

THE RALPH M. BROWN ACT
(Government Code Section 54950, et seq.)

General

The Brown Act embodies the philosophy that public agencies exist for the purpose of conducting public business, and the public has the right to know how its “collaborative decisions” are being made. It represents the determination of the balance that should be struck between access on the one hand, and the need for confidential candor on the other. There is a presumption in favor of access, with exceptions for confidentiality where there has been a demonstrated need. The exceptions are construed narrowly.

The Brown Act may be divided into six topics: to whom does the Act apply, what is a meeting, the agenda requirements, the public’s rights, closed sessions, and consequences for violation.

1. Bodies covered by the Brown Act

- A. Legislative bodies of local agencies, e.g., boards, commissions, councils and committees. Also applies to person who is elected as part of body who has not yet taken office.
- B. Does not apply to individual decision makers, e.g., department heads, legislative bodies acting in judicial capacity, bodies created by single decision maker.
- C. “Local agencies” include cities, counties, school districts, special districts, municipal corporations, etc. (There is a separate law for state agencies.) Factors used in assessing “localness” include geographical coverage, duties of the agency, existence of oversight, provisions concerning membership and appointment.
- D. “Legislative bodies” include governing bodies and their subsidiary bodies, e.g., boards, commissions, committees or other bodies of a local agency that are created by charter, ordinance, resolution or ‘normal action’ of a legislative body. This applies regardless of “temporary v. permanent,” and “advisory v. decision making.”
- F. There is a specific exception for: “Non-standing” advisory committees that are composed of less than a quorum of the legislative body.
 - 1. Standing committees are those whose meeting schedule is fixed by resolution or action of the body that created the committee.

2. If a legislative body designates less than a quorum of its members to meet with representatives from another body to exchange info, a separate body is not formed. However, if less than a quorum meets with another agency to perform a task, e.g., make a recommendation, a separate legislative body is formed.
- F. The act covers private corporations created by legislative bodies for purpose of exercising authority, entities which receive funds from a local agency where the agency appoints one of its members to the board. Mere receipt of public funds by a nonprofit corporation does not subject a nonprofit corporation or other entity to the Brown Act.

2. What is a meeting?

- A. Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction. Can include lunches, social gatherings, board retreats.
- B. Exemptions for: 1) conferences open to the general public which involve issues of interest to the body, 2) other public meetings, 3) meetings of other bodies under same local agency, or 4) social or ceremonial occasions, as long as a majority of the members do not discuss application of specific issues to the legislative body.
- C. Serial meetings are included within the Brown Act if they are for the purpose of developing a concurrence as to action to be taken.
1. Serial meeting is a series of communications (whether in person or by phone or other media), each of which individually involves less than a quorum, *but* which, taken as a whole, involve a majority of the board's members. Examples include meetings of board members' intermediaries, chain communications (a@b@c), and hub communications (a@b, a@c).
 2. "Concurrence as to action to be taken" includes substantive matters that are or are likely to be on board's agenda, but does not include purely housekeeping matters (e.g., times, dates and locations of upcoming meetings.)
- D. Individual contacts between members of the public and board members are exempt from definition of meeting.

3. Notice and Agenda Requirements

- A. Regular meetings are those whose time and place is set by ordinance, by-law or resolution.
 - 1. At least 72 hours prior to meeting, must post agenda containing a brief general description (generally no longer than 20 words are required) of each action or discussion item to be considered, including items to be considered at closed sessions. Purpose is to notify members of public of items in which they may wish to participate.
 - 2. Exceptions for three types of matters, each of which must be publicly announced before proceeding:
 - a. Emergency (requires majority vote).
 - b. Need for immediate action arising after publication of agenda (requires 2/3 of entire body, or if fewer than 2/3 remain, 100% of all remaining members).
 - c. Matter which has been posted for a previous meeting which is carried over for no more than five days.
 - 3. **Agenda must contain opportunity for public testimony.** May impose reasonable time limitations. Can't take action on matter raised for first time in "public comment" if item not on agenda.
- B. Special meetings require 24 hours notice, no business may be considered except that for which meeting was called. May be held in closed session.
- C. Emergency meetings (crippling disasters, strikes, public health and/or safety threats) may be called on 1 hour notice, determined by majority of body. No closed session permitted.
- D. Closed sessions require three types of notice— agenda, pre-closed session announcement, and post-closed session report of action taken.
 - 1. Statutes contain "safe harbor" format for agenda requirement.
 - 2. Special statutory requirements re: exposure to potential litigation (may post or announce).
 - a. Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs need not be disclosed.

- b. Facts and circumstances that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs shall be publicly stated on the agenda or announced.
 - c. The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection.
 - d. A statement made by a person in an open and public meeting threatening litigation must be stated on agenda or announced.
 - e. Special requirements when a statement threatening litigation made by a person outside an open and public meeting. No closed session in absence of record of the statement prior to the meeting.
 - f. No requirement for disclosure of written communications that are privileged and not subject to disclosure pursuant to the Public Records Act.
- 3. At end of closed session, must convene in open session and report on action taken, either orally or in writing. Specific statutory requirements as to form of report.
 - 4. Adjournments and continuances - need not be separately posted if subsequent meeting is continued for no more than five days. However, notice of adjournment (continuance) must be posted.
 - 5. Location of meetings - must generally be within geographic boundaries of the body's jurisdiction, except for compliance with law or court order, to inspect real property, meetings of multi agency significance, nearest available facility if body has none available, meeting with state or federal officials to discuss regulatory issues, nearby facility to discuss facility itself, visit legal counsel to reduce fees, schools may attend conferences on collective bargaining or interview potential employee from another district or interview public about superintendent.
 - 6. Special procedures re: new or increased taxes or assessments.

4. Rights of the Public.

- A. Access generally means the right to be notified of items to be considered (agenda), to attend meetings of legislative bodies without identifying oneself, to record the meeting, to have access to documents distributed to members of the legislative body, not to pay for the agency's costs in complying with the Brown Act, to be free from discrimination, to provide public comment.
- B. Legislative bodies may provide greater public access than required by the Brown Act.

5. Permissible Closed Meetings.

Narrow construction, must have express authorization.

A. Personnel exception.

- 1. Applies to appointment, employment, evaluation, discipline or dismissal of public employee.
- 2. Employee may request hearing be conducted in public only if purpose is to discuss specific instances of misconduct. Employee has right to 24 hours notice of misconduct.
- 3. Employee does not include elected officials, independent contractors, member of legislative body.
- 4. Must pertain to particular employee, not employees in general. No abstract discussions re: creation of new positions, unless workload discussion involves performance of a specific employee.
- 5. May not be used to discuss salary.

B. Pending litigation and attorney-client privilege.

- 1. Based on attorney client privilege, but applies only to litigation.
- 2. Litigation includes any adjudicatory proceeding.

3. Litigation is “pending” when any of the following circumstances exist:

- (a) Litigation, to which the local agency is a party, has been initiated formally.
- (b) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

4. “Existing facts and circumstances” are limited to the following:

- (a) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff.
- (b) Facts and circumstances, e.g., an accident, disaster, incident, or transaction that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs.
- (c) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation.
- (d) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.
- (e) A statement threatening litigation made by a person outside an open and public meeting on a specific matter.

5. Pending litigation exception also includes those cases where the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

C. Real Estate Negotiation

D. Labor Negotiations

E. Public Security

8. Consequences of Violation.

A. Criminal penalties - misdemeanor where action taken in violation of the act.

B. Civil remedies --

1. Injunction, mandamus, declaratory relief
2. Action may be voided following notice to correct, which must be received within 90 days, and acted on within 30 days, lawsuit filed within 15 days.

C. Attorney fees

1. Awarded against agency, not individual.

Marin Independent Journal
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Charter board in violation of meeting act

Judge sends directors back to school

By Con Garretson *IJ* reporter

The Novato Charter School Board of Directors broke the state's open meetings law several times last year and board members could face fines or jail time *if* future violations occur, a judge has ruled.

Also, board members and the school's director must attend a seminar on the Ralph M. Brown Act in the next six months under the terms of a final judgment and permanent injunction signed last week by Marin County Superior Court Judge Lynn Duryee.

Officials said they weren't certain, but it might be the first such judgment against a public agency in Marin County. An expert on the Ralph M. Brown Act said it is the first time that such a legal ruling has been made against a California charter school under the 48-year-old law. Novato Charter School officials, without admitting wrongdoing, settled a civil complaint filed by the Marin County District Attorney's Office resulting from a December letter signed by a group of school parents, said Deputy District Attorney Robert Nichols, who investigated the case.

At issue are seven instances in which the board failed to meet the requirements of the state public meetings law in the second half of 2000, including failure to properly notify the public of meetings, the agendas of closed sessions and decisions made during such sessions.

The judgment notes that the charter school, established in 1996, "has limited resources and experience regarding compliance with the Ralph M. Brown Act."

The act, established by the state Legislature, is designed "to ensure the accountability of government officers and to enable citizens' oversight of government agencies by keeping official decision-making processes as open as possible to public knowledge and participation," according to the California First Amendment Coalition.

The act sets out regulations governing public information on meetings and open and closed sessions. Nichols said there was no evidence that the board or the director *intended* to break the Brown Act, which could have led to an even rarer criminal prosecution.

"Our belief was that the violations in this case were more erroneous than intentional," he said. The judgment does not specifically identify the board members — Philip Hallstein, Curt Kruger, Jeanette Longtin, Janine Perra and Mary Williams, but applies to them and school Director Rachel Bishop, who also was not named.

Nichols said the Brown Act typically applies only to elected officials, but in this case Bishop was included because of the role she plays in setting and conducting public meetings. Bishop did not return a call left at the school yesterday.

“All I can really say in response to any question you may ask is that we have been advised by our attorneys to make no comment other than to say that the issue has been resolved,” Longtin said yesterday.

Nichols said the judgment, which included an order to pay \$2,500 in DA investigative costs, also will apply to all future board members and directors. Each future violation could mean a maximum \$1,000 fine, six months in jail or both, he said. Fines could apply to individuals and the school, he said.

“This is probably something that other charter schools would want to be aware of”

—Terry Francke— general counsel. California First Amendment Coalition

The same penalties would apply to public officials or agencies convicted of a criminal violation of the Brown Act, however, no one has ever been found guilty of the misdemeanor, said Terry Francke, general counsel for the California First Amendment Coalition.

“Wow,” Francke said. “It’s the first time I’m aware of that a court has ever dealt with a Brown Act issue against the board of a charter school. This is probably something that other charter schools would want to be aware of.”

Francke said Novato Charter School officials could have argued that the school did not fall under the auspices of the Brown Act, although it is a public school with teachers paid by the Novato Unified School District. Because the issues will not be heard by a state appeals court, the decision will not become a state legal precedent, he said.

The violations came to light after some parents became frustrated by the way former eighth-grade teacher Chris Topham was fired by the board behind closed doors. The board failed to disclose what items were discussed on closed session agendas and what actions were taken during them, the parents wrote, both violations of the state open meetings law. Other meetings were not publicized in the manner required by the Brown Act, they wrote.

Topham, who could not be reached yesterday, was not advised of his option under the law to have his termination hearing in an open session; said Ann Falletta of Petaluma, who pulled her two children out of the school. Topham later financially settled with the school for legal costs and other expenses from his unsuccessful fight for reinstatement, she said.

Seven of the 24 children in Falletta’s daughter’s eighth-grade class left for other schools after Topham was fired. Her daughter, Ashlan, followed Topham to Summerfield Waldorf School in Santa Rosa, where he still teaches.

Falletta brought the violations to the attention of the First Amendment Project of Oakland and was advised to write a letter to the school board and the district attorney’s office to “correct” the wrongdoing. Once the letter was received, Falletta said the violations ceased for the most part.

“The board is required to notice any public meetings in an accessible way 72 hours in advance,” Falletta said. “There was one time (earlier this year) that the only notice was posted in a courtyard of the school at 3 p.m. on Friday for a special meeting on Sunday, and it was closed all weekend. That’s not following the spirit of the law.”

Falletta said she did not know much about the Brown Act until she began doing research on public access laws. “The more I looked into it the more I realized this is a tool for newspaper people,” Falletta said. “Everything I read said, ‘Call your editor. Well I don’t have an editor. It’s really a journalist’s bailiwick.’”

Marin Independent Journal
Friday, March 1, 2002

Sanitary District settles complaint

**Las Gallinas Valley board
accused of violating meeting law**

By Con Garretson
IJ reporter

The Las Gallinas Valley Sanitary District yesterday settled a civil complaint that accused board members of violating the state's open meetings law by deliberating in private. It was only the second judgment against Marin elected officials in connection with violations of the Ralph M. Brown Act, according to Marin Deputy District Attorney Bob Nichols, who led an investigation by his agency.

The settlement approved by Judge Lynn Duryee and filed yesterday, indicates the violations were made up of district matters being deliberated and decided upon by a majority of directors outside of a meeting setting, which is two separate violations. The illegal meetings did not have an agenda, nor were they publicized by a public notice, which made up the two other alleged violations in this case, according to the court documents.

In settling the lawsuit without admitting wrongdoing, the district agreed to pay \$7,500 in district attorney investigative expenses and have board members attend a seminar on the Brown Act, a term that was met in January.

OPEN MEETING LAWS IN CALIFORNIA: THE BROWN ACT: Gov't Code §54950-54960.5

This guide is intended to be a quick reference for journalists and citizens 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.

- Basic Rules for who and what are covered
- Rules for open meetings
- What if... defining what is a "meeting"
- Rules for Closed Meetings
- What to Do ... about closed meetings

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. Non-profit 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 non-profit 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:

- a. post and send notice and an agenda for any regular meeting (§54954, 54954.2); mail notice one week before regular and special meetings to those who request it (§54954.1); post notice of continued meetings (§54955.1); notice special and emergency meetings (§§54956, 54956, 54956.5); allow media to remain in meetings, cleared due to public disturbance 54957.9).
- b. limit action to items on the agenda, absent special circumstances (§54954.2(a)(b)).
- c. hold meetings in the jurisdiction of the agency except in limited circumstances (§54954(h)(1)-(4).(c).(d).(e)), and in places accessible to all, with no fee §54961(A)).
- d. do not require a "sign in" for anyone (§54953.3).

- e. 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)).
- f. allow the public to address the covered board at regular or committee meetings, on any item in the agency's jurisdiction (§54954.3(a)).
- g. conduct only public votes, with no secret ballots (§549S3(c)).
- h. 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 non-profit 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 its 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, individual 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 Newspapers v. Stockton Redevelop. Agency, 171 CA3d 95 (1985); Common Cause v. Stirling, 147 CA3d 518 (1983).

Agency members attend a conference called by someone else -- 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 MEETINGS 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 specified 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 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 closed meetings include license and permit applications for people with criminal records (§54956.7); 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, Society of Professional Journalists or California First Amendment Coalition.
- write a story or letter to the editor about it
- contact the District Attorney under §54959, or take legal action under §54960(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).