

## OVERVIEW OF THE BROWN ACT

### I. THE RALPH M. BROWN ACT (Cal. Gov't Code § 54950 *et seq.*)

#### A. Open Meetings

- In order to ensure governmental deliberations and actions are taken *openly*, governmental entities are required to conduct their meetings pursuant to requirements set forth in the Brown Act. The term “meeting” includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any matter which is under the subject matter jurisdiction of the agency.

#### B. Calling a Meeting

- Regular Meetings – Each Legislative body shall provide for the time and place for regular meetings by ordinance, resolution, or by-laws.
- Special Meetings – The presiding officer or a majority of the body may call a special meeting. So long as substantive consideration of agenda items does not occur, a majority may meet without providing notice to the public in order to call the meeting and prepare the agenda.
- Emergency Meetings – When a majority of a legislative body determines that an emergency situation exists, it may call an emergency meeting. The Brown Act defines emergency as a crippling activity, work stoppage or other activity which severely impairs public health, safety, or both.

#### C. Notice Requirements

- Regular Meetings – Must post an agenda in a location freely accessible to the public, and on the website, at least **72** hours prior to a regular meeting. (Gov. Code §54954.2(a).)
- Special Meetings – Must post a “notice” in a location that is freely accessible to the public and on the website at least **24** hours prior to a special meeting. Written notice must also be provided to all board members and, if requested, to any media outlets. (Gov. Code §54956)
- Emergency Meetings – Absent a dire emergency, telephonic notice must be provided to all media outlets that have requested that they receive notice of any special meetings at least one hour prior to the meeting. In the case of a dire emergency, notice need only be provided at or near the time that notice is provided to members of the body.

#### D. Agenda Requirements

- Regular Meetings – The agenda must specify the time and location of the meeting and contain a **brief general description** of each item to be discussed or transacted at the meeting, **including** closed session items. (See Gov. Code § 54954.5 for “safe harbor” requirements for closed session item descriptions.) The description must be sufficient to provide interested persons with an understanding of the subject matter which will be considered. (*Carlson v. Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, 200. [The description of ‘Continuation school site change’ was inadequate notice of a school *closure*.]) Every agenda shall provide an opportunity for members of the public to directly address the legislative body on any item under the subject matter jurisdiction of the body.
- Special Meetings – The “call and notice” shall indicate that it is a special meeting which is being called and specify the time and place of the special meeting and the business to be transacted or discussed, including closed session items. No other business shall be transacted at the special meeting. The Board may not consider salaries or salary schedules at a special meeting. (Gov. Code 54956(a).) Every agenda shall provide an opportunity for members of the public to directly address the legislative body on any item under the subject matter jurisdiction of the body.

#### E. Closed Sessions

- Permissible Closed Session Topics – Because closed sessions are considered a narrow exception to the open meeting requirement, topics that may be discussed in closed session are limited to the following exceptions:
  - (i) Personnel;
  - (ii) Pending litigation and the attorney-client privilege;
  - (iii) Real property negotiations;
  - (iv) Labor negotiations;
  - (v) Public security; and
  - (vi) License application
- Oral Notice of Closed Session Topics – Prior to adjourning into closed session, a representative of the legislative body must **orally announce** the items to be discussed in closed session. The announcement may

take the form of a reference to agenda item number. (Gov. Code § 54957.7). Depending on the particular closed session topic, there may be additional notice requirements (*See* Real Property Negotiations, Gov. Code §54956.8.)

- Oral Notice of Actions Taken in Closed Session – Once the closed session has been completed, the agency must reconvene in open session, where it is required to report votes and actions taken in closed session, if any. (Gov. Code § 54957.1.)

#### **F. Rights of the Public**

- A member of the public can attend a meeting without having to register or give other information as a condition of attendance. A legislative body may not prohibit any person attending an open meeting from video recording, audio recording or broadcasting the proceedings, absent a reasonable finding that such activity would constitute a disruption of the proceedings.
- The public is guaranteed the right to provide testimony at any regular or special meeting on any subject which will be considered by the legislative body before or during consideration of the item. The legislative body may adopt regulations to assist in processing comments from the public and may establish reasonable time limitations on particular topics or individual speakers.
- The legislative body shall not prohibit a member of the public from criticizing the policies, procedures, programs or services of the agency, or of the acts or omissions of the legislative body.

#### **G. Prohibited Conduct**

- “Outside Meetings” – Any use of direct communication, personal intermediaries or technological devices by a majority of the members of a legislative body to ***discuss, deliberate, or take action is prohibited*** outside a meeting authorized by the Brown Act. (Gov. Code § 54952.2(b)(1).) Some examples are:
  - A private letter signed by Council members and sent to the city manager directing him not to serve the summons regarding an eminent domain action held to violate the Brown Act. (*Common Cause v. Stirling* (1981)119 Cal. App. 3d 658.)
  - A series of individual telephone calls from an agency attorney to individual board members to poll their approval for a real estate transaction was held to constitute a meeting. (*Stockton*

*Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal. App. 3d 95, 105.)

- The California Attorney General has concluded that a majority of a board e-mailing each other regarding current issues under the body’s jurisdiction would violate the Brown Act even if the e-mails (i) were also sent to the secretary and chairperson of the agency, (ii) were posted on the agency’s website, and (iii) a printed version of was reported at the next public meeting of the board. (84 Ops. Cal. Atty. Gen. 30 (2001).)
- Topics Not on Agenda – No action or discussion shall be undertaken on any item not appearing on the posted agenda. **Exceptions:**
  - Board members “may briefly respond to statements made or questions posed by persons exercising their public testimony rights.”
  - On their own initiative or in response to public questions, board members may ask a question for clarification, make a brief announcement, or make a brief report on his own activities.
  - Board members may provide reference to staff or other factual information, request staff to report back at subsequent meeting concerning any matter or take action to direct staff to place matter on future agenda.

## H. Permissible Conduct

- Attendance of Board Members at Special Events – A majority of board members may attend certain specified events, such as conferences, without it being deemed a “meeting.” (See Gov. Code § 54952.2(c) (2)-(6).)
- Discussions with Staff – A staff member may have separate conversations with members of a board in order to answer questions or provide information if that person does **not** communicate to members of the legislative body the comments or position of any other member of the legislative body. For example, A **one-way transmission** to, and **solitary review** by, Board members of background materials is allowed. (*Frazer v. Dixon Unified School Dist.* (1993)18 Cal. App. 4th 781, 797.)

## I. Penalties – Including Criminal Liability

- The act provides **CRIMINAL** penalties for certain violations, including when a member attends a meeting where action is taken in

violation of the Brown Act, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.

- The Brown Act also provides for civil remedies, including injunctive or declaratory relief to (i) stop or prevent a violation; or (ii) to void past acts of the body.