



**LOS OLIVOS COMMUNITY
SERVICES DISTRICT
BROWN ACT TRAINING**

January 10, 2024 @ 6:00pm



Aleshire & Wynder

Brown Act – Open and Public

Ralph M. Brown Act, Government Code Section 54950, et. seq.

- ***Legislative Declaration***

“The people 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 they may retain control over the instruments they have created.” [Govt. Code § 54950]



Ralph M. Brown 1959
Photo courtesy
The Modesto Bee

General Default Rule

- “All meetings of a 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.”
[Govt. Code § 54943]



- **Goals of the Brown Act:**
 - To curb misuse of the democratic process by public bodies through secret legislation.
 - To ensures the public’s right to attend and participate in meetings of local legislative bodies.



What is a Legislative Body?

- **Governing bodies** of local agencies (e.g. City Council, school boards).
- Commissions, committees, board or other bodies of a local agency created by ordinance, resolution, whether permanent or temporary, decision-making or advisory,
- **Standing committees** that have (1) *continuing subject matter jurisdiction*; OR (2) a *meeting schedule fixed* by charter, ordinance, resolution, or formal action of a legislative body.

What is a Meeting?

- A “meeting” occurs whenever a ***majority*** of the members of a legislative body ***congregate*** at the ***same time and place*** ***to hear, discuss, deliberate, or take action on any item within the subject matter jurisdiction of the legislative body.***



Types of Brown Act Meetings

- **Regular Meetings** – Govt. Code § 54954.2
- **Special Meetings** – Govt. Code § 54956

Who Can Attend A Meeting

- Anyone can attend open meetings
- Cannot require names, questionnaires, or conditions to attendance
- Public may record proceedings by video, film or audiotape
- If meeting willfully interrupted or order cannot be restored by removing only the disrupting individuals, legislative body may order room cleared

Exceptions to Meeting Definition

- Individual Contacts
- Conferences
- Community Meetings
- Meetings Other Legislative Bodies
- Standing Committees (provided members not on the standing committee attend only as observers)
- Social or Ceremonial Events
- Provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the agency

Informal Gatherings

- Use caution when socializing with other City Council members outside of an open and noticed meeting.
- ***Example:*** After a City Council meeting, three Council Members decide to have dinner.
- *City business may not be discussed or transacted!*



Beware of Serial Meetings

- The Brown Act *prohibits* a majority of the members of a legislative body from using a ***series of communications of any kind***, directly or through intermediaries, ***to discuss, deliberate, or take action on any item within the subject matter jurisdiction of the legislative body.***
- Such meetings deprive the public of an opportunity for meaningful participation in legislative body decision-making.

Beware of Serial Meetings

- Unlawful ***serial meetings*** can occur through:
 - In-person contacts among a majority of members
 - Technological contacts (e.g. telephone, fax, ***email*** chains, ***text message***, and other social media communications)
 - Contact with a majority of members through staff or others acting on behalf of the body or one of its members.
 - “***Daisy Chain***” – Member A contacts Member B, Member B contacts Member C, and so on until a quorum and collective concurrence is established.
 - “***Hub and Spoke***” – A staff member contacts each member of a legislative body one-on-one for a decision on a proposed action revealing each member’s decisions to each other.
-

Social Media Considerations

- A meeting includes any use of direct communication, personal intermediaries, or technological devices which are employed by a majority of the members of the legislative body to develop a collective concurrence on action to be taken by members of the legislative body.
- Social media: Can constitute a meeting if members respond directly to any communication posted or shared by another member regarding commission/board business on social media.
 - Any online platform that is open and accessible to the public, including traditional “private” social media sites such as Facebook, Twitter, or Nextdoor, but also smaller forums such as a discussion section on a news website.
 - Likes, thumbs up, emojis, sharing, or commenting.

No Discussion / No Action

- A legislative body ***may not*** take action upon or discuss an item not listed on the agenda – except in limited circumstances. [Govt. Code § 54954.2(a)(2)]



Exceptions

No Discussion/No Action

- No **discussion** or **action** on items not agenda except:
 - Brief responses to a statement or question from the public.
 - Questions to staff for clarification of a matter based on public comment.
 - Brief announcements or reports on member's or staff's own activities.
 - Requests for staff to report back at future meetings concerning any matter. [Govt. Code § 54954.2(a)(3)]
-

Exceptions

No Action/No Discussion

No **discussion** or **action** on items not agenda except:

- Upon a determination by a majority that an “**emergency situation**” exists. [Govt. Code Govt. Code § 54954.2(b)(1)]
 - Work stoppage, crippling activity or other activity severely impairing public health, safety or both; or
 - Dire emergency – a crippling disaster, mass destruction, terrorist act posing peril so immediate and significant, there is no time to lose). [Govt. Code 54956.5]
-

Exceptions

No Action/No Discussion

No **discussion** or **action** on items not agenda except:

- Upon a determination by 2/3 vote of members present (or unanimous vote if less than the full membership is present) that:
 - ***Immediate action*** must be taken; AND
 - The ***need*** for action ***came*** to the *attention* of the local agency ***after the agenda was posted***. [Govt. Code Govt. Code § 54954.2(b)(2)]

Agendas - Overview

- Effective notice is essential for open and public meetings.
- Public must be provided the ***times and dates*** of all meetings and an agenda with ***brief general descriptions of all matters to be discussed or considered*** must be made available before the meeting.



Agenda Posting Requirements

- Times and dates for all meetings must be noticed and an agenda must be prepared providing a brief general description of all matters to be discussed or considered.
 - **Regular Meetings:**
 - Agenda must be posted 72 hours before the meeting.
 - Meeting must be held within the agency's jurisdiction.
 - **Special Meetings:**
 - Agenda posted 24 hours before the meeting.
 - May be called by a majority of the legislative body OR presiding officer of legislative body.
-

Teleconferencing

- Teleconferencing may be used so long as:
 - A quorum of the legislative body participates from *within the local agency's jurisdiction*.
 - The agenda identifies each teleconference location.
 - The teleconference location is accessible to the public and technology is available to allow the public to participate.
 - Votes must be done by roll call.



Post Pandemic Legislation

- Governor's Executive Orders
- AB 361
- AB 2449
- AB 557
- AB2449
- Relaxes some of the requirements
 - No longer obligated to post agendas at all teleconference locations;
 - Not obligated to identify all teleconference locations in the meeting agendas, and agencies don't have to make each teleconference location open to the public.
- Imposes New Requirements
 - Finding of just cause or emergency
 - Limited number of meetings
- Agency must provide either a two-way audiovisual platform or two-way telephonic service and a live webcasting
- Expires 1/1/26 (per AB 557)

Public Participation

- All meetings must be open and public and all persons must be permitted to attend.
- **Public Comment:** Must provide an opportunity to address the legislative body with regard *to any matter within the body's jurisdiction* and on any item on the agenda before or during its consideration.
 - Special meeting: Comment limited to items on the agenda.
- Not an opportunity for Q&A!



Closed Session

- **Purpose:** Allows for discussion and action behind closed doors on certain specific subject matters where it is in the public interest to preserve ***confidentiality***.
- Primarily used for personnel issues, pending litigation, labor negotiations and real property acquisitions.
- Disclosure of confidential information acquired in closed session is PROHIBITED. ***Only the legislative body acting as a whole may agree to divulge confidential closed session information.***
- Consequences of disclosing confidential closed session information includes injunctive relief, disciplinary action (employees), or referral to a grand jury (council member).

Closed Session – Permissible Topics

- ***Conference with Legal Counsel:***
 - Existing Litigation [Govt. Code § 54956.9(a)]
 - Anticipated Litigation [Govt. Code § 54956.9(b)]
 - Initiation of Litigation [Govt. Code § 54956.9(c)]
 - ***General Employment and Discipline Matters:***
 - Appointment and Employment
 - Employee Performance Evaluation
 - Employee Discipline and Dismissal
 - Complaints or Charges Against Employee. [Govt. Code § 54957(b)(1)-(4)]
-

Closed Session – Permissible Topics

- ***Conference with Real Property Negotiator:***
 - Instruction on price and terms of payment [Govt. Code § 54956.8]
 - ***Conference with Employment/Labor Reps.:***
 - Conference with public agency's own employment/labor rep. to discuss salaries, fringe benefits, the public agency's available funds, or funding priorities. [Govt. Code § 54957.6.]
 - ***Student issues:***
 - Education Code also provides that student discipline issues must be addressed in closed session unless the parents or student request otherwise.
-

Closed Session - Confidentiality

- Disclosure of confidential information acquired in closed session is **PROHIBITED**.
 - Only the legislative body ***acting as a whole*** may agree to divulge confidential information acquired in closed session.
 - Violation of the confidentiality requirement may be remedied by:
 - ***injunctive action*** to prevent disclosure;
 - ***Discipline*** of employee who has willfully disclosed confidential information; or
 - ***referral*** of a member of the legislative body who was willfully disclosed confidential information to the ***Grand Jury***.
 - Note: it is permissible to make a confidential inquiry or complaint to a District Attorney or Grand Jury concerning a perceived violation of law. [Govt. Code § 54963]
-

Brown Act Violations

- **Criminal sanctions**: Violation of Brown Act by any member of a legislative body with **intent** to deprive public of information is a *misdemeanor*.
- **Civil remedies**: District Attorney or any interested person can sue to prevent a pending or future violation or ***to invalidate actions take in violation of the Brown Act.***
- Upon written demand legislative body has:
 - 30 days to cure alleged open session violations; and
 - 90 days to cure any other alleged violations.
- **Penalties**: Court costs and reasonable attorneys' fees.

Brown Act Bottom Line

- The Brown Act requires:
 - Openness
 - Transparency
 - Public access to information
 - ***Any gathering of a majority of public agency that involves any aspect of the decision-making process triggers Brown Act open meeting requirements.***
-

QUESTIONS?

