

THE BROWN ACT
CALIFORNIA'S OPEN MEETING LAW

Prepared by:
Anthony Saul Alperin
Assistant City Attorney

This paper discusses the requirements of the Ralph M. Brown Act¹ as they apply to the various boards and commissions of the City of Los Angeles.² Its purpose is to acquaint you with these rules and to provide an easy to use guide that will assist you in conducting the meetings of your commission. The paper is not an exhaustive treatise on the Act; rather, it outlines the most important requirements of the Act.³ If you have any questions about the application of these rules, you should contact the Assistant or Deputy City Attorney who regularly advises your commission.

What Bodies Are Covered By The Act?

The Brown Act governs the meetings of all local "legislative bodies," that is, all multi-member councils, boards, commissions, committees and the like of a local government agency. Only bodies created by charter, ordinance or the formal action of another legislative body are covered by the Act. These bodies may exercise legislative or adjudicatory functions, or both. The departmental boards and commissions of the City of Los Angeles are all governed by the Act.

The Act also governs the meetings of standing committees (those which have continued responsibility over a particular subject matter, as well as those with fixed meeting schedules) of the boards and commissions. It does not include temporary advisory committees which consist solely of less than a quorum of the members of the board or commission. These will typically be committees of two members (of a five member board) assigned to investigate and report back on a single issue.

What Is A Meeting?

A "meeting" of a board or commission includes a gathering of a majority of the

¹ Cal. Govt. Code § 54950, *et seq.*

² At various places in this paper, reference will be made to "boards and commissions," "boards" or "commissions". Regardless of which term is used, the reference will be to all of the City's various departmental boards and commissions.

³ This paper has been updated to reflect amendments to the Act enacted in 1997.

members at the same time and in the same place to hear, discuss or act on one or more matters under the jurisdiction of the board or commission. The only type of meeting allowed by the Brown Act is this type of meeting, and it may lawfully be held only if the notice and agenda requirements discussed below are followed.

Informal, social gatherings of board members are not meetings, and need not comply with the Act, so long as there is no discussion of any subject matter under the board's jurisdiction. If these informal gatherings will involve discussions among a majority of the members of a board relating to the board's official business, the meeting should be properly noticed, and an agenda of the business items that will be discussed must be posted. The public must be allowed to attend and participate.

A meeting can include a conference or retreat attended by a majority of commission members. If a conference is open to members of the public and involves issues of interest to the public, it is not a meeting subject to the Act so long as the members do not discuss among themselves, other than as part of the scheduled program, specific issues within the jurisdiction of the commission.

The Act prohibits the use of direct or indirect communications, intermediaries or technical devices used by a majority of a commission to assist them in arriving at any decision. For instance, the chair may not call two other members of a five member board to discuss an agenda item. Nor may one member call a second member, who then calls a third member. Nor may someone on the staff of a department speak with a majority of the department's commission members about a matter the commission will be asked to decide. The same is true for the use of e-mail, fax machines and the like for communication among a majority of members.

Sending a written communication that becomes a public record does not result in a meeting being held. However, a majority of members should not circulate motions, proposals and similar documents among themselves for their review and signature, as that would constitute an unlawful meeting within the meaning of the Act.

Individual communications between members of a board or commission and members of the public are not prohibited by the Act. However, if a board will act on a quasi-judicial, adjudicative matter (e.g., a land use variance or the revocation of a permit or license), all communications between members of the board and anyone with an interest in the matter should take place at formal meetings or through written communications that are made a part of the official record.

May Members Of A Legislative Body Who Are Not Members Of A Committee Attend Committee Meetings?

Members of a legislative body may attend meetings of its committees, even if

they are not members of the committees they attend. However, if a majority of the members of the legislative body attend a committee meeting, there are two legal options:

1. Notice the meeting as a meeting of the legislative body itself as well as the committee. All of the members in attendance may participate.

2. If the committee is a standing committee, notice the meeting only as a meeting of the committee and comply with all of the following requirements:

a. The committee meeting must be an open and properly noticed as a committee meeting (no closed session may take place if a majority of the legislative body is in attendance);

b. The members of the legislative body who are not members of the committee may attend *only* as observers and may not participate in the discussion.

(Option No. 2 is available only if the committee is a standing committee of the legislative body.)

What Are The Notice and Agenda Requirements?

1. Regular Meetings

The time and place for regular commission meetings are established by ordinance, resolution or rules of order. They can be changed by similar formal action.

The agenda of a regular meeting of a commission must be posted at least 72 hours before the start of the meeting. With the exceptions described below, all matters that will be discussed or acted on by the commission must be listed on the agenda. That listing must briefly and generally describe the matter that will be discussed or decided in terms that will be understandable by the public. Matters not on the agenda may be discussed only if they meet criteria discussed below.

2. Special Meetings

A "special meeting" of a board may be called by giving notice (by mail or personal delivery) 24 hours before the meeting to all members and to all media outlets that have requested to be so notified. The notice must state the place and time of the meeting, as well as the matters that will be discussed and/or decided. A member who does not receive notice can waive the requirement. That waiver needs to be made in writing either at the time of or before the meeting. No matter that is not on the agenda

of a special meeting may be discussed at that meeting.

3. Emergency Meetings

The majority of the members of a commission may call an emergency meeting when an emergency exists that requires discussion or action by the commission. These emergencies include only crippling disasters, work stoppages or other activities which severely impair public health, safety or both. At least one hour notice must be given to media outlets that have requested notice of special meetings. Emergency meetings may not be held in closed session.

4. Exceptions To The Agenda Requirement

Under almost all circumstances, issues may not be discussed at commission meetings unless the issues are set forth as items on the agenda of the meeting. There are three exceptions to these rules, and all three relate to regular meetings. The only matters which can be discussed at special meetings are those on the written agenda.

A commission may discuss a matter that is not on the agenda of a regular meeting *only* if one the following requirements are met:

a. By majority vote, the commission determines that the issue to be discussed constitutes an emergency that would allow it to hold an emergency meeting (see discussion above). This discussion must be held in open session.

b. By a two-thirds vote of the entire membership, the commission determines that there is a need to act immediately, that the commission's consideration of the matter cannot await the next meeting of the commission and that the need for immediate action came to the commission's attention after the posting of the agenda.

What Information Must An Agenda Contain?

The agenda must list all of the matters that will be considered at the meeting. Each item on the agenda should be described by a brief but informative summary of the nature of the matter to be discussed and/or decided. That description should inform interested members of the public about the matter so that they can decide whether to attend and participate.

What Rights Do Members Of The Public Have At Meetings?

Except when closed sessions are permitted (see below), all commission meetings must be held in public. Members of the public who choose to do so must be

allowed to attend; they may not be asked to register or provide any information as a condition of attending. Also, members of the public must be allowed to record a meeting on a video or audio tape or to broadcast the proceedings, unless the commission makes a reasonable finding that the activity would disrupt the meeting.

Members of the public must be allowed to present testimony or otherwise address a commission about each item on the agenda. At regular meetings, the public must be given an opportunity as well to address the commission on any matter under its jurisdiction, even if the matter is not on the agenda. Commissions may adopt reasonable rules governing the amount of time for such public comment on each item on the agenda as well as the time each member of the public will be allowed to speak. The public may discuss information relating to specific matters and must be allowed to criticize the policies, procedures or programs of the agency. However, disruptions of a meeting need not be tolerated.

Members of the public are entitled to be given copies of written materials that a commission will consider when discussing or acting on an agenda item. This requirement does not apply to materials that are subject to an attorney-client or other privilege or which are otherwise not required to be disclosed to the public in accordance with the Public Records Act.

Meetings may not be held in facilities which are inaccessible to disabled persons. If a commission holds a meeting in an unusual location, such as a restaurant, the public must be allowed to attend without the need to pay any price for entry (e.g, if the meeting is held in a restaurant, they must be able to attend without buying lunch). They must be able to hear the proceedings and must be allowed to present public testimony.

Under What Circumstances May Closed Sessions Be Held?

Under certain circumstances specifically allowed by the Act, a commission is allowed to meet in closed session. Otherwise, meetings must be open to the public. If a meeting is closed to the public, it is not permissible to allow some interested persons to attend while denying access to others. Generally, the only persons who may attend closed sessions are the members of the board and any City staff that is needed to assist the board in its deliberations. Persons without official roles should not attend.

In order for a commission to be able to meet in closed session, the item must be listed on the agenda, or one of the exceptions to the agenda requirement must be applicable. The Act provides a safe harbor with regard to the agenda requirement for closed sessions. If a commission uses one of the Act's suggested standard agenda item formats contained in the Act, indicating the purpose of a closed session on the agenda, that is all that is required. In addition, the items that will be discussed in

closed session must be announced publicly before a closed session is held.

After a closed session is completed, the commission is required to meet in open session. If final action was taken in the closed session, that action must be publicly reported, along with the vote taken. With respect to litigation, the commission must report an instruction to counsel to defend an action, file or not file an action or appeal or to act as amicus curiae.

1. Personnel Exception

The Act allows a commission to meet in closed session to discuss the appointment, employment, evaluation of performance, discipline or dismissal of a public employee. The employee involved may request a public hearing when the purpose of the closed session is to consider specific charges or complaints against the employee. If the employee requests a public hearing under those circumstances, the commission must discuss the specific charges or complaints in open session. Because the issues concerning the "personnel exception" can become complicated, the president of the commission or a member of the staff should consult the office of the City Attorney for advice.

2. Pending Litigation

A commission is allowed to meet in closed session with attorneys from the office of the City Attorney (or with private counsel retained by the City to provide special legal services) to discuss pending litigation when a discussion of the matter in public would prejudice the City. This section is applicable only when (i) litigation has been formally initiated, (ii) the commission is meeting to decide whether to initiate litigation, or (iii) in the opinion of the commission and its attorneys, based on existing facts and circumstances, there is a significant exposure to litigation.

A commission may not otherwise meet in closed session with its attorneys, even when the commission believes that it should receive advice from its attorneys under confidential circumstances.

Before meeting in closed session to discuss pending litigation with its attorneys, the commission must list on the agenda, and/or announce publicly, the specific subdivision of Government Code § 54956.9 which allows the closed session. If a lawsuit or other proceeding (e.g., an arbitration) has been filed, the name of the case must (except in very narrow circumstances) be listed on the agenda or announced.

3. Real Estate Negotiations

A board may meet in closed session to instruct its agent (who may include a

member of the board) concerning the purchase, sale or lease of real property. Before meeting in closed session, the board must meet in public to identify the property involved and the persons with whom the negotiations will take place. Eminent domain proceedings may not be discussed pursuant to this exception but rather the pending litigation exception.

What Are The Penalties And Remedies For Violating The Act?

It is a misdemeanor for a member of a legislative body to attend a meeting at which action is taken in violation of the Brown Act, if the member intends to deprive the public of information which the member knows (or should know) the public is entitled.

Violations of the Act may also result in the issuance of injunctions and writs of mandate to correct violations or to prevent future violations.

Also, a court can declare a decision made in violation of the Act void. Before filing an action, the complaining party must make a demand that the board cure the violation. That demand must be made within 90 days after an alleged violation occurs. In cases involving alleged violation of the rules governing agendas, the demand must be given within 30 days. If the board fails to cure the violation, a court may issue an appropriate order.

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