

OPEN MEETING LAWS IN CALIFORNIA THE BROWN ACT

Government Code §54950-54960.5

This guide is intended to be a quick reference on the Brown Act as of February 10, 1996. It does not substitute for research or consultation with a lawyer on detailed questions. It is intended to address the most common access problems, but can't cover everything.

First Amendment Project:

<http://www.thefirstamendment.org/brown-act.html>

THE BASICS

Meetings of public bodies must be “open and public,” actions may not be secret, and action taken in violation of open meetings laws may be voided (§§54953(a), 54953(c), 54960, 54960.1).

WHO'S COVERED

- 1) Local agencies, including counties, cities, school and special districts (§54951).
- 2) “Legislative bodies” of each agency are the boards whose meetings are governed by the Brown Act – the agency’s governing body plus any board, commission, committee, task force or other advisory body created by the agency, whether permanent or temporary (§54952(b)). Collectively these will be called “covered boards.”
- 3) Any standing committee of a covered board, regardless of number of members (§54952(b)).
- 4) Nonprofit corporations formed by a public agency or which includes a member of a covered board and receives public money from that covered board (§54952).
- 5) NOT affected are: meetings of ad hoc, advisory committees consisting of less than a quorum of the covered board (§54952(b)); most nonprofit corporations; courts and court agencies; state government. (See Bagley-Keene Act for state agencies, §§ 11120-11132.)

WHAT'S COVERED

A “meeting is any gathering of a majority of the members of a covered board to hear, discuss, or deliberate on matters within the agency’s or board’s jurisdiction. “Note: no vote or action is required for the gathering to be a meeting, nor must the members meet face-to-face (§54962.2).

MEETING RULES

To preserve the public’s rights under the Brown Act, an agency must:

- Post and send notice and an agenda for any regular meeting (§§54594, 54954.2): mail notice one week before regular and special meetings to those who request it (§54954.1): notice special and emergency meetings (§54956, §54956.1).
- Notify the media of special or emergency meetings (§54956, §54956.5); allow media to remain in meetings, cleared due to public disturbance (§54957.9).
- Limit action to items on the agenda, absent special circumstances (§54954.2(a)(b)).
- Hold meetings in the jurisdiction of the agency except in limited circumstances (§54954(b)(1)-(4),(c),(d),(e)), and in places accessible to all, with no fee (§54961(A)).
- Do not require a “sign in” for anyone (§54953.3)
- Allow recording and broadcast of meetings (§54953.5(a)), and let the public have a copy of and listen to any recording made by the agency of its open meetings (§54953.5(b)).
- Allow the public to address the covered board at regular or committee meetings. On any item in the agency’s jurisdiction (§54954.3(a)).
- Conduct only public votes, with no secret ballots (§54953(c)).
- Treat documents as public “without delay,” if distribution before or at the meeting, unless they are also exempt under the Public Records Act (§54957.5).

WHAT IF...

- A council member is on a board of a nonprofit corporation – is it covered? YES, if the council appointed him or her, and funds the corporation (§54952(c)(2)).
- An agency delegates authority to some other entity – is that entity covered? YES, if it was created by the agency’s elected body) §54952(b)(c)(1)).
- A council committee meeting has less than a quorum – is it required to meet openly? YES, if the committee has *either* a set meeting schedule or a continuing subject matter jurisdiction (§54952(b)).
- A quorum of an agency is at a social gathering – is that a violation? NO, so long as the members do not discuss business matters within their jurisdiction (§54952.2(b)(4)). BUT regular “social” gatherings like luncheons are meetings, since it’s likely public business is discussed (43 Opps. Atty. Gen. 36 (1964)).
- Members use individual contacts to collectively decide an issue – Is that a violation? YES. Information communicated to a quorum through a series of contacts, individuals phone calls (“daisy chain”), or a third person (“spoke and wheel”) to evade the public is a “meeting” (§54952.2(a)(2); 63 Opps. Atty. Gen. 820 (1980); Stockton Redevelop Agency, 171 CA 3d 95 (1985); Common Cause v. Stirling, 147 CA 3d 518 (1983).
- Agency members attend a conference and call another member – is this covered? NO, so long as they do not discuss specific business matters within their jurisdiction (§54952.2(b)(2),(3)).
- A meeting is held by video-teleconference. This is ALLOWED, for testimony and deliberation only, if the public’s rights are protected (§54953(b)).

RULES FOR CLOSED MEETING

Closed meetings are the exception, and permitted only if they meet defined purposes and follow special requirement (§54953(a), (c), §54954.5, §54962).

EVEN AT CLOSED SESSIONS:

Special public notice and agenda requirements apply §54954, 54954.2, 54954.5). All actions taken and all votes in closed session must be publicly reported orally or in writing within 24 hours (§54957.1), and copies of any contract or settlements approved must be made available promptly (§54957.1(c)).

CLOSED MEETINGS MAY BE HELD FOR: PERSONNEL.

Only to discuss the appointment, employment, performance, evaluation, complaints about or dismissal of a specific employee or potential employee (§54957). (The employee may request a public meeting on any charges or complaints). Closed sessions are NOT ALLOWED for general employment discussions; independent contractors not functioning as employees; salary discussions; any elected official or member of the covered board; “the local agency’s available funds, funding priorities or budget.”

PENDING LITIGATION:

Only if open discussion “would prejudice the position of the agency in the litigation.” The litigation must be named on the posted agenda or in open session (§54956.9).

To qualify, the agency must:

- Be a party to pending litigation (§54956.9(a));
- OR expect, based on certain specific facts, to be sued (§54956.9 (b)(1), (2));
- OR expect to file suit itself (§54956.9(c)).

LABOR NEGOTIATIONS

- Only to instruct the agency’s negotiator’s on compensation issues (§54957.6). (Note: school districts are covered by the Rodda Act.)

PROPERTY NEGOTIATIONS

- Only to discuss, with an agency's bargaining agent, price or payment terms. The parcel name of the prospective seller or purchaser must be on the agenda. Final price and payment terms must be disclosed when the actual lease or contract is discussed for approval (§54956.8).

OTHER

- Other closed meetings include license and permit applications for people with criminal records (§54958.7); threats to public services or facilities (§54957); Insurance pooling (§54956.95).

WHAT TO DO IF:

A MEETING IS CLOSED THAT SHOULD BE OPEN

- Refuse to leave, and use this Guide to check the law, to protest and enforce all notice requirements
- Leave only if ordered by law enforcement
- Call your editor or lawyer at once

AN ILLEGAL CLOSED MEETING HAS BEEN HELD

- Ask participants what happened, and get reports of actions taken and copies of contracts approved.
- Call First Amendment Project, (<http://www.thefirstamendment.org/brown-act.html>) or California First Amendment Coalition (<http://www.cfac.org/contact.html>).
- Write a story or letter to the editor about it
- Contact the District Attorney under §54980(a) against violations or a "gag rule" imposed on a body's members.
- A court may:
 - Force the agency to make and preserve tapes of closed sessions (§54960(b));
 - Declare actions taken null and void (§54960.1)
 - Award costs and attorneys fees (§54960.5).

Government Code on Public Meetings

The Ralph M. Brown Act

Some relevant sections of the Government Code

54951 As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or other local public agency.

54952 As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee, or other body is organized and operated by such local agency or by private corporation.

54952.2 As used in this chapter, "legislative body" also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body to a local agency delegated to it by that legislative body.

Meetings of the academic senate or faculty council of a California community college are subject to the open meeting requirements of the Ralph M. Brown Act (Section 54950 et seq.). [66 Ops. Atty. Gen. 252, 7-28-83]

- 54953 (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of the local agency, except as otherwise provided in this chapter.
- (b) Not with standing any other provision of law, the legislative body of a local agency may use video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The use of video teleconferencing, is authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body. If the legislative body of a local agency elects to use video teleconferencing, it shall post agenda at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency. The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location. This section shall remain in effect until January 1, 1994, and on that date is repealed unless a later enacted statute, which is chaptered before January 1, 1994, deletes or extends that date.

54952.6 as used in this chapter, "action taken" means a collective decision by the majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

54953.5 Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the legislative body of the local agency that such recording constitutes, or would constitute, a disruption of the proceedings.

The Brown Act requires

1. Agendas posted at least 72 hours before a regular meeting. Agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting. (54954.2)

2. No action shall be taken on any item not appearing on the posted agenda except for emergencies, in instances where two-thirds of the legislative body (or all if less than 2/3 are present) determine that the need for action arose after the agenda was posted, or the item was posted for a prior meeting not more than five calendar days prior to the meeting and the item was continued to the meeting at which action is to be taken. (54954.2)
3. Meetings of public agencies be open and public (54952.3, 54953)
4. Notice of meetings must be delivered to those requesting notice at least 24 hours before the time of such meeting (54952.3)
5. If regular meetings are held, they must be provided for in bylaws or some other rules of the body. In this case, no other notice is required. (54952.3)
6. Special meetings may be called by the presiding officer, or by a majority vote of the members of the legislative body. Only business described in the notice of the meeting can be considered. (54956)

Note: failure of any person to receive notice does not constitute grounds for any court to invalidate the actions of the legislative body for which the notice was given. (54954.1)

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