of business to be transacted or discussed, including items to be discussed in closed session.”
- People should have enough information to decide whether they want to attend.
- Rule of thumb = 20 words is sufficient



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AGENDAS

Must include language regarding how an individual with a disability may access the meeting and related materials.

Must include the address where non-confidential materials given to board members less than 72 hours prior to a regular meeting may be obtained.



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WHAT ABOUT ITEMS NOT ON THE AGENDA?

No action can be taken...except

- ✓ Majority decides there is an emergency situation pursuant to Government Code section 54956.5.
- ✓ 2/3 of the members present (or all members if less than 2/3 are present) vote that immediate action is needed and the need came to board's attention after agenda was posted. (Regular meetings only.)



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LOCATION OF MEETINGS

All meetings must be held within the area over which the board has jurisdiction.



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RIGHTS OF THE PUBLIC

May address Board:

- ✓ Matters on the agenda

Before or during consideration of the item, public must be given an opportunity to comment on the item.

- ✓ When a member of the public raises an issue that is not on the agenda, the item may be briefly responded to, **NO ACTION!**

- ✓ Reasonable time limitations and other regulations are permitted (be consistent).



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RESPONSE TO PUBLIC COMMENT

- Refer speaker to staff.
- Refer speaker to appropriate reference material.
- Request staff to report back at a future meeting.
- Direct staff to place the matter on a future agenda.



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CLOSED SESSIONS

- Closed session meetings are specifically defined and limited in scope.
- If there is no specific statutory authority for the closed session, the meeting must be conducted in public.
- Not enough that it is sensitive, embarrassing or controversial. Meeting is either open or closed. Cannot invite selected members of public.
- Primarily involve personnel issues, pending litigation, labor negotiations, or real property transactions.
- Generally used to avoid revealing confidential information that would prejudice legal or negotiating position of the body or compromise privacy interest of employee.



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CLOSED SESSIONS – AGENDAS AND REPORTS

- Legal authority for closed session must be on the posted agenda with the same kind of brief description (cite Brown Act code section).
- Must make public announcement prior to closed session discussion (can just refer to agenda item).



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CLOSED SESSIONS – AGENDAS AND REPORTS

- If final action is taken in closed session, must report out on certain actions taken and the vote of each member present. Required content specified in Government Code section 54957.1.
- A person may not disclose confidential information that has been acquired by attending a closed session to a person not entitled to receive it, unless the disclosure is authorized by the body.



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RECORDS AND PUBLIC ACCESS

General rule: agendas, minutes & writings distributed at board meetings are public records.

SB 343 (Effective July 1, 2008)

- ✓ Documents pertaining to an agenda item distributed to board members less than 72 hours prior to the meeting must be made available to the public.



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PENALTIES AND REMEDIES

Penalties and Remedies provided by the Legislature to combat violations of the Act include:

Criminal penalties.

Civil injunctive relief.

Award of attorney's fees.

Actions taken in violation of Brown Act may be declared null and void by a court.



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PENALTIES AND REMEDIES

- It is a misdemeanor for a Board member to attend a meeting where action is taken in violation of the Brown Act and the member intends to deprive the public of information to which the Board member knows or has reason to know the public is entitled.
- Misdemeanor is punishable by imprisonment in county jail and/or fine not to exceed \$1,000.