

*The Ralph M. Brown Act*

Presented by:

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# *The Ralph M. Brown Act*

1. Purpose
2. To whom it applies
3. What constitutes a meeting
4. Where meetings can be held
5. Notice and agenda requirements

# *Purpose*

Balance the government's interest in confidential candor with the public's interest in free and open debate.

Narrowly construe the exceptions to free and open debate.

Discourage the concept that "sensitive" information may be kept private or that the public only needs to know the result.

## *Legislative Policy [sec. 54950]*

“The people of this state do not yield their sovereignty to the agencies which serve them. 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. The people insist on remaining informed so that they may retain control over the instruments they have created.”

# DISCUSSION POINTS

- Is public involvement really all that important?
- Does it have the positive impacts on those holding a public trust that we attribute to it?
- Do public agencies really serve the public or does the public serve them?

# *To Whom Does the Act Apply?*

“Legislative bodies” of local agencies

“All meetings of the legislative body of a local agency shall be open and public ... .”

Government Code section 54953(a)

# *“Legislative Body”*

Governing body of a local agency or any other local body created by state or federal statute.

Sec. 54952(a).

## *Subsidiary bodies*

- Any commission, committee, board, or other body of a local agency, created by charter, ordinance, resolution, or formal action of a legislative body, (other than a committee of less than a quorum of the legislative body) is itself a legislative body. (Section 54952(b).) Regardless of whether that body is permanent or temporary, advisory or decision making.

## *“Legislative body (cont.)”*

### *Subsidiary bodies (cont.)*

-Any board commission, committee, or other multimember body that governs a private entity, that either (A) is created by an elected legislative body to exercise authority delegated by that legislative body, or (B) receives funds from the local agency and the legislative body appoints one of its own members to serve as a full voting member of the board, commission, committee or other multimember body.

### *Section 54952(c)(1)*

-Lessee of any hospital under Health & Safety Code sec 32121(p).

### *Section 54952(d)*



## *“Legislative body (cont.)”*

- Exception for an ad hoc advisory committee composed solely of less than a quorum of the members of the legislative body which created it. But exception does not apply if it is a standing committee. Must be single subject, short duration –e.g., Less than a quorum committee to study purchase of new voting equipment.
- Standing committee of a legislative body: has continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of the legislative body. Section 54952(b.)

## *What Is a "Meeting?"*

“[A]ny congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”

Section 54952.2(a)

# *Meetings Covered*

Face to face meetings ~ a majority of the members gathering at the same time and place discussing topics within the legislative body's jurisdiction.

Serial meetings

Retreats

Video teleconferencing

## *“Face to Face” Meetings*

The board does not have to be formally convened.

The board’s **deliberations**, including the consideration, analysis or debate of an issue, and any vote which may ultimately be taken are covered.

The body doesn’t have to “**act**” to be covered.

# *“Serial” Meetings*

A Series of Communications...  
Can be “chain” (A to B to C) or  
“Hub” (A to B and A to C...)

Each of which involves less than a quorum of the  
legislative body...

But which taken as a whole involves a majority of  
the body’s members.

Series of contacts to reach agreement on an  
action

Includes use of technological devices

Includes use of intermediaries

# *Board Retreats*

Retreats are covered by the act when elements of “meetings” exist.

Agenda requirements apply

# *Video Teleconferencing*

Video teleconferencing ( sec. 54953(b))

– permitted for any type of meeting within the subject matter jurisdiction of the board.

Agendas are to be posted at teleconference locations.

Each location must be accessible to the public.

# *Exemptions*

The Brown Act **DOES NOT APPLY** to:

- **Social meetings** – attendance by majority of the board not deemed a “meeting” as long as members do not discuss business within the jurisdiction of the legislative body.
- **Meetings organized by others** – attendance by a majority of the board at an open and publicized meeting organized to address a topic of local concern by other than the local agency.
- **Conferences** – not deemed a “meeting” as long as it concerns issues of general interest, and open to the public.



# *Exemptions Continued*

- *Individual contacts between a member and any other person.*
- *Attendance by a majority at a purely ceremonial function.*
- *Attendance by a majority at an open and public meeting of another local agency.*
- *Attendance by a majority at an open and public meeting of a standing committee of that body, provided the members who are not members of the committee attend only as observers.*

## *Where Can Meetings Be Held?*

Meetings of a legislative body must be held within the boundaries of the territory over which the local agency exercises jurisdiction.

Certain exceptions apply (e.g., Site visit, joint powers authority meetings, etc.)

## *Notice & Agenda Requirements*

### For REGULAR MEETINGS:

Must occur at a time and location set by ordinance, resolution or by-laws.

Agenda must be posted at least 72 hours prior to the meeting.

Agenda must contain brief description of each item to be discussed, including items in closed session.

## *Notice & Agenda (Cont.)*

When can board act on or discuss items that are not on the agenda?

**P**reviously posted for a prior meeting – if the present meeting is held within 5 days of the prior meeting.

**E**mergency item – a work stoppage or crippling disaster which severely impairs public health and safety.

$\frac{2}{3}$  vote for those present determine that there is a need for immediate action which has come to the attention of the body after the agenda already posted.

# *Notices and Agenda: Recent Brown Act Amendments*

- AB 1344 (10/9/11) – effective 1/1/12
  - Posting on Internet
    - Requirement to post regular and special meeting agendas on agency's website
    - Only applies if agency has a website
    - Applies to legislative bodies created by state or federal statute
    - Applies to legislative bodies created by formal action of another legislative body, if its members are compensated for appearance and one of its members is also a member of a legislative body created by statute
  - Executive Compensation
    - Cannot call special meeting to discuss local agency executive's compensation package
    - Does not apply to special meeting re local agency budget

## *Agenda and Writings for Discussion or Consideration at Public Meetings*

Section 54957.5 requires that any non-confidential writing relating to an agenda item for an open session of a regular meeting that is distributed within 72 hours of the meeting be made available for public inspection “without delay,” and no later than the time it is distributed to the members of the body. The documents can be made available at a public office or location that has been designated by the agency and listed on the meeting agenda, or posted on the local agency’s internet web in a position and manner that makes it clear that it relates to an upcoming meeting’s agenda.

## *More Section 54957.5*

Section 54957.5 also requires that non-confidential documents distributed during a public meeting be made available for public inspection at the meeting if prepared by the local agency or a member of the legislative body. If the document is prepared by another person, it must be made available after the meeting.

# *Emergency Meetings*

May be called upon 1 hour telephonic notice

“Emergency” applies to a crippling disaster, work stoppage or other activity which severely impairs public health, safety or both.

Emergency meetings may not be held in closed session.



## *Special Sessions*

Notice must be received at least 24 hours prior to the meeting by all members of the body and media.

No other business shall be considered.

Notice needed even if the meeting is conducted in closed session and even if no action is taken.

Notice must describe the public's right to comment on any item described in the agenda before or during consideration of that item.

# *Exceptions To The Agenda Requirement*

- A member of the body may briefly respond to statements or questions posed by persons exercising their public comment rights
- On their own initiative or in response to questions posed by the public, a member may ask a question for clarification, make a brief announcement or report on his or her own activities, make a referral to staff or request staff to report back at a subsequent meeting
- A member of the body may take action to direct staff to place a matter of business on a future agenda
- A body may take action on a nonagenda item when there is a need to take immediate action and the need for action came to the attention of the local agency after the posting of the agenda



*Closed Sessions*

# *Closed Sessions*

## General principles

### Exceptions to the open meeting rule

- Personnel matters
- Pending litigation
- Labor negotiations
- Real estate negotiations
- Other exceptions (permitted closed sessions)

# General Principles

Closed sessions are exceptions to the general rule

- Permitted only where specifically available by statute
- Standard is NOT whether the subject is sensitive, embarrassing or controversial

Who can participate?

- Members of the body
- Required support staff

Specific agenda rules for each closed session type

Announcements prior to closed session

Votes reported in open session

- Who voted and how voted
- May be reported orally or in writing

## *Personnel Exception [Sec. 54957] (Not to Be Confused With Labor Relations)*

When can closed session be used for personnel matters?

- Appointment/hiring of a “public employee”
- Performance evaluations
- Discipline
- Hear/consider complaints brought by another person or employee
- What is the purpose of this exception?
- Avoid undue publicity and embarrassment of affected employee

Complaints/charges against a specific employee:

- Employee to get **advanced written notice** of:  
(1) session; And (2) right to have matter heard in open session

# Personnel Exception (Cont.)

What is an “employee: in this context?

- Defined in the statute
- Civil service employee
- Department heads & officers
- Independent contractor who functions as an officer or employee

Closed session cannot be held to:

- Select independent contractors for project work
- Discuss/make appointments to boards & commissions
- Discuss complaints against elected officials

# *Personnel Exception (Cont.)*

## Agenda requirements:

- Appointment/hiring
  - Description of position

## Performance evaluation

- Job position
- Name of affected employee

## Discipline

- No details required

## Complaints/charges

- No details required

## Report to open session:

- Action taken
- Title/position of affected employee
- Vote result



# *Pending Litigation Exception (Sec. 54956.9)*

Rule: A legislative body, based on advice of legal counsel, may meet in closed session with counsel regarding “pending litigation” when discussion in open session would prejudice the agency’s litigation position.

What is “pending litigation” in this context?

- Any adjudicatory proceeding before a court, arbitrator, hearing officer

When is litigation “pending”?

- When agency is a party to litigation already begun; Or
- When body is meeting to decide if it will start litigation; Or
- When in the opinion of the agency, based on counsel’s advice, there exist facts that create “significant exposure” to litigation; Or
- When body is only meeting to decide if such facts exist.

## *Pending Litigation Exception (Cont.)*

What type of “existing facts and circumstances” create significant exposure?

\*Those that might result in litigation but the agency believes they are not yet known to potential plaintiff(s) or

Those that include, e.g., an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced, or

A written claim or threat of litigation has been received, or

A statement threatening litigation has been made in an open, public meeting on a matter within the legislative body's responsibility, or

A statement threatening litigation has been made outside an open, public meeting and the agency official or

## *Pending Litigation Exception (Cont.)*

### Attorney-client privilege

This statute is the exclusive expression of the attorney-client privilege as it relates to closed sessions held under the pending litigation exception. Section 54956.9

# *Pending Litigation Exception (Cont.)*

## Agenda Requirements:

Specific statute permitting closed session

Title of litigation (unless settlement or service of process compromised)

## Report in Open Session:

Substance of litigation

Next step (if any), i.e.,

File/defend/settle/appeal/amicus brief

Vote count

## *Real Estate Negotiations Exception* *[Sec. 54956.8]*

Rule: legislative body may meet in closed session with its negotiator to grant authority regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property

A “prior announcement” of the closed session at an open meeting the body must be made, identifying the property and the identity of the other party.

Negotiator can be a member of the legislative body

If the real estate involves eminent domain: closed session permitted per “pending litigation” statute

## *Real Estate Negotiations Exception (Cont.)*

### Agenda requirements:

Property address or parcel number

Negotiating parties

Substance of discussion w/negotiator (i.e., price, terms of payment).

### Report in open session:

If agreement is finalized in closed session, then report its terms in the corresponding open session

If agreement is finalized by the other party, report its terms in open session as soon as possible.

Vote count

## *Labor Negotiations Exception [Sec. 54957.6]*

Rule: legislative body can meet in closed session with its designated representatives, both prior to and during labor negotiations process, to:

Review agency's position regarding labor issues involving employees

Provide instructions to the negotiator

Approve an agreement with a union.

Employees may also include officers or independent contractors who function as employees, but does not include any elected officials, members of legislative bodies, or other independent contractors.

# *Labor Negotiations Exception [Sec. 54957.6]*

What labor issues can be discussed in closed session?

Salaries, salary schedules, fringe benefits of its represented (union) and unrepresented (non-union) employees

And for represented employees, can also discuss any matter within the statutory scope of representation

Can also discuss availability of funds and funding priorities if the discussions relate to instructions being given to the local agency's labor negotiator

Okay to meet in closed session with intervening state conciliator who has intervened in the proceedings



# *Labor Negotiations Exception (Cont.)*

## Agenda requirements:

Name of negotiator

If negotiating with a union, the name of the union

If negotiating with unrepresented employee the position title

## Report in open session:

Action to approve agreement (if any)

The identity of the other parties

Vote count

## *Other Authorized Closed Sessions*

### **Threat to public services or facilities [sec. 54957]**

Closed session with the Governor, Attorney General, district attorney, agency counsel, law enforcement, or security consultant or 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.

### **Insurance joint powers authority liability [sec. 54956.95]**

Discussion of claims filed against JPA or a member agency; Act to approve/deny/settle

## *Other Authorized Closed Sessions*

License/permit applications [sec. 54956.7]

Consideration of application of one who has criminal record

Trade secrets/medical quality hearing

Other laws authorize closed sessions for public hospital's discussions of these issues

# Checklist



When handling a Closed Session matter, ask:

Is it a proper subject for closed session?

Consult statute and legal counsel if unsure

Is it clear what can & cannot be done in closed session?

What are the agenda and reporting requirements?

What prior announcements need be made (if any)?

What documents must be made available to the public?

# Public 's Rights Under the Brown Act

## *1. General Rights of Public*

To have meetings open and public with few exceptions. (54950, 54953)

To have no conditions, such as registration, or other information, attached to their right to attend meetings. (54953.3)

To be able to audio and video record and take photos of the proceedings, unless to do so causes a disturbance.

To be able to inspect any such recordings made by the agency.  
(54953.5)

To be able to broadcast the proceedings, unless it would disrupt the meeting. (54953.6)

To request and have mailed a copy of all agendas and the agenda packet at the time each agenda is posted, or upon distribution of the agendas to the board. (54954.1)

Note: failure to receive an agenda or packet does not invalidate any action taken at the meeting.

To have the meeting held at a facility that does not discriminate and which is accessible to disabled persons. (54961)

## *2. Public's Access to Documents*

Access, without delay, to:

All agendas of public meetings.

All documents distributed to the board members.

- Exception: document exempt from PRA disclosure.



### *3. Public Input & Testimony*

#### *A. Public's Rights*

Any member of the public has a right to address the board at any regular or special meeting on any item on the board's agenda.

This input may be either before or during the board's consideration of the item.

This right to address the board shall be noted in the agenda. (54954.3(a))

Any member of the public may address the board at regular meetings on matters not appearing on the agenda, as long as the matter is within the board's subject matter jurisdiction.

This right must also be noted on the agenda and is usually described as the "public input" portion of the agenda.

No action may be taken on any item not appearing on the agenda, unless one of the exceptions in 54954.2(b) [emergency or need arose after agenda was posted] applies. (54954.3(a))

## *B. Board's Rights to Regulate Public Input*

The board may adopt reasonable regulations governing the rights of public input.

These regulations can include, but are not limited to, limitations on the total amount of time allocated to agenda issues and limitations on the amount of time for each individual speaker.

The input can be restricted to “matters within the board’s subject matter jurisdiction.”

A board cannot prohibit public criticism of the “policies, procedures, programs, or services” of the public agency, or of the “acts or omissions” of its legislative body.” (54954.3(c).)

However, some County Counsels believe that it probably can prohibit public criticism of individual employees of the agency, referring such matters to the appropriate department head and/or hearing the complaint in closed session.

A board can also prohibit discussion of specific juvenile court cases in public session as being outside of the board’s jurisdiction and as being a violation of the child’s privacy rights under the juvenile court law.

A board may stop a speaker who becomes overly repetitious or whose subject is irrelevant to the board's subject matter jurisdiction. Kindt v. Santa Monica Rent Control Board 67 F.3d 166 (9<sup>th</sup> Cir., 1995)

A board may have a speaker removed from the room if the speaker loses all sense of decorum and becomes overly disruptive. (Kindt)

## *4. Sanctions for Violations of the Brown Act*

A board member may be held criminally liable (misdemeanor) for intentional violations. (54959)

Any interested person or the district attorney may sue for mandamus, injunction, or declaratory relief for violations and threatened violations of the Brown Act or to determine if any rule or act of a legislative body is valid or invalid. (54960)

A court can order an agency to audio record and preserve its closed sessions so the court can review these actions to determine if the agency is violating the act. (54960)

Prerequisite to lawsuit requires a written demand to cure and correct ("cease and desist letter") within 90 days of closed session (and 30 days of open session if in violation of agenda requirements. (54960.1, 54960.2)

The background of the slide is a deep blue color with a subtle, wavy texture that resembles water. On the left side, there is a bright, glowing area representing the sun's reflection on the water, which fades into the darker blue of the rest of the slide. The text is centered in the upper half of the image.

What happens if there is a violation?

The legislative body has 30 days to respond to a cease and desist letter. It can issue an unconditional commitment to cease and desist and not to repeat the past action, deny the violation, or do nothing.

If legislative body denies the violation, the complaining party has 60 days to sue. If the legislative body fails to act during the cure period, its inaction is deemed a decision not to cure, and the complaining party can sue.



An action that violates the Brown Act is  
null and void UNLESS:

Action was taken in violation of sections  
54953 (open meetings),

54954.2 (agenda postings),

54954.5 (closed session descriptions),

54954.6 (public meeting to impose new fees  
or taxes),

54956 (special meeting), and

54956.5 (emergency meeting

AND...

Those actions are not void if the following conditions exist:

- (1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.
- (2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.
- (3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.
- (4) The action taken was in connection with the collection of any tax.
- (5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

# *Cease and Desist Letter Rules*

- Effective 1/1/13
  - Cease and Desist Letter
    - Interested party or DA must send a cease and desist letter to legislative body prior to filing a lawsuit
    - Letter must go out within 9 months of violation
    - Must set forth the allegation of past violation
    - Legislative body has 30 days to issue an unconditional commitment to cease and desist
  - Unconditional Commitment
    - Must substantially conform to format of statute
    - Must be approved by legislative body in open session and not on consent
  - Effect of Unconditional Commitment
    - Stops future actions from going forward
    - Forces dismissal of ongoing action w/ prejudice
    - Violation of terms is a violation of the Brown Act not subject to this procedural requirement
  - Costs and Attorney's Fees
    - May be awarded if filing of action caused legislative body to issue unconditional commitment to cease and desist

QUESTIONS