

## **The Ralph M. Brown Act**

*"The people of this State do not yield their sovereignty to the agencies which serve them. 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 good for them not to know. The people insist on remaining informed so that they may retain control over the instruments they have created."*

*The Ralph M. Brown Act, California Government Code § 54950.*

The Brown Act or "Open Meeting Law" is officially known as the Ralph M. Brown Act and is found in the California Government Code § 54950 et seq. 1. The Brown Act was enacted in 1953 to guarantee the public's right to attend and participate in meetings of local legislative bodies, and as a response to growing concerns about local government officials' practice of holding secret meetings that were not in compliance with advance public notice requirements. The Brown Act is pivotal in making public officials accountable for their actions and in allowing the public to participate in the decision making process.

### **Who is Governed by the Brown Act?**

The Brown Act governs local agencies, legislative bodies of local government agencies created by state or federal law and any standing committee of a covered board or legislative body, and governing bodies of non-profit corporations formed by a public agency. Examples of these would be city council, county board of supervisors, special district, school boards, standing committees, and even some types of Home Owners Associations (if they were created by a public entity and constituted as some sort of public district.)

### **What is a "Meeting?"**

A meeting, as defined by the Brown Act, is "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 item that is within the subject matter jurisdiction of the legislative body" (§ 54952.2 (a)). For instance, when the quorum for a Board of Supervisors reaches the number necessary to be a majority (i.e. 5 out of 7), that is considered a meeting under the Brown Act. Also, when the same or a greater number of supervisors are attending a social gathering, for which no meeting notice was given, and they start discussing business under the jurisdiction of their legislative body, that would be considered a meeting that falls under Brown Act regulations.

The key elements for a meeting are quorum and discussion, hearing or deliberation of issues; the meeting needs not to be formally convened in order to be subject to the act. That means that “informal”, “study,” “discussion,” “informational,” “fact-finding,” or “pre-council” gatherings of a quorum of the members of a board are within the scope of the Act as meetings.

### **Exceptions (Meetings Not Covered by the Brown Act)**

Conferences and retreats, other public meetings, meetings of other legislative bodies, social or ceremonial events are exempt from the Brown Act provided that legislative members follow certain rules such as limiting the discussion to the agenda in the conference; or that legislative members do not discuss amongst themselves business of their legislative body. Regulations for these exceptions to meetings are contained in § 54952.2(c). Also excluded from the application of the Brown Act are individual contacts or conversations between a member of a legislative body and any other person (§ 54952.2(c) (1). Any other person is defined as a non-staff or non-board member.

### **Serial Meetings**

The Brown Act explicitly prohibits the use of “direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body” (§ 5495.2(b)). Serial meetings involve communication between members of a legislative body that are less than a quorum, but when all participants are considered, it constitutes a majority. “For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a "serial meeting" ... Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues.

For example, when a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting. In *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, the Court concluded that a series of telephone conversations conducted by the agency's attorney as an intermediary constituted a meeting within the scope of the Brown Act. (See also, 65 Ops.Cal.Atty.Gen. 63 (1982); 63 Ops.Cal.Atty.Gen. 820 (1980)).<sup>3</sup> Thus, the use of email to create consensus among the legislative members might be in violation of the Brown Act.

### **Teleconference Meetings**

The Brown Act allows teleconference meetings if they comply with the following specifications:

- The teleconference location is accessible to the public and it is noted in the agendas;
- The meeting is useful to the public and the legislative body;
- All votes are taken by roll call, and;
- At least a quorum of the members of the legislative body are located within the boundaries of the territory over which it exercises jurisdiction (§ 54953(b)).

### **Closed Sessions**

The Brown Act allows closed sessions under the scope of a regular meeting. It stipulates that they shall comply with agenda posting and be held within the jurisdiction of the legislative body (§ 54954), which shall include a description of the items to be discussed (§ 54954.2). In addition, prior to holding any closed session, the legislative body shall disclose, in an open meeting, the item or items to be discussed in the closed session (§ 54957.7). Items that can be discussed by the legislative body are according to § 54954.5:

- License or permit determination (§ 54956.7)
- Conference with real property negotiators (§ 54956.8)
- Conference with legal counsel regarding existing or anticipated litigation (§ 54956.9)
- Liability claims (§ 54956.95)
- Threat to public services or facilities (§ 54957(a))
- Public employee appointment, employment, performance evaluation, discipline, dismissal or release (§ 54957(b))
- Conference with labor negotiators (§ 54957.6)
- Case review or planning (§ 54957.8)
- Report involving trade secret or hearings (§ 54956.87, California Health and Safety code §§1461,32106 and 32155; or California Government Code §§ 37606 and 37624.3)
- Charge or complaint involving information protected by federal law (§ 54956.86).
- The legislative body should publicly report actions, along with the vote and abstention count, taken as result of a closed session (§ 54957.1). Documentation relative to the reports should be available to any person on the next business day following the meeting (§ 54957.1(c)).

### **Special Meetings**

Either the presiding officer or the majority of members of the legislative body may call special meetings at any time by delivering each of its members a written notice and by notifying the media (which has previously requested notification of special meetings): the notice shall be

received at least 24 hours in advance before the meeting. Special meetings notice shall be also posted at least 24 hours prior to the meeting and it should be held in a location that is freely accessible to members of the public. The discussions at the special meeting are limited to the issues posted in the agenda. No other business shall be considered (§ 54956).

### **What Rules Must a Meeting Follow?**

Local agencies, in order to comply with the Brown Act, shall:

Hold open and public meetings (§ 54953 (a)). In addition, no legislative body shall conduct any meeting in a facility that prohibits the admittance of any person(s) on the basis of: race, religion, color, national origin, ancestry, sex; or that is inaccessible to disabled persons, or where the public, in order to gain access to the facility, needs to pay or purchase something (§ 54961 (a)).

- Vote publicly, no secret ballots are allowed (§ 54953 (c)).
- Comply with the protections and prohibitions of Section 202 of the Americans with Disabilities Act of 1990 (§ 54953.2).
- NOT require public registration, as a condition for attendance; the public is not required to register, provide any other information –such as self-identification--, or fulfill any condition precedent to its attendance. If an attendance list is circulated, it shall clearly state that the signing, registering, or completion of the document is voluntary (§ 54953.3)
- Allow recording of the proceeding (video tape, audio tape) provided that recording is done in an undisruptive way (§ 54953.5)
- NOT prohibit or restrict broadcasting unless there is a finding that this would be disruptive to the proceedings (§ 54953.6)
- Post notice of meetings, information shall include specified time and location, except for advisory or standing committees (§ 54954 (a))
- Post agendas at least 72 hours in advance of the meeting and it shall contain a brief general description of each item of business (§ 54954.2(a))
- NOT take action or discuss any item not appearing on the posted agenda except under certain conditions (§ 54954.2(a), conditions appear on subsection (b)) \
- Hold meetings in the jurisdiction of the legislative body (§54954 (b))
- Allow and honor any person’s request to provide and mail a copy of the agenda at the time the agenda is posted (at least 72 hours in advance) or of all the documents of the agenda packet of any meeting (§ 54954.1)
- Provide an opportunity for comment from members of the public to directly address the legislative body on any item of interest to the public on every agenda for regular meetings (§ 54954.3(a))
- Allow public criticism of the legislative body (§ 54954.3(c))
- Hold at least one public meeting, allowing for public comment, before adopting any new or increased general tax or increased assessment, and

- the legislative body shall provide at least 45 days public notice of such meeting (§ 54954.6)5
- Not charge fees for the attendance to a meeting or for carrying out any provision in the Brown Act (§ 54956.6). The only exception is when legislative bodies are allowed to charge a fee that covers the cost of mailing an agenda or agenda packet (§ 54954.1). A related requirement is found on § 54961(a) that prohibits meetings in a place where the public needs to pay or purchase something
- Disclose to the public agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency. In addition, under the California Public Records Act these documents shall be made available upon request and without delay (§ 54957.5)
- Preserve the order in meetings. Moreover, if a group willfully interrupts a meeting and the order can only be restored by the removal of disruptive individuals, then the legislative body may order the meeting room to be cleared. The session might be reinitiated and representatives of the media shall be allowed to stay and attend the session. The legislative body may also establish a procedure for readmitting individual(s) not responsible for the disruptive conduct that caused the meeting room to be cleared (§ 54957.9).

### **Violations of the Brown Act**

Each member of a legislative body who has taken action in violation of any provision of the Brown Act, and where there was willful deprivation of information to the public, is guilty of a misdemeanor (§ 54959). Civil remedies (injunction, mandamus, declaratory relief and voiding past actions of the body) are provided in case of violation of the Brown Act (§§ 54960 and 5490.1) pursuant to §§ 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5 (that is, for violations to requirements for: general open meeting, agenda posting, closed sessions, tax and assessment, special meetings and, emergency meetings). A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to §§ 54960 and 5490.1.

In order to correct a violation to the Brown Act, a complaint to cure and correct has to be filed by the interested party:

- within 30 days of the date the action was taken during an open meeting and in violation of agenda requirements
- Within 90 days of the date the action was taken for all other cases
- Once the legislative body has received the complaint, it has 30 days to cure or correct the challenged action, if it fails to do so, a person then may file suit to void the action (§ 54960.1.)