



Public Meeting Law (the Brown Act)

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September 11, 2018

Today's Agenda

- Brown Act – Public Meeting Law
 - Who is covered?
 - Meetings and agendas
 - Closed sessions
 - Remedies for violations of the Act

Brown Act – Public Meeting Law

Brown Act - Background

- The Brown Act is contained in Gov. Code section 54950, *et seq.*
- Enacted to respond to the then increasing utilization of secret and informal meetings by legislative bodies
- Generally requires for meetings of legislative bodies to be open and public – “open meeting requirement”

Transparency in Government

- **Presumption: Government business is conducted in the open, subject to limited exceptions**

“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.”

Ralph M. Brown Act, 1953

Key Principles

- Transparency in government:
 - *Presumption in favor of public meetings, subject to limited, specific exceptions*
- Public access/participation:
 - *Protected by requirements relating to posting and content of agendas & public right to participate*
- Within Context of a “Business Meeting”:
 - *Public transparency*
 - *Running an efficient meeting*
 - *Approving transactions, regulations and agreements*
 - *Protect confidentiality of closed session*

Agencies and Legislative Bodies Subject to the Act

Local agencies covered by the Act:

- Counties, cities, city and county, towns, school districts, municipal corporations, districts, political subdivisions, community college districts, joint powers agencies
- Boards, commissions and agencies within the above listed agencies

Agencies and Legislative Bodies Subject to the Act

Legislative bodies covered by the Act:

- Governing body of local agency or other local body created by state or federal statute
- Other bodies of local agencies created by charter, ordinance resolution or formal action of a legislative body
- Example: boards of trustees and personnel commissions

Agencies and Legislative Bodies Subject to the Act

Legislative bodies covered by the Act:

- Bodies that govern private corporations or similar entities that are created by the legislative body or receive funds from a local agency

Who is a Member of a Legislative Body?

- Any individual who is elected or appointed to sit on a legislative body and vote on and make decisions with other such individuals
- Applies to individuals who have not yet assumed elected office

What is NOT a Legislative Body?

- Advisory committees composed solely of the members of the legislative body which are less than a quorum of the legislative body for a specific purpose
- BUT there are exceptions...
 - Standing committee
 - Continuing subject matter jurisdiction
 - Meeting fixed by statute or rule

Legislative Body

The County has a team of officers assigned to prepare the upcoming week's agenda and background materials. This team includes the County Counsel, County Auditor-Controller, County Administrative Officer and the Clerk of the Board. When the team meets, does this constitute a legislative body under the Brown Act?

Meetings and Agendas

What is a Meeting Covered by the Act?

- Congregation of a majority of the Board/Council members
 - Same time and place
 - To “hear, discuss or deliberate”
 - On any item within its subject matter jurisdiction
- Meeting of a committee created by formal action
 - Permanent or temporary
 - Decision making or advisory

* Gov. Code § 54952.2

What is NOT a Meeting Covered by the Act?

- Attendance of a majority at conferences/seminars, community meetings, social events
 - If no discussion of district business
- Meetings of an advisory committees composed solely of members less than a quorum, unless...
 - Standing committee
 - Executive Board
 - Ad Hoc Committee
 - Continuing subject matter jurisdiction
 - Meeting fixed by statute or rule

Meeting at Ribbon Cutting Ceremony?

The district held a ribbon cutting ceremony for the newly constructed campus student center. Five of the seven school board members attended. The members did not discuss any particular issues related to the center's approval, but one of the members commented that he was elated by the fact that the new center will be located near the major street in town.

Did a “meeting” under the Brown Act occur at the ribbon cutting ceremony?

Meeting at Diner?

At the Council's meeting held earlier in the day, the council discussed potential changes for the use of the recreation room at the school. After the meeting, four of the five Council members went to the local diner for dinner. At dinner, they discussed the latest blockbuster movie. During dessert, one of the members briefly recalled an issue related to his personal use of the recreation room and how it affects his opinion regarding the potential changes to its use.

Did a meeting under the Brown Act occur at the diner?

Be Careful – Serial Meetings Prohibited!

No communication between Board/Council members that:

- Comes to include a majority through email, telephone, intermediaries, etc.
- To hear, discuss or deliberate on any item within the subject matter jurisdiction of the district.

NOTE: Prohibition no longer limited to communications to develop a “collective concurrence.”*

***[Gov. Code § 54952.2(b)]**

Email String

Jane, one of the five board members sends an email to another board member, Joe, regarding ideas she has for a funding proposal that was discussed at the last board meeting.

Has a serial meeting occurred?

Email String

Joe likes Jane's ideas in her email and forwards Jane's email to Mike, another board member. Jane is not cc'd on this email.

Has a serial meeting occurred?

Email String

Mike is confused by one of Jane's ideas and replies to both Joe and Jane in his reply email, which includes Jane's original email. In his email, he tells Jane that Joe forwarded to him her email, and asks Jane to clarify the idea she posed in her email to Joe.

Has a serial meeting occurred?

Agendas: Tools for a Well Run Meeting

- Agenda items contain brief description
 - Enough to inform the public
- Provide focus to the Board/Council & the public
- Help legislative bodies plan & prioritize
- Improve communication
- Build institutional memory

Public Access: Agenda is Key

- **Is The Meeting Properly Agendized?**
 - Timely
 - Accessible to public, regardless of time of day
 - States date, time and location
 - Provides brief general description of each item
 - Reflects all meetings commence in public session
 - Includes opportunity for public comment
 - on any matter of public concern
 - within subject matter jurisdiction of the board
 - before or during board's consideration of the item
 - Including closed session items
 - States where public may inspect records

Public Access: Agenda is Key

- **Agendas Should NOT:**
 - Use “place holders” for closed session (i.e. list generic closed session items to cover things that may come up)
 - Misuse closed session exceptions to cloak what should be part of the public discourse
 - Require members of the public to provide identifying information to attend [Gov. Code § 54953.3]
 - Prohibit public criticism of policies, procedures, programs services, or acts or omission of the Board/Council

Items NOT on Agenda

- General rule – no action or discussion on an item that is not on the posted agenda
- BUT there are exceptions...
 - Brief response
 - Emergency
 - Immediate action
 - Item from agenda of prior meeting
 - If within 5 days

To Discuss or Not Discuss?

During closed session, the Board discusses the single item on the agenda, a computer product with vendor XYZ. In the middle of the discussion, Tony, one of the Board members mentions that since they are altogether, they might as well discuss the viability of a special events program involving vendor ABC that is up for renewal soon.

Is it okay for the Board to discuss the second program? Why or why not?

Types of Meetings

- Regular meetings
- Special meetings
- Emergency meetings

S.B. 1436

- Legislative body required to **orally report** in open session summary of recommendations for final actions on:
 - Salaries, salary schedules or compensation paid in the form of fringe benefits
 - For “local agency executives”
 - Includes executive officers *and* assistants and deputies

What is a Regular Meeting?

- Meeting held at a time & place specified by applicable bylaw/rule
- Occurs at a regularly scheduled time
- Agenda posted at least 72 hours prior
- Posting location freely accessible + on agency website (if any)
- Agenda encompasses notice

What is a Special Meeting?

- Meeting called at *any* time by the presiding officer of the legislative body or by a majority of the members
 - Notice posted at least 24 hours before the meeting
 - Notice delivered to members and press at least 24 hours before the meeting
 - Date, time and location of meeting
 - Brief description of matter to be discussed
 - Only matters in notice may be discussed at meeting
 - No special meetings regarding compensation for any local agency executive (A.B. 1344)

What is an Emergency Meeting?

- Emergency = work stoppage, crippling activity, disaster, or other activity that severely impairs or threatens public health and/or safety
 - No written notice required
 - Notice to media
 - Posting of minutes
 - Limited closed sessions

Online Posting

The City has posted its regular meeting agenda in compliance with the Brown Act in all aspects, except one. The City is having technical difficulties with its web site. It is unable to post the agenda online.

Can the City proceed with its regular meeting?

Running Efficient and Brown Act Compliant Meetings

Running Efficient (and Brown Act Compliant) Meetings

- **Time Management**

- **Permissible Communications With Administrators:**

- Between administrators and individual members or group less than a quorum;
 - To convey information or answer questions; *if*
 - Staff does not communicate Board/Council's comments/positions or act as intermediaries.

[Gov. Code § 54952.2(b)(2)]

Running Efficient (and Brown Act Compliant) Meetings

- **Disorderly Conduct During Meetings**
 - Remind disruptive individual(s) of rules re: willful interruption, proper decorum
 - If disruption continues, may clear the room
 - Media remains if did not participate in disruption
 - Apply procedure for re-admittance of non-disturbing individuals

Rights of the Public

- **Public Attendance at Meetings**
 - Registries, attendance lists may *not* be required but voluntary lists okay
 - Teleconference locations must be identified and held in a place accessible by public
 - All locations must be identified on the agenda
 - Agenda must be posted at all locations
 - Each location must be open to the public
 - All votes must be made by roll call
 - Public comment must be allowed at each site

Rights of the Public

- Right to record meeting
- Right to broadcast meeting
- Right to inspect documents and recordings
 - Agendas and attached documents
 - Writings distributed at meetings
 - Tapes/films that record meetings

Rights of the Public

- **Right to Inspect Documents**

- Documents provided to the governing body to discuss items in open session are public records
- Where public documents are provided to a majority of body less than 72 hours before a regularly scheduled meeting, they must be made available for public inspection at the time the writing is distributed to all, or a majority, of the members of the body. (Gov. Code § 54957.5)
- Agenda must advise where they may be inspected

Rights of the Public

- **Disorderly Conduct during Meeting**
 - Willful interruption may result in clearing of the meeting room
 - Establish procedure for re-admission of non-disturbing persons
 - Media may remain if did not participate in disruption

Public Right to Participate in Meetings

- Must permit the public to address items on the agenda before they are voted on
- Tip: If agency begins with closed session must first have public comment

Limits on Public Comment

- May adopt reasonable regulations for public comment
 - Time limit on particular issues and for each speaker
 - May **not** prohibit public criticism of the staff policies, procedures, programs, services, or acts of the legislative body
 - May prohibit making comments about issues outside of the body's jurisdiction

Closed Sessions

Closed Session

- Closed sessions are generally prohibited
- Presumption in favor of open session
- Statutory exceptions in Government Code section 54954.5, including: pending litigation, threats to public services, personnel, labor negotiations, real property transactions
 - Safe harbor language for agendas
- Reporting out varies by exception

Announcement Before Closed Session

- Before conducting a closed session, the legislative body must announce in open session the items to be discussed in closed session and state the general reasons for the closed session
 - Refer to agenda or make announcement orally
 - Make sure to cite statute for closed session

Conducting Closed Session Meetings

- Closed session meetings should usually involve only the members of the legislative body of the agency, plus any additional support staff required or any witnesses required
- Individuals not necessary to the meeting should be excluded

Pending Litigation Exception

- Legislative body confers with or receives advice from its legal counsel
- “Pending Litigation” includes: ongoing litigation, significant exposure to litigation, decisions to initiate litigation, settlement discussions
- “Pending Litigation” can be before a court, administrative body, hearing officer or arbitrator

Pending Litigation Exception

- Settlement discussions – typically discussed during closed session
- BUT, may **not** decide matters in closed session that must be decided after a public hearing (e.g. granting zoning variances) even if part of settlement

Personnel Matters Exception

- Closed session permitted for:
 - Appointment
 - Employment
 - Evaluation of performance
 - Discipline/dismissal/release
 - Includes release of probationary & high-level employees
 - Complaints/charges
 - Compensation – but only if it is a reduction due to discipline

Personnel Matters Exception

- Closed Session *Not* Permitted for:
 - Dispute, censure, termination, evaluation of:
 - Board members
 - Independent contractors or consultants (e.g. architects, law firms)
 - Discussions relating to broad classifications of employees
 - Only discussion of specific employees permitted
 - Employee compensation/salary setting
 - Unless a disciplinary reduction in pay

Personnel Matters Exception

- 24-Hour Notice Requirement (the exception to the exception):
 - Complaints or charges against employees
 - 24 hours written notice of right for open session
 - No notice = voids action taken
 - Hearing vs. deliberating on complaints/charges
- Written notice delivered 24 hours before session
- If employee does not request open session, it is heard in closed

Personnel Matters Exception

- Performance evaluations – on its own does *not* constitute hearing of complaints or charges
 - May take disciplinary action following review of adverse performance...BUT watch out for accusations made during closed session
 - >>> Provide 24 hours notice that addresses performance evaluation *and* complaints/charges

Labor Negotiations Exception

- Purpose of closed session meeting:
 - To review position and instruct the local agency's designated representative, e.g. compensation
 - To discuss any other matter related to represented employees within the scope of bargaining
- Closed session can take place before the commencement of negotiations and throughout negotiations to confer with the agency's representative
- Board may not act on proposed compensation in closed session

Real Property Transaction Exception

- The legislative body may meet in closed session with an agency's real property negotiator *prior to* the purchase, sale, exchange or lease of property
 - To discuss price and term of payment
 - Must identify property, negotiator and party negotiating with on public agenda

Closed Session Agenda Description

- The format for describing closed session items vary and depend on the item
- Government Code section 54954.5 provides descriptions for the various closed session items
 - No violation so long as the closed session items are described in “substantial compliance” with the section 54954.5 descriptions

Closed Session Agenda Description

- Pending litigation – state name of pending litigation
 - If litigation is anticipated – state “potential action involving significant exposure to litigation pursuant to...”
- Personnel matters – “Public employee discipline/dismissal/release”

Closed Session Agenda Description

- Labor negotiations/relations – specify names of designated representative and employee organization
- Real property transaction – specify location of property, agency negotiator, negotiating parties and what will be instructed to the negotiator (e.g. price, terms of payment, etc.)

Reporting After Closed Session

- After the closed session, the legislative body must reconvene into open session and report the actions taken in the closed session
- The nature of the report depends on the type of action taken

Reporting After Closed Session

- Real property negotiations – approval and substance of final agreement
- Disposition of claim or settlement of litigation – parties involved, monetary amount, substance of claim

Reporting After Closed Session

- Personnel decisions
 - Shall be reported at the public meeting during which the closed session is held
 - Identify the title of the position
 - Report of a dismissal or non-renewal of employment contract must be deferred until the first public meeting following the exhaustion of administrative remedies

Reporting After Closed Session

- Labor negotiations
 - Report approval of final and ratified agreement
 - Report items approved and parties to the negotiation

Confidentiality of Closed Session

- No disclosure of personal recollection of closed session discussions
- A person may not disclose confidential information that was acquired by being present in a closed session
- Sanctions
- Exceptions
 - Informing DA/grand jury re violation
 - Questioning propriety/legality of actions

Deposition of Council Member

The City was sued for wrongful termination by the City's former Finance Manager, who claimed she was terminated for comments she made to the City Council during closed session regarding the General Manager's expense account.

Deposition of Council Member

The former Finance Manager's attorney deposed one of the City Council members who attended the closed session at issue. The City Council member expressly refused to answer any questions related to the content of the closed session. The attorney now seeks to compel the City Council member to answer the questions

Call From the Press

A major decision was made by the Board last night after discussion during closed session. A local newspaper reporter calls Mary, one of the Board members, and asks if Mary could discuss why the Board made the decision. Mary tells the reporter that she can only discuss what she said during the closed session but not what anyone else said.

Will Mary breach confidentiality of the closed session?

Remedies for Violations of the Brown Act

Remedies for Violations of the Brown Act

- District attorney or other interested person may:
 - Bring an action to prevent violations or threatened violations
 - Determine the applicability of the Act to actions or future actions
- Legislative body must be provided the opportunity to cure the violation
- Remedies include attorney fees and costs

Thank You!

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