



OFFICE OF THE CITY ATTORNEY

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REPORT NO. R03-0494

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REPORT RE:

**THE RALPH M. BROWN ACT,
OPEN MEETINGS LAW FOR LOCAL GOVERNMENT**

(Government Code Section 54950, *et seq.*)

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Honorable Members:

Periodically, the City Attorney's Office provides you with updates on the Brown Act. For your convenience, this time we are also attaching to this update, a general summary of the Brown Act that we have provided to City commissioners and your deputies.

As you know, the Ralph M. Brown Act requires, with certain specified exceptions, that meetings of the legislative bodies of local agencies be open and public (Government Code § 54950, *et seq.*). The Brown Act has been interpreted to mean that all of the deliberative processes of the local legislative bodies, including discussion, debate and acquisition of information, must be open and available for public scrutiny. (*Sacramento Newspaper Guild vs. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41.) It is always helpful to remember that violation of the Brown Act can have criminal and civil penalties (Government Code §§ 54959 and 54960)

The Brown Act has been amended several times since the last Office update was circulated. The highlights of these amendments are summarized below.

I. AGENDAS, §§ 54953.2, 54954.1, 54954.2, and 54957.5.

Amended by Stats 2002 ch 300 (AB 3035)

Sections 54953.2, 54954.1, 54954.2, and 54957.5 ensure that the protections afforded to persons with disabilities included in Section 202 of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. Sec. 12132) are met by local agencies with regard to public meetings and materials distributed as part of those meetings.
Amended by Stats 2002 ch 300 sec. 6 (AB 3035)

The agendas for the City Council, City Boards, and City Commissions already contain information regarding assistive listening devices and similar accommodations. The new amendments to Government Code §§ 54954.1, 54954.2, and 54757.5 include requirements for agenda packets to be made available in appropriate alternative formats to persons with a disability as well as requiring additional information to appear on the agenda.

Specifically, the amendments require that:

- (1) all public meetings comply with the ADA and implementing rules and regulations;
- (2) all agendas, packets or written material distributed during a public meeting be made available in "appropriate alternative formats to individuals with disabilities, upon request;
- (3) all agendas must inform individuals with disabilities how, to whom and when to make a request for disability-related modification or accommodation, including auxiliary aids or services; and
- (4) all agenda materials that are disclosable public records must be made available in "appropriate alternative formats," upon request.

Requests for alternative formatted materials must be submitted in writing and the request is valid for one year and must be renewed each January 1. Additionally, after receiving a request, the Board must mail the requested materials in an appropriate alternative format at the time the agenda is posted or upon distribution to all or a majority of the members of the legislative body, whichever occurs first. Although a fee can be charged for copying/mailing the materials, the fee cannot exceed the cost of providing the service.

The code does not mandate any specific language. Currently, the agenda for the meetings of the Board of Commissioners of DWP contains some language re the ADA, but may not completely provide all of the additional required information:

The following are examples of additional language that could be added to the preexisting language used by the various City Boards and Commissions:

(1) Upon request, the Board will provide reasonable accommodation to enable individuals with disabilities to participate in its meetings, including access to agenda materials in alternative formats.

(2) Persons requiring an alternative format of this public notice pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling a particular identified person or number.

(3) Upon request, the city (or Board) will provide written agenda materials in alternative formats, or provide reasonable accommodations, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings.

II. DISCLOSURE OF CONFIDENTIAL INFORMATION OBTAINED IN CLOSED SESSION, § 54963.

Amended by Stats 2002 ch 1119 sec. 1 (AB 1945)

This new section specifically addresses the disclosure of information obtained in a closed session. Government Code § 54963 prohibits a person from disclosing confidential information that has been acquired by being present in a closed session, unless the legislative body has authorized the disclosure of that confidential information. Confidential information is defined as a communication made in a closed session that is "specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session."

The remedies for violating this section are new: 1) injunctive relief to prevent the disclosure; 2) disciplinary action against an employee who has willfully disclosed confidential information; and 3) referral to a grand jury of a member of a legislative body who has willfully disclosed confidential information.

In the case of employee discipline, however, Subsection 54963(d) provides that before any discipline can be imposed for willfully disclosing confidential information, the employee must first have received training about or been given notice of the requirements of the new law.

The law recognized the following exceptions to the statute:

(1) making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law necessary to establish the illegality of an action taken by the legislative body in a closed session or the potential illegality of an action that has been the subject of deliberation in closed session;

(2) expressing an opinion about the propriety or legality of actions taken in closed session; and

(3) disclosing information acquired by being present in a closed session that is not confidential information.

Nothing in the section prohibits disclosures under the whistleblower statutes contained in Labor Code Section 1102.5 or Article 4.5 (§ 53296, *et seq.*) of the Government Code.

.II. DEFINITION OF LEGISLATIVE BODY, § 54952.

Amended by Stats 2002 ch 1073 sec. 2 (AB 2937)

This amendment adds the phrase "limited liability company, or other entity" in several subsections.

IV. SAFE HARBOR DESCRIPTION OF CLOSED SESSION ITEMS, § 54954.5.

Amended by Stats 2002 ch 1120 sec. 1 (AB 2645)

For purposes of describing closed session items pursuant to § 54954.2, the agenda is in substantial compliance if it includes the information provided below, irrespective of its format:

With respect to closed session pursuant to § 54957 - Threat to Public Services or Facilities. Consultation with (specify the name of the law enforcement agency and title of officer, or name of applicable agency representative and title).

**V. CLOSED SESSION REGARDING PUBLIC SECURITY, FACILITIES,
EMPLOYEES, NATIONAL SECURITY, EXAMINATION OF WITNESS; § 54957.**

Amended by Stats 2002 ch 1120 sec. 2 (AB 2645)

This amendment clarifies the exemption for closed sessions on public security issues. It assures that nothing contained in the chapter should be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

VI. EMERGENCY MEETINGS IN EMERGENCY SITUATIONS; NOTICE, § 54956.5.

Amended by Stats 2002 ch 175 sec. 2 (SB 1643)

Emergency situation for purposes of an emergency meeting means both of the following:

(1) An emergency, such as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, such as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

In the case of a dire 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 § 54956 or both of the notice and posting requirements.

Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to § 54956 shall be notified one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time

that the presiding officer notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone.

As for closed sessions during emergency meetings, the legislative body may meet in closed session pursuant to § 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

VII. PROCEEDING TO DETERMINE VALIDITY OF ACTION; DEMAND FOR CORRECTION; § 54960.1.

Amended by Stats 2002 ch 454 sec. 23 (SB 1326)


The amendment includes references to § 54956.5 (emergency meetings in emergency situations) in the citations listed in this section.

If you have any questions with regard to the Brown Act, please feel free to contact Assistant City Attorney Claudia Culling at 213.978.8172 or any of the other attorneys in the Government Counsel Division.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

BY



TERREE A. BOWERS
Chief Deputy City Attorney

**CITY ATTORNEY'S OFFICE
GOVERNMENT COUNSEL DIVISION**

**THE BROWN ACT:
CALIFORNIA'S OPEN MEETING LAW**

This is a summary of the requirements of the Ralph M. Brown Act¹ as they apply to the City Council and other boards and commissions of the City of Los Angeles. Its purpose is to acquaint you with these rules and to provide an easy to use guide that will assist you in understanding how the City Council and its staff should conduct itself in order to conform to these rules. This is not an exhaustive treatise on the Act; rather, it outlines the most important requirements of the Act.² Questions about the application of these rules may be directed to any of the City Attorneys in the Government Counsel Division.

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 management, policy-making, advisory, legislative or adjudicatory functions, or some combination of those duties. The City Council, departmental boards and commissions and many Council-created advisory boards 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 (board). It does not include temporary advisory committees that consist solely of less than a quorum of the members of the board. 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 the includes a gathering of at least a majority of the members of a legislative body at the same time and in the same place to hear, discuss or act on one or more matters under the jurisdiction of the legislative body. 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

¹ Cal. Govt. Code § 54950, *et seq.*

² This discussion is current with statutory and case law through the beginning of 2003.

agenda requirements discussed below are followed.³ Because a Council committee is a legislative body under the act, this discussion applies to committees as well as to the Council and all boards, commissions and their standing committees. For purposes of this discussion, we will use the term legislative body to include, the Council, its committees, City boards, commissions and their committees.

Informal, social gatherings of a legislative body are not meetings, and need not comply with the Act, as long as there is no discussion of any subject matter under the legislative body's jurisdiction. If these informal gatherings will involve discussions among a majority of the members of the legislative body relating to the body'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 may include a conference or retreat attended by a majority of the legislative body's members. If a conference is open to the public and involves issues of interest to the public, it is not a meeting subject to the Act as long as the members do not discuss among themselves, other than as part of the scheduled program, specific issues within the jurisdiction of the legislative body.

The Act prohibits the use of direct or indirect communications, intermediaries or technical devices used by a majority of the legislative body to assist the members in arriving at any decision. For instance, the chair of a committee may not call two other members of a three member committee 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 or meet with a majority of the committee members about a matter the Committee 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 or receiving a written communication (including an e-mail) 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. Also, a majority of members may not exchange letters or e-mails on a subject under the legislative body's jurisdiction.

Individual communications between members of the legislative body and members of the public are permitted by the Act. However, if the legislative body will be acting on a quasi-judicial, adjudicative matter (e.g., a land use variance or the revocation of a permit or

³ Less than a majority of the members of the Council or a board may meet together or over the phone to discuss a subject within their jurisdiction without having to comply with the Brown Act. Their gathering or discussion does not constitute a "meeting" within the meaning of the Act. However, serial meetings of less than a quorum do constitute a meeting and are subject to the Act.

license), all communications between members of the body and anyone with an interest in the matter are required to take place at formal meetings or through written communications that are made a part of the official record.

May Members of the Legislative Body Who Are Not Members of a Committee of the 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 a legislative body attend a committee meeting, there are two legal options:

1. Notice the meeting as a meeting of a 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 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.)

May a Majority of the Members of the Council or a Board Attend a Conference or a Meeting of a Private Group?

Members may attend a conference or a meeting of a private group (e.g., homeowner association), even if the conference or meeting will discuss matters of general interest to the community. However, a majority of the members may attend these events at the same time only if:

- (a) The conference or meeting is open to attendance by the public;
- (b) If the event is a meeting of a private group, it has been publicized; and
- (c) The members do not discuss among themselves, other than as part of the scheduled program, business that is within the subject matter jurisdiction of the legislative body.

Otherwise, a conference attended by a majority of members must be open to the public. The Act does require the organizers to allow members of the public to attend free of charge even if others are charged an admission fee.

What Are the Notice and Agenda Requirements?

Requirements for Regular Meetings

The time and place for regular legislative body 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 legislative body 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 legislative body 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 the exceptions discussed below.

Requirements for Special Meetings

A "special meeting" of a legislative body may be called by posting a notice/agenda and by delivering (by mail or personal delivery) the notice/agenda to all members and to all media outlets that have requested to be so notified 24 hours before the meeting. The notice/agenda 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. Only matters that are on the agenda of a special meeting may be discussed at that meeting.

Requirements for Emergency Meetings

The majority of the members of a legislative body may call an emergency meeting when an emergency exists that requires immediate discussion or action by the legislative body. These emergencies include only crippling disasters, work stoppages or other activities that 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.

Exceptions to the Agenda Requirement

Under almost all circumstances, a matter may not be discussed at a legislative body meetings unless it is listed on the agenda. There are three exceptions, and all three relate to regular meetings. The only matters that can be discussed at special and emergency meetings are those on the written agenda.

The legislative body 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 legislative body 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 legislative body determines that there is a need to act immediately, that the legislative body's consideration of the matter cannot await the next meeting of the body and that the need for immediate action arose 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 legislative body 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 sign-in 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 legislative body makes a reasonable finding that the activity would disrupt the meeting.

Members of the public must be allowed to present testimony or otherwise address the legislative body about each item on the agenda. The legislative body may not act on an agenda item until it has allowed for public comment on that item. At regular meetings, the public must be given an opportunity as well to address the legislative body on any matter under its jurisdiction, even if the matter is not on the agenda. The legislative body may adopt reasonable rules governing the amount of time for 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.

The legislative body may ask speakers for their names and addresses, but if the members of the public refuse, they must still be given the opportunity to speak.

Members of the public are entitled to copies of written materials that the legislative body 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 the legislative body 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, the legislative body is allowed to meet in closed session. 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 legislative body and any City staff that is needed to assist the board in its deliberations. Persons without official roles should not attend.

In order for the legislative body 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 the legislative body 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.

Under certain circumstances, after a closed session is completed, the legislative body is required to meet in open session and publicly report the action taken and the vote.

Personnel Exception

The Act allows the legislative body 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 legislative body must discuss the specific charges or complaints in open session. Because the issues concerning the "personnel exception" can become complicated, the President of the legislative body, chair of the committee or a member of the staff should consult the Office of the City Attorney for advice.

Pending Litigation

The legislative body 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 legislative body is meeting to decide whether to initiate litigation, or (iii) in the opinion of the legislative body and its attorneys, based on existing facts and circumstances, there is a significant exposure to litigation. The legislative body may not otherwise meet in closed session with its attorneys, even when the legislative body 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 legislative body 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.

Real Estate Negotiations

A legislative body 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 body 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.

Must Members Actually Attend Meetings in Order to Participate in Them?

As indicated above, legislative body meetings must be open and public. That means that members usually must be in actual attendance at meetings in order to participate. However, the Brown Act does allow meetings to be held by teleconferencing. A "teleconference" is a meeting where the body's members are not all at the same location and are connected by electronic means, through either audio, video or both. During this type of a meeting, members may discuss and vote on agenda items. If a legislative body elects to hold meetings in that manner it must comply with all of the following requirements:

- (a) Agendas, which must list all items to be discussed, must be posted at all teleconferencing locations;
- (b) Members of the public must be allowed to attend at any of the teleconferencing locations and to address the legislative body directly at any of the locations;
- (c) At least a quorum of the legislative body must be located at one or more teleconferencing locations within the City; and

- (d) The meeting must otherwise comply with all of the other requirements of the Brown Act.

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 to which the member knows (or has reason to 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 body 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 body fails to cure the violation, a court may issue an appropriate order.

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