

Open & Public Meetings

**Office of County Counsel
Dana Barton, Deputy County Counsel
March 11, 2021**



Open & Public Meetings

“ . . .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.”

-Cal. Government Code §54950

Overview of the Brown Act

The Act applies to “legislative bodies” which must conduct their business only at public “meetings” where they can consider only items of business listed on “agendas.” “All meetings... shall be open and public and all persons shall be permitted to attend any meeting”

Who Is Governed By the Act?

- Any “legislative body”
- Governing body of any local agency, i.e., Board of Supervisors, Board of Directors, City Council
- Commission, committee, board or other body created by another legislation body



Three Types of Meetings

Regular Meetings

Special Meetings

Emergency Meetings

What Is a “Meeting”?

Any **congregation of a majority** of the members of a legislative body at the same time and location, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

Further, the members shall not use a series of communications, direct or indirect, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

-Cal. Government Code §54952.2(a) , (b)

“Serial Meetings”

- Email/Text Chain
- Hub and Spoke

Exceptions to Meeting

- Individual communications
- Attendance by a majority of the members at:
 - Conferences on matters of general interest
 - Publicized and public meetings to discuss topics of community concern, except those organized by the local agency
 - Open and noticed meeting of another body of the local agency
 - Open and noticed meeting of a committee of the local agency
 - Purely social or ceremonial events

-Cal. Government Code §54952.2(c)

Exceptions to “Open” Meeting

- Closed Session – Authorized for certain subjects:
 - Conference with legal counsel regarding litigation (existing lawsuit, filing a lawsuit, or exposure to a lawsuit)
 - Public employee appointment
 - Public employee performance evaluation
 - Public employee discipline, dismissal, or release
 - See Government Code Section 54954.5 for a complete list and **“safe harbor” agenda language**

<http://leginfo.legislature.ca.gov>

- California Law

Meeting Agendas

Regular Meetings

- Agenda must be posted at least 72 hours before meeting
- Agenda must be freely accessible to members of the public
- Agenda must contain time and place of meeting and description of all items to be discussed or transacted

Special Meetings

- Notice must be posted at least 24 hours prior to meeting, be freely accessible to the public; and provided to requesting media outlets
- Notice must contain time and place of meeting and description of all items to be discussed or transacted

Emergency Meetings

- Notice must be provided, by telephone, to requesting media outlets at least one hour prior to meeting. Waived if no telephone service.

Posting Meeting Agendas

- If an agency has a website, agendas must be posted 72 hours before the meeting.

Public Comment

- **Regular Meeting.** The public shall be provided an opportunity to address the legislative body on **any item of interest to the public**, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body.
- **Special Meeting.** The public shall be provided an opportunity to address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

“A local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”

(Government Code Section 54954.3(c))

Non-Agenda Item Exceptions:

- Legislative body member or staff person may “briefly respond” to questions or comments by the public
- Member or staff person may ask a question for clarification, make a brief announcement, or a brief report on his or her own activities
- May provide a reference to staff or elsewhere for factual information, request staff to report back at a later meeting on any matter, or direct a matter to be placed on a future agenda
- Emergency situation (specific requirements including two-thirds vote requirement to take action)

Brown Act Violations: Civil Action

The District Attorney, or any interested person, may request a Court of competent jurisdiction to:

- Stop any violation or threatened violation of the Act;
- To determine the applicability of the Act to actions or threatened future actions of the legislative body;
- To determine the validity of any legislative body's action that discourages the expression of any of its members;
- To compel the recording of a legislative body's closed sessions which may subsequently be reviewed and released by a court in a future enforcement case; and
- To void certain actions taken in violation of the Brown Act.

Brown Act Violation: Criminal Penalties

Each member of a legislative body who attends a meeting of that legislative body, is guilty of a misdemeanor, where:

- **Action** is taken in violation of any provision of this chapter; and
- The member **intends** to deprive the public of information to which the member **knows or has reason to know** the public is entitled.

-Cal. Government Code §54959

Inadvertent Error

It Can Be Cured or “Fixed”

- Cure or Correct Demands
- Cure is not admissible as evidence in civil or criminal action--i.e., not an admission

Questions?