

**File ID:** 2026-00786

5/4/2026

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## **Commissions Follow Up Log Process**

File ID: 2026-00786

**Location:** Citywide

**Recommendation:** Receive and file.

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**Presenter:** Harveen Gill, Senior Deputy City Attorney, (916) 808-5346, hgill@cityofsacramento.org, Office of the City Attorney

### **Attachments:**

- 1-Description/Analysis
- 2-Presentation
- 3-Council Rules of Procedure
- 4-Open & Public VI - A Guide to the Ralph M. Brown Act

### **Description/Analysis**

**Issue Detail:** The Council Rules of Procedure outlines the process for commissioners to request future agenda items. This presentation is intended to review this process with commissioners so that they may adhere to these Rules and the Ralph M. Brown Act.

**Policy Considerations:** Not applicable.

**Economic Impacts:** Not applicable.

**Environmental Considerations:** California Environmental Quality Act (CEQA): The proposed action is not a project under CEQA because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines §15378(b)(5)).

**Sustainability:** Not applicable.

**Commission/Committee Action:** Not applicable.

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**Rationale for Recommendation:** Not applicable.

**Financial Considerations:** Not applicable.

**Local Business Enterprise (LBE):** Not applicable.



# ***Sacramento Youth Commission***

***May 4, 2026***



# Follow-Up Log Process

# What is the Follow-Up Log?

- Running list of various items of interests that commissioners would like to be agendized for future meetings



# How the Follow-Up Log works

- To place an item on the Follow-Up Log for a future agenda members may make a request during “Commission Ideas - Comments and Questions”
  - REMEMBER: items cannot be requested outside of an official meeting, and Commissioners have no additional right to information access
- Referencing the Log, Staff will then make determinations about which items will be agendized for future meetings

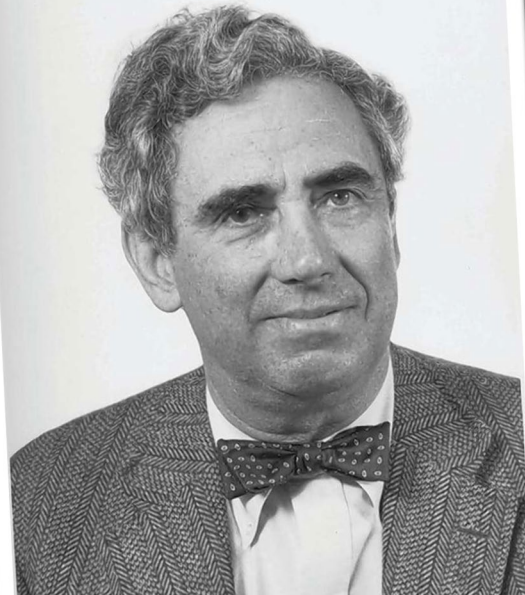


# The Ralph M. Brown Act

# Introduction to the Ralph M. Brown Act

- Enacted in 1953, the Brown Act is a California law that guarantees the public's right to attend and participate in meetings of local legislative bodies.
- Its primary purpose is to ensure that decisions made by public agencies are made in an open and transparent manner.

Journalist Michael Harris



May 25, 1952 - Part 1

## Your Secret Government: It Comes in Many Guises

By Michael Harris

SINCE the Nation's beginning Americans have been concerned with secret government; "Star Chamber session" was a fighting phrase in 1776, and has been ever since.

In the effort to keep public servants doing public business in full public view, success has been generally proportionate to the amount of interest shown by the public.

This is the first of a series of articles dealing with this problem of government-behind-closed-doors as it applies at the local - the Bay Area - level.

**WHEN** City Councils convene, the law is: "Meetings shall be public."

For school boards, the California Government Code requires: "No action authorized or required by law shall be taken by the governing board of a school district except in a meeting open to the public."

For Supervisors: "All meetings of the Board of Supervisors shall be public." There

In Washington, it is generally agreed that some matters involving the Nation's security must be discussed and decided in confidence so that potential enemies cannot learn the details of America's military strategy.

But in the Bay Area the problems facing local units of government are apt to be of no great moment to be of men in the great capitals of Europe and Asia. They are more likely to be such matters as higher taxes, difficulties in the school system, pay raises for public officials and the like.

**There Are Exceptions**

The type of closed meetings at which many of these matters are considered is known by a variety of names: caucus, session, committee-of-the-whole, pre-council meeting, work session and—perhaps most euphonious of all—study meeting.

Whatever the name, it means the same thing: the word is

as an opening wedge for some public bodies to do the bulk of their work in secret. A survey of the Bay Area by The Chronicle's indicated that in some cases boards and councils perform virtually all public business behind closed doors except the actual passage of resolutions and ordinances.

The public meeting which follows a caucus may be extremely brief. A matter which is debated in a closed meeting for hours may be introduced in a meeting, exposed to public scrutiny for an instant, voted on and enacted into law in a matter of seconds. In a legal sense, the only work the public body performs.

**Real Estate Matters**

A parallel might be to consider that the only work a housewife does when she bakes a pie is to take the pie out of the oven when it is ready for serving.

Real estate

viduals in the community who want to meet privately with the council or board to ask for special favors.

For some bodies even the procedure of doing all the basic work in private and then simply taking a formal vote in the open is too public for their comfort.

So they take advantage of the second triumphant archings instead.

These are what the term implies—meetings which are quietly called by the board's chairman. Sometimes they are held on nights or afternoons when the board does not normally meet. Or a procedure until the public has gone home after a regular meeting is adjourned and then, free from scrutiny and then, free get to work on controversial matters.

Assemblymember  
Ralph M. Brown



# Public's Business Conducted in Public

Public bodies exist to aid in the conduct of the people's business and should conduct deliberation and take action publicly. All meetings of legislative bodies shall be open and public; all persons shall be permitted to attend any meeting of the legislative body.

# Legislative Bodies

## YES Legislative Bodies

- Governing body (City Council)
- **Appointed bodies (e.g., commissions)**
- Newly elected members who haven't yet assumed office
- **Bodies created by formal action of the body**
- **Standing committees (regardless of composition)**
- Governing body of a private organization in limited circumstances

## NOT Legislative Bodies

- Temporary advisory committees of less than a quorum (i.e. **ad hoc committees**)
- Groups that advise a single decision maker



## Aside: Ad-Hoc Committees

- Formed by the chair during a public meeting, who will also appoint its members.
  - Cannot have more than a quorum of the commission as members
  - Must have a limited purpose, focusing on a specific task or issue
  - May exist for no more than one year
  - Cannot have a meeting schedule fixed by the commission
  - Members cannot discuss ad-hoc business with commission members who are not on the ad-hoc, except at a public meeting
  - The ad-hoc cannot speak FOR the commission, only advise it
  - When the ad-hoc's business is concluded, or when it expires, it must provide a summary and dissolution report to the commission
- See the Administrative Policy for Ad-Hoc Committees for more details

# Improper “Serial” Meetings



*You cannot do outside a meeting what you should do in a meeting.*



# Meeting Exceptions

Meeting does not include the following so long as no commission business is discussed or transacted:

- Social or ceremonial events
- Conferences
- Community meetings
- Meetings of other legislative bodies, e.g., City Council
- Informal gatherings

Default Approach – Perception vs. Intention:

- Regardless of the kind of gathering, avoid discussion of anything the public could construe as decision-making outside of a properly noticed meeting

# Notices and Agendas

- Regular meeting agenda must be posted 72 hours (Brown Act) in advance. The City's Sunshine Ordinance extends that deadline to 120 hours in advance.
- In a location accessible to the public.
- Meeting time, place, and brief description of each business item.
- Commission cannot take action on items not on the agenda.
- Appointees may briefly respond to, but not take action on any non-agenda item questions.



UPCOMING MEETINGS		
Name	Date	
Law and Legislation Committee	Jan 4, 2022 - 01:00 PM	<a href="#">Agenda</a>
Budget and Audit Committee	Jan 4, 2022 - 03:00 PM	<a href="#">Agenda</a>
5PM City Council	Jan 4, 2022 - 05:00 PM	<a href="#">Agenda</a>
Sacramento Disabilities Advisory Commission	Jan 5, 2022 - 06:00 PM	<a href="#">Agenda</a>
CANCELLED - Sacramento Heritage, Inc. Board of Directors	Jan 6, 2022 - 12:00 PM	
Parks and Comm...		



***Thank You!***  
***Questions?***

# **Council Rules of Procedure**

Resolution No. 2025-0075 Adopted on March 25, 2025



## Table of Contents

---

Chapter 1 – Authority/Administration .....	5
A. General Authorities and Applicability .....	5
B. General Administration .....	5
C. Amendment.....	5
D. Suspension .....	5
E. Rosenberg’s Rules of Order .....	6
Chapter 2 – Duties.....	7
A. Duties of Members and Staff.....	7
B. Duties of Mayor and Vice Mayor .....	7
Chapter 3 – Conduct of Members .....	8
A. Norms and Expectations.....	8
B. General Conduct .....	8
C. Conduct with Members.....	9
D. Conduct with City Manager and Staff .....	10
E. Conduct with the Public.....	11
F. Conduct with Other Agencies.....	11
G. Conduct with Boards and Commissions .....	11
H. Conduct with the Media.....	12
I. Ethical Conduct .....	12
Chapter 4 – Conduct of City Staff.....	13
A. General Conduct .....	13
Chapter 5 – Conduct of the Public .....	14
A. General Conduct .....	14
B. Addressing the City Council .....	16
C. Electronic Devices .....	18
D. Location of Speaker.....	18
Chapter 6 – Meeting Types and Schedules.....	19
A. Regular Meetings .....	19
B. Adjourned Meetings.....	19
C. Special Meetings .....	19
D. City Council Emergency Meetings .....	19
E. Closed Sessions .....	20
F. Public Hearings .....	21
G. Teleconference Meetings .....	22

H.	Televised Meetings.....	22
Chapter 7	– Meeting Agendas .....	23
A.	Requirements for Agenda Item Submission.....	23
B.	Declaration of Policy.....	23
C.	Procedures for Submission of Reports.....	24
D.	Written Communications from the City and the Public .....	24
E.	Preparation of the Agenda Packet.....	25
F.	Distribution of the Packet.....	25
G.	Posting of Agenda .....	25
H.	Failure to Meet Agenda Deadlines.....	26
I.	Exceptions to the Agenda Requirement.....	26
J.	Order of Business and Types of Agenda Items.....	26
K.	Ordinances and Non-Binding Resolutions .....	27
L.	Ceremonial City Council Resolutions.....	29
Chapter 8	– Conduct of Meeting.....	30
A.	Call to Order – Presiding Officer .....	30
B.	Roll Call/Attendance .....	30
C.	Order of Discussion.....	31
D.	Quorum Call .....	33
E.	Obtaining the Floor .....	33
F.	Motions .....	34
G.	Voting.....	35
Chapter 9	– Council Vacancies .....	37
A.	Procedures .....	37
Chapter 10	- Facilities.....	38
A.	Meeting Locations .....	38
B.	Meeting Capacity.....	38
Chapter 11	- City Council Committees and Regional Organizations .....	39
A.	General.....	39
B.	Council Standing Committees.....	39
C.	Council Ad Hoc Committees .....	40
D.	Regional Organizations .....	41
Chapter 12	– Councilmember Proposal Requests .....	42
A.	General.....	42
B.	Procedures .....	42

C.	Councilmember Proposal Request Flowchart (following page) .....	43
Chapter 13 – Law and Legislation Committee .....		45
A.	Authority; Purposes.....	45
B.	Procedures .....	45
C.	Requirements for Agenda Item Submission.....	47
Chapter 14 – Personnel and Public Employees Committee .....		48
A.	Purposes.....	48
B.	Procedures .....	48
C.	Requirements for Agenda Item Submission.....	48
Chapter 15 – Budget and Audit Committee .....		49
A.	Purposes.....	49
B.	Procedures .....	49
C.	Requirements for Agenda Item Submission.....	50
Chapter 16 – Racial Equity Committee.....		51
A.	Purposes.....	51
B.	Procedures .....	51
C.	Requirements for Agenda Item Submission.....	51
Chapter 17 – City Advisory Bodies.....		52
A.	Vacancies and Appointments.....	52
B.	Requests for Future Agenda Items .....	53
C.	Advisory Body Reports.....	53
Chapter 18 – Annual Review of City Council Appointive Officers .....		55
A.	Purposes.....	55
B.	Procedures .....	55
Glossary .....		57

## Chapter I – Authority/Administration

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### A. General Authorities and Applicability

1. The Charter of the City of Sacramento provides that the city council shall determine its own rules and order of business ([Sacramento City Charter, § 30](#)). These Council Rules of Procedure (“Rules”) apply when not in conflict with the [Charter of the City of Sacramento](#), [Sacramento City Code](#), the Constitution, or laws of the State of California, including the Ralph M. Brown Act ([Government Code, § 54950 et seq.](#)) (Brown Act). Until such time as they are amended or new rules are adopted by resolution, these Rules govern the order and conduct of business of the city council, legislative bodies that meet concurrently with the council, council committees, and council-established boards, commissions, and committees (collectively, “legislative bodies”).
2. These rules are applicable to council-established boards, commissions, and committees, as well as to the persons sitting on those boards, commissions, and committees. Those council-established boards, commissions, and committees that are authorized to adopt rules of procedure shall adopt rules that are consistent with these Rules and may not be in conflict with the Charter of the City of Sacramento, Sacramento City Code, the Constitution, or laws of the State of California.
3. In the absence of council-adopted administrative policies, council staff shall abide by the administrative policies approved by all charter officers.

### B. General Administration

1. The council shall review and revise these Rules annually, or as needed.
2. During council discussions, deliberations, and proceedings, the presiding officer has the primary responsibility to ensure that the council, staff, and members of the public adhere to these Rules.
3. Any member who thinks the Rules are being violated may make a “point of order” to call for the presiding officer to enforce the Rules.

### C. Amendment

Any rule may be adopted, altered, amended, or repealed by resolution at any time by a majority vote of the council, provided that at least a 120-hour notice of such proposed rule change is given to the councilmembers.

### D. Suspension

1. Any rule may be temporarily suspended by a two-thirds vote of all councilmembers present, being not less than five votes.

E. Rosenberg's Rules of Order

To the extent these Rules do not address an issue of parliamentary procedure for legislative body meetings, [Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century](#) shall apply.

## Chapter 2 – Duties

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### A. Duties of Members and Staff

- I. Members and city staff shall conduct the business of the City of Sacramento:
  - a. Recognizing that stewardship of the public interest is of primary concern;
  - b. Working for the common good of the people of Sacramento; and
  - c. Assuring fair and equal treatment of all persons, claims, and transactions coming before the council, council committees, and council-established boards, commissions, and committees.

### B. Duties of Mayor and Vice Mayor

- I. The mayor is:
  - a. The presiding officer of the city and of all meetings of the council;
  - b. The official head of the city for performance of duties lawfully delegated to the mayor by the charter;
  - c. Referred to as “chair” or “chairperson” when acting as presiding officer of legislative body meetings other than the council;
  - d. Considered a member of the council;
  - e. Entitled to make and second motions on matters before the council and vote on actions, but possesses no veto power over actions of the council;
  - f. The primary, but not the only, person responsible for interpreting the policies, programs, and needs of city government to the people; and for informing the people of any major change in policies or programs; and
  - g. Empowered, but not exclusively empowered, to make recommendations to the council on all policies and programs that require council decisions; and to perform such other duties as prescribed by the charter.
2. The vice mayor and mayor pro tem shall be elected annually from among the members of the council, other than the mayor, by a majority vote at the council’s first meeting in January.
  - a. In the absence of the mayor from the city or a council meeting, the vice mayor shall possess all powers of the office of the mayor and be subject to all prescribed duties for that office.
  - b. In the absence of the mayor and vice mayor from the city or a council meeting, the mayor pro tem shall possess all powers of the office of the mayor and be subject to all prescribed duties for that office.

## Chapter 3 – Conduct of Members

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### A. Norms and Expectations

#### I. Members shall:

- a. Put constituents first at all times;
- b. Treat each other, staff, and members of the public with dignity, courtesy, and respect;
- c. Value all opinions, be tolerant of new and different ideas, and encourage creativity and innovation;
- d. Follow through on commitments and be accountable to each other;
- e. Clarify when items are discussed in confidence and maintain appropriate confidentiality;
- f. Be attentive to others, limiting interruptions and distractions;
- g. Encourage dissent in debate while being mindful not to prolong discourse or block consensus;
- h. Be candid with each other about ideas and feelings, and resolve conflicts directly;
- i. Keep comments clear, concise, and on-topic to maximize opportunities for all to express themselves;
- j. Continuously strive to improve how members work as a team;
- k. Place clear and realistic demands on staff resources and time when requesting action;
- l. Start and end meetings on time, work from an agenda, and be present, attentive, and prepared;
- m. Present problems in a way that promotes discussion and resolution; and
- n. Continually work to build trust in each other.

### B. General Conduct

#### I. Members shall:

- a. Treat each other and everyone with courtesy and refrain from inappropriate behavior and derogatory comments;
- b. Be fair, impartial, and unbiased when voting on quasi-judicial actions;

- c. Use the speaker sequencing system to inform the presiding officer of their wish to speak and wait to be acknowledged by the presiding officer before speaking, and abide the following for orderly and courteous discussion:
  - (i) Members should permit the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate the discussion, while fully participating in the process;
  - (ii) The presiding officer may give preferential speaking order to the councilmember who represents the district of the agenda item;
  - (iii) In the interest of time, the presiding officer may limit the time allotted to speakers, including members of the body;
  - (iv) Members are encouraged to hear comments from other members prior to speaking a second time; and
  - (v) It is usual courtesy for the presiding officer to play a less active role in the debate and discussion and to make a summary or final comments on any item.
- d. Move to require the presiding officer to enforce this chapter, and the presiding officer shall do so upon an affirmative vote of a majority of the members present;
- e. Preserve order and decorum during the meeting;
- f. Not delay or interrupt the proceedings or the peace of the council, nor disturb any member while speaking, by conversation or otherwise, nor disobey the orders of the council, or the presiding officer, except as otherwise herein provided;
- g. Abide by the Confidential Information Policy (Resolution No. 2010-0108) prohibiting disclosure of confidential communications and authorizing public censure for failure to comply with the policy;
- h. Support the laws established by the council; and
- i. Abide by this chapter in conducting the business of the City of Sacramento.

### C. Conduct with Members

- I. Members shall:
  - a. Value each other's time;
  - b. Attempt to build consensus on an item through an opportunity for dialogue; but when this is not possible, the majority vote shall prevail, and the majority shall show respect for the opinion of the minority;

- c. Have the right to dissent from, protest, or comment upon any action of the council;
- d. Respect each other's opportunity to speak and, if necessary, agree to disagree;
- e. Avoid offensive negative comments and practice civility and decorum during discussions and debate; and
- f. Assist the presiding officer's exercise of the affirmative duty to maintain order.

#### D. Conduct with City Manager and Staff

##### I. Members of the city council shall:

- a. Speak to the city manager directly on issues and concerns;
- b. Direct the city manager to implement council's policy decisions through the administrative functions of the city;
- c. Treat staff professionally and refrain from publicly criticizing individual employees;
- d. Avoid involvement in personnel issues except during council closed sessions regarding council-appointed staff, including but not limited to the city attorney, city auditor, city clerk, city manager, city treasurer, or director of the office of public safety accountability;
- e. Discuss directly with the city attorney, city auditor, city clerk, city manager, city treasurer, or director of the office of public safety accountability as appropriate, any displeasure with their department or staff; and
- f. Request answers to questions on council agenda items from the city attorney, city auditor, city clerk, city manager, city treasurer, or director of the office of public safety accountability, department directors, or division managers prior to the meeting whenever possible.

##### 2. General Direction

- a. Council requests that deal with policy issues and council requests that may be construed as direction must be directed to the city manager, except for general inquiries or questions, in which case the council may go to the department directors or key staff in the City Manager's Office. Members may also deal directly with the city attorney, city clerk, city treasurer, city auditor, or other staff appointed by the council.

E. Conduct with the Public

I. Members shall:

- a. Make the public feel welcome;
- b. Be impartial, respectful, and without prejudice toward the public;
- c. Listen courteously and attentively to public comment;
- d. Not argue back and forth with members of the public; and
- e. Make no promises to the public on behalf of the legislative body.

F. Conduct with Other Agencies

I. Members shall:

- a. Project a positive image of the city when dealing with other agencies;
- b. Show tolerance and respect for other agencies' opinions and issues and, if necessary, agree to disagree;
- c. Represent official policies or positions of the council when designated as delegates of a legislative body;
- d. Explicitly state when their opinions and positions do not represent the legislative body when representing their individual opinions and positions, and not allow the inference that they do (see also Rule 13.A.1.c); and
- e. Have the ability to lobby or discuss issues that have been adopted by legislative bodies or are standing policies of the legislative bodies with other legislators, government officials, applicants, or other interested persons.

G. Conduct with Boards and Commissions

I. Councilmembers shall:

- a. Treat all members of boards, commissions, and committees with appreciation and respect; and
  - b. Refrain from participation at board, commission, and committee meetings with the purpose of influencing the outcome of those meetings.
2. Rule 3.G.1.b does not apply to the Compensation Commission, Sacramento Ethics Commission, or Independent Redistricting Commission.

## H. Conduct with the Media

1. Members shall not discuss – or go "off the record" with the media to discuss – confidential or privileged information pertaining to closed sessions, or attorney-client privileged or attorney work product communications, including personnel, litigation, or real property negotiations.
2. Providing non-confidential, non-privileged background information is acceptable.

## I. Ethical Conduct

1. Members shall conduct themselves in accordance with the Sacramento City Code of Ethics ([Sacramento City Code § 4.02](#)) including but not limited to:
  - a. Members shall comply with the citywide nepotism policy adopted or approved by city council resolution.
  - b. Members shall comply with the citywide whistleblower protection policy adopted or approved by city council resolution.
  - c. Members shall receive ethics training material, as required by Assembly Bill 1234 within 30 days of taking office and at least every two years.
  - d. Members shall receive sexual harassment training material, as required by Assembly Bills 1825 and 1661 within 30 days of taking office and at least every two years.
  - e. Members shall follow the Political Reform Act and Fair Political Practices Commission regulations.
  - f. Members shall conduct themselves in accordance with such policies and training.

## Chapter 4 – Conduct of City Staff

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### A. General Conduct

- I. Staff shall:
  - a. Prepare well-written staff reports and provide accompanying documents on all agenda items in accordance with the agenda format and preparation schedule;
  - b. Be available for questions from members in accordance with the [Brown Act](#) prior to and during meetings;
  - c. Respond to questions from the public during meetings only when requested to do so by members or the city manager;
  - d. Refrain from arguing with the public or members; and
  - e. Switch electronic equipment such as cellular telephones to silent or off mode during council meetings.
2. Staff shall remain objective on issues and not be advocates for issues unless so directed by the legislative body.
3. To the extent permitted by the [Brown Act](#), the city manager and staff shall, as soon as possible, inform the mayor and members representing the districts affected of controversial, significant-impact issues that are coming before the legislative body.
4. The city manager shall advise management staff of potentially political or controversial issues coming before the legislative body and direct staff to be present and appropriately prepared.
5. The city manager shall make available an informational briefing for members' staff for items affecting the city and items on, or potentially on, the council agenda. Briefings shall include necessary department staff and shall take place as soon as possible.

## Chapter 5 – Conduct of the Public

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### A. General Conduct

#### I. Decorum.

- a. Members of the public attending council meetings shall observe the same rules and decorum applicable to the members and staff as noted in chapters 3 and 4 of these Rules.
- b. No person shall engage in conduct that is intended to or is likely to provoke violent or riotous behavior, nor shall any person engage in conduct that disturbs the orderly conduct of the council meeting. Examples of disorderly conduct include:
  - (i) Feet-stamping.
  - (ii) Whistling or other abrupt noises.
  - (iii) Yelling or shouting or interrupting a speaker who is addressing the council.
  - (iv) Organized silent demonstrations and other demonstrations intended to disturb the progress of the meeting.
  - (v) Physically threatening conduct.
  - (vi) Verbal threats.
  - (vii) Banging, slamming, or throwing objects.
  - (viii) Interfering with other attendees' ability to participate or address the council.
  - (ix) Entering areas of the chamber not intended for the public.
  - (x) Incitement to commit unlawful or disturbing acts or disrupt proceedings.
  - (xi) Refusing to abide speaker time limits and leave the podium when directed.
  - (xii) Placing physical objects in a manner that creates a disturbance or disrupts proceedings.
  - (xiii) Interjection when not at the podium.
  - (xiv) Refusing to heed the presiding officer's call for order.

- (xv) Approaching the podium or dais without permission of the presiding officer.
  - (xvi) Signs may not be mounted to any solid item that would facilitate holding or waving and may not impede the view of other attendees.
- c. Enforcement. In addition to the presiding officer, the decorum officer and the sergeant-at-arms shall have primary responsibility for enforcing council meeting decorum. Additionally, any member may at any time call for a point of order, to request the timely enforcement of these rules of decorum.
- (i) The presiding officer shall request that a person who is breaching the rules of decorum cease the conduct. If the person does not cease the conduct immediately, the presiding officer may order the person to leave the council meeting or order the sergeant-at-arms to remove the person.
  - (ii) The decorum officer, who shall be a council-selected person who sits on the dais, may also exercise the duties of the presiding officer in Rule 5.A.1.c.(i) above.
  - (iii) The sergeant-at-arms shall assist in enforcing the rules of decorum, including removing disorderly persons upon order of the presiding officer or decorum officer.
  - (iv) If decorum cannot be maintained in council chambers, the presiding officer may take a recess so that decorum can be established.
    - a. If any meeting is willfully interrupted by any person or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be maintained by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. ([Government Code, § 54957.9](#)).

The presiding officer shall direct the sergeant-at-arms to allow the following to attend the remaining session:

- i. Once decorum is restored, allow all participants back into council chambers; or
- ii. Once decorum is restored, allow all persons, with the exception of any individuals identified by the presiding officer or decorum officer who were willfully interrupting the meeting or participating in the disturbance, back into council chambers; or

iii. Once decorum is restored, allow only credentialed representatives of the press or other news media, except those participating in the disturbance, back into council chambers.

(v) If it is infeasible to continue the orderly conduct of the meeting in the council chambers the council will continue the meeting in another room at the City Hall Complex and only city staff, credentialed members of the press or other news media, except those participating in the disturbance, will be allowed into the meeting.

2. Lobbyists shall identify themselves and the client(s), business, or organization they represent before speaking to the council ([Sacramento City Code, § 2.15.160](#)).

## B. Addressing the City Council

1. Purpose of public comment. During regular meetings, the city provides opportunities for the public to address the council as a whole in order to listen to the public's opinions regarding agenda items and unagenda matters within the subject matter jurisdiction of the city. At all other (special) meetings, public comment is limited to agenda items.

a. Public comments should not be addressed to individual members nor to city officials, but rather to the council as a whole regarding city business. Comments should be directed to the council and not the audience.

b. While members of the public may speak their opinions on city business, personal attacks on members and city officials, use of swear words, and signs or displays of disrespect for individuals are discouraged as they impede good communication with the council.

c. Consistent with the [Brown Act](#), the public comment periods on the agenda are not intended to be "question and answer" periods or conversations with the council and city officials. The limited circumstances under which members may respond to public comments are set out in Rule 8.D.2.

d. Members of the public with questions concerning consent calendar items may contact the staff person or the member whose district is identified on the report prior to the meeting to reduce the need for discussion of consent calendar items and to better respond to the public's questions.

e. The presiding officer may stop a member of the public whose comments are not confined to the agenda item being heard. During the public comment portion of the agenda, the presiding officer may stop a member of the public whose comments are not within the subject matter jurisdiction of the city.

2. Speaker time limits. In the interest of facilitating the council's conduct of the city's business, the following time limits apply to members of the public (speakers) who wish to address the council during the meeting.

- a. Matters not on the agenda: two minutes per speaker.
  - b. Consent calendar items. The consent calendar is considered a single item and speakers are therefore subject to the two-minute time limit for the entire consent calendar. Consent calendar items can be pulled at a member's request and will be considered individually, with up to two minutes of public comment per speaker.
  - c. Discussion calendar items: two minutes per speaker.
  - d. Time limits per meeting. In addition to the above time limits per item, the total amount of time any one speaker may address the legislative body at a meeting is eight minutes.
    - (i) Each speaker shall limit their remarks to the specified time allotment.
    - (ii) The presiding officer shall consistently utilize the timing system, which provides speakers with notice of their remaining time to complete their comments. A countdown display of the allotted time will appear on the screen behind the dais.
    - (iii) In the further interest of time, speakers may be asked to limit their comments to new materials and not repeat what a prior speaker said. Organized groups may choose a single spokesperson who may speak for the group, but with no increase in time.
    - (iv) Speakers shall not concede any part of their allotted time to another speaker.
    - (v) The presiding officer may further limit, or expand, the time allotted for public comments per speaker or in total for the orderly conduct of the meeting; such limits shall be fairly applied.
2. Speaker slips. Members of the public in chambers wishing to speak to the legislative body must submit to the city clerk a completed speaker's slip indicating the agenda item or matters not on the agenda item that they wish to address before the item is called.

### C. Electronic Devices

1. Members of the public shall turn their electronic devices that are capable of emitting sound – including cellular telephones, personal data devices, digital tablets, laptop computers, etc. – to the off- or silent-mode during council meetings.
2. Cameras. Cameras and recording equipment may be used during council meetings only if:
  - a. The devices are silent during use;
  - b. The devices are used in a manner and at locations that do not impede walkways or others views of the meeting or disrupt the conduct of the meeting;
  - c. Continual lighting may not be used with video recording; and
  - d. Flash photography is not allowed.

### D. Speaker Location and Documents

1. Members of the public shall not approach the dais without the express consent of the presiding officer or city clerk.
2. Members of the public wishing to address the legislative body must approach the podium when recognized by the presiding officer or city clerk and speak only from the podium.
3. Members of the public may make oral communications but may not display any content on the overhead screens or otherwise. Members of the public wishing to provide documents to the council shall comply with Rule 7.D.

## Chapter 6 – Meeting Types and Schedules

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### A. Regular Meetings

1. The city council shall hold regular meetings and provide the time, place, and manner of holding its meetings by annual resolution. A majority of regular council meetings must be held after 5:00 p.m. All meetings of the council must be open to the public, except as permitted by state law ([Sacramento City Charter, § 31](#)).
2. The city council shall generally meet on Tuesdays at either 2:00 p.m. or 5:00 p.m. in the City Hall Council Chamber, 915 I Street, First Floor, Sacramento, California, except as otherwise stipulated in the adopted meeting schedule.
3. City council standing committees shall generally meet on Tuesdays at 11:00 a.m. in the City Hall Council Chamber, 915 I Street, First Floor, Sacramento, California, except as otherwise stipulated in the adopted meeting schedule.
4. City boards, commissions, and committees shall hold regular meetings and provide the time, place, and manner of holding its meetings, according to the council-adopted meeting schedule. All meetings of the city's legislative bodies must be open to the public, except as permitted by state law. The city council shall annually, and as needed, adopt a meeting schedule for all city legislative bodies.
5. City boards, commission, and committees shall generally meet at either 11:00 a.m., 1:00 p.m., or 5:30 p.m. at the City Hall Complex, 915 I Street, Sacramento, California, except as otherwise stipulated in the council-adopted meeting schedule.

### B. Adjourned Meetings

As permitted by law, the legislative body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the motion of adjournment.

### C. Special Meetings

1. The mayor or a majority of the members of the City Council may direct the city clerk to call a special meeting by providing notice 24-hours in advance of the meeting to the mayor, to all members, and to all media outlets and persons having requested in writing notification of such meetings pursuant to state law.
2. Whenever practicable, special meetings must take place in the council chamber and be video streamed live and recorded for viewing later.

### D. City Council Emergency Meetings

1. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities or services, the City Council may hold an emergency meeting without complying with either the 120-hour (regular meeting) or 24-hour (special meeting) notice and

posting requirements but shall otherwise comply with the [Sacramento City Code § 4.04](#) and [Brown Act](#) procedures generally stated below.

2. Each local newspaper of general circulation and radio or television station that has requested notice of emergency meetings pursuant to the [Brown Act](#) shall be notified by the City Clerk, or designee thereof, at least one hour prior to the emergency meeting, or in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the emergency meeting.
3. This notice shall be given by telephone call or text message to the numbers provided in the most recent request for notification.
4. In the event that telephone services are not functioning, the notice requirements of this section are deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.
5. During an emergency meeting, the legislative body may meet in closed session pursuant to the [Brown Act](#) if agreed to by a two-thirds vote of the members present, being not less than five votes of the council.
6. All special meeting requirements in the [Brown Act](#) are applicable to an emergency meeting, except for the 24-hour notice and posting requirement.
7. The minutes of an emergency meeting; a list of persons who the presiding officer of the legislative body, or designee of the council, notified or attempted to notify; a copy of the roll call vote; and any actions taken at the meeting, shall be posted for a minimum of ten days in a public place as soon after the meeting as possible.

#### E. Closed Sessions

1. Closed sessions generally shall be special meetings held immediately prior to regular meetings.
2. In accordance with the [Brown Act](#), the public may speak regarding any closed session item prior to the closed session.
3. All closed session information, verbal or written, is privileged and confidential and shall not be shared with any person not at the closed session. Any member sharing information in violation of this rule may be subject to censure by the council consistent with the council's confidentiality policy then in effect.
4. The city attorney shall report out in public session any reportable actions that were taken by council and the vote on such actions in accordance with the [Brown Act](#).
5. For closed sessions related to appointive-officer performance evaluations and compensation, see Chapter 18.

## F. Public Hearings

1. The city clerk shall set council hearing dates and notify the council via the preliminary draft agenda on all matters that require a notice and public hearing before the council, such as matters received from the planning division and appeals to the council.
2. Public hearings will not be withdrawn or continued without the full knowledge and concurrence of the councilmembers within whose districts/jurisdiction the issue resides.
3. The council may refuse to grant a continuance of any hearing unless there is a valid legal reason why the hearing must be continued.
4. Continuances.
  - a. Any person (applicant, appellant, or designated representative) scheduled for a public hearing before the legislative body:
    - (i) May obtain one continuance for a period not to exceed the second regular meeting after the original scheduled hearing date, as a matter of right, without personally appearing on the scheduled hearing date, provided a written request for the continuance must be delivered to the city clerk by noon on the day prior to the scheduled public hearing. Any person who has once obtained a continuance by any procedure may not obtain a subsequent continuance under this Rule 6.F.4.a(i).
    - (ii) Who wants to obtain a continuance of the hearing beyond the second regular meeting after the original scheduled hearing date, or who has not notified the city clerk as provided in Rule 6.F.4.a(i), may obtain a continuance only by appearing before the legislative body at the time the original hearing is scheduled and requesting a continuance. This continuance is not a matter of right and will not be granted unless the legislative body is satisfied that good cause exists for the continuance and that a substantial number of people will not be inconvenienced by such continuance.
    - (iii) Who has once obtained a continuance of a hearing either by notice to the city clerk under Rule 6.F.4.a(i) or by personal appearance under Rule 6.F.4.a(ii) may obtain a further continuance only by appearing before the legislative body at the scheduled hearing and satisfying the legislative body that extraordinary circumstances exist that would justify this second continuance.

- (iv) Who has twice obtained a continuance of a hearing may obtain an additional continuance only by appearing before the legislative body at the scheduled hearing and satisfying the legislative body that a miscarriage of justice would result from the refusal of the legislative body to grant a continuance.
- b. City staff may obtain a continuance based on the need of the originating department or on behalf of a member. Department staff may request, via the city clerk, as many continuances as needed to complete and ready the project or appeal for the hearing process; however, staff may not serve as a requestor on behalf of an applicant or appellant.
- c. Any organized group of residents or neighborhood associations not recognized as an applicant or appellant may contact their councilmember and request a continuance as needed to complete and ready the project or appeal for the hearing process. The member, in their sole discretion, may request the legislative body approve the continuance for good cause.
- d. At the meeting when the hearing is scheduled, but before the hearing starts, any member may request the council approve a continuance.
- e. Disputes regarding the length of a continuance will be decided by the council at the scheduled hearing if city staff or the city clerk cannot obtain mutual agreement between the parties beforehand.

#### G. Teleconference Meetings

- a. Members of the City Council may participate via a teleconference platform only in accordance with the [Brown Act](#).

#### H. Televised Meetings

- a. City Council meetings held in the council chambers are generally telecast via local television and available live via video streaming on the city's official [website](#) and recorded for viewing later.
- b. Standing committee and city established board, committee, and commission meetings held in the council chambers or historic hearing room are available live via video streaming on the city's official [website](#) and recorded for viewing later.

## Chapter 7 – Meeting Agendas

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### A. Requirements for Agenda Item Submission

1. The city manager and city clerk shall develop the agenda for council meetings in consultation with the mayor and/or vice mayor, with the exception of agenda items involving the compensation of charter officers or any personnel that report to the council, which may only be brought forward with the initial approval of the mayor, or recommendation by a majority of the Personnel and Public Employees (P&PE) Committee.
2. Charter officers, the director of the office of public safety accountability, and the Sacramento Housing and Redevelopment Agency executive director may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.
3. Department directors, subject to the discretion of the city manager, may submit staff reports, including oral reports, to the city clerk for placement on the agenda.
4. Outside agencies and advisory bodies, and city boards, committees, and commissions may submit agenda items in accordance with the following:
  - a. Items must be sponsored for agenda placement by the mayor, charter officers, or department staff; and
  - a. All agenda items must be submitted in accordance with the agenda packet submission and preparation requirements.
5. Prior to an agenda item being brought to the city council, it should be brought to any relevant city board, committee, or commission and the staff report should include the board, committee, or commission recommendation.

### B. Declaration of Policy

1. No ordinance, resolution, motion, or item of business may be introduced or acted upon at a meeting of a legislative body of the city without it appearing on a duly noticed and posted agenda in accordance with [Sacramento City Code § 4.04](#) and the [Brown Act](#). Exceptions to this rule are limited to those provided by state law.
2. No ordinance, resolution, motion, or item of business will be considered that:
  - a. Does not affect the conduct of the business of the City of Sacramento or its powers or duties as a municipal corporation, or
  - b. Supports or disapproves of any legislation or action
    - (i) Of the State of California;
    - (ii) Of the President or Congress of the United States; or

(iii) Before any officer or agency of the state or nation, unless the proposed legislation or action, if adopted, will affect the conduct of the municipal business or the powers or duties of the City of Sacramento or its officers or employees.

c. Rule 7.B.2 may be invoked only before public comment or council deliberation on the matter and by five affirmative votes on the question: "Shall the council consider this matter?"

#### C. Procedures for Submission of Reports

1. A written staff report should be prepared and submitted in accordance with the agenda review procedure and reviewed by the relevant departments including but not limited to finance, city manager, and city attorney.
2. Continued items do not require a new report if there are no changes other than the agenda date. If there is any other change, a new report meeting all applicable requirements must be submitted.
3. Staff reports should include sufficient information for members of the council and the public to understand the action being considered, including any board, commission, or committee recommendation, and the appropriate legislative history.

#### D. Written Communications from the City and the Public

1. The city clerk shall manage communications to members regarding meeting topics to ensure compliance with the [Brown Act](#).
  - a. Except for records exempt from disclosure under the California Public Records Act ([Government Code, § 54957.5](#), subd. (b)) and otherwise by law, agendas and any other writings distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public and shall be made available upon request without delay.
  - b. Materials distributed to the members during the meeting shall be available for viewing by the public during the meeting if the materials were prepared by the city or a member, or at the conclusion of the meeting if prepared by another person ([Government Code, § 54957.5](#), subd. (b)).
2. Interested parties or their authorized representatives may address the council by written communications regarding agenda items.
  - a. Written communications received by the city clerk will be delivered to members as soon as possible or at the city council meeting if related to an item on that meeting agenda.

- b. Members of the public may submit comments via the agenda “e-comment” function on the city’s [website](#). E-comments can be submitted and viewed on the city’s website agenda page once an agenda is posted and until adjournment of that meeting. The full e-comment package will be available in the city’s online records library after the conclusion of a meeting.
- c. Documents (20 copies recommended) that members of the public submit to the legislative body at the meeting shall be given directly to the city clerk for distribution and shall not be given directly to the members. The documents will be made available to the public.

E. Preparation of the Agenda Packet

- 1. No later than 120-hours prior to each regularly scheduled meeting, the city clerk shall finalize the agenda packet.
- 2. Agenda Packet Contents.
  - a. The agenda packet will include the agenda, the staff reports, draft resolutions and ordinances, contracts, and other attachments. Items noted as “To Be Delivered” on the agenda will be delivered and published to the city’s [website](#) upon receipt by the city clerk. No item is required to be considered by the legislative body if the applicable written material is not delivered to the members before the meeting and made available to the public at the same time.
  - b. Corrections or supplements to a staff report or other written materials already included in the agenda packet may be delivered separately.
  - c. All agreements on the agenda must be available for review by the council and the public prior to the meeting, or at the meeting location during the meeting, unless determined otherwise by the city attorney.
  - d. Unless waived by a two-thirds vote of council, all city labor agreements and all agreements greater than \$1,000,000 must be posted on the city’s website and be made available to the public at least ten days prior to council action as required by [Sacramento City Code section 4.04.020](#).

F. Distribution of the Packet

- 1. The city clerk shall make available the agenda packet to the councilmembers and post it to the website no later than 120 hours prior to a regularly scheduled meeting.

G. Posting of Agenda

- 1. The city clerk shall post the agenda of each regular meeting of the legislative body at least 120-hours in advance of the meeting in a location that is freely accessible to members of the public, as required by the [Brown Act](#).

2. The city clerk shall maintain an affidavit indicating the location, date, and time of posting each agenda.
3. If technical difficulties occur, the agenda and reports will be published on the city's [website](#) as soon as those difficulties are resolved.

#### H. Failure to Meet Agenda Deadlines

1. The city clerk shall not, without the concurrence of the city manager and city attorney, accept any agenda item or revised agenda item after the deadlines established and noted in these Rules.
2. Any agenda items or revised agenda items will be reviewed by relevant departments as identified by the agenda workflow approval process.

#### I. Exceptions to the Agenda Requirement

1. Matters not included on the published agenda may be discussed and acted upon by the legislative body only in the following situations:
  - a. At a meeting during which a majority of the members determine in open session that the matter in question constitutes an "emergency" ([Government Code, § 54956.5](#)); or
  - b. Upon a determination by two-thirds of the members, or if less than two-thirds are present by unanimous vote of the members present, that:
    - (i) There is a need to take immediate action; and
    - (ii) The need for action came to the attention of the city after the agenda had been posted.

#### J. Order of Business and Types of Agenda Items

The order of business should be carried out as listed on the agenda in the order as set out below; however, the presiding officer may reorder the items at the meeting, unless members object. Members may request items be reordered by motion.

1. Closed Session: confidential discussions with the legislative body as permitted by the [Brown Act](#).
2. Special Presentations/General Communications: the presentation and receipt of ceremonial resolutions and recognitions not requiring formal legislative body action. Special presentations are limited to two per meeting and no more than five minutes each.
3. Consent Calendar: considered one item, consisting of matters routine in nature and not likely to be subject to debate or inquiry by the members or the public; typically adopted in one motion.

4. Public Hearings: duly noticed hearings as mandated by local, state, or federal law, providing an opportunity for public review and comment of a proposed action by the council.
5. Discussion Calendar: non-routine items requiring an oral presentation and discussion before action is taken.
6. Information Items: items when staff is required by federal or state law or city code to inform council of an issue when authority has been delegated to a person, position, board, or commission.
7. Council Comments – Ideas, Questions, and ABI234 Reports:
  - a. Brief oral or written reports summarizing meeting or conference attendance at city expense, as required by Assembly Bill 1234 ([Government Code, § 53232.3](#));
  - b. Requests for the city manager or staff to report on various issues;
  - c. Requests to place items on a future council meeting agenda;
  - d. Requests to refer preparation or review of non-binding resolutions or ordinances to the Law and Legislation Committee; and
  - e. Reports on district and citywide activities or news.
8. City Manager’s Report
  - a. Brief oral report from the City Manager or designee.
9. Public Comment-Matters Not on the Agenda: oral communications from the audience regarding matters not on the agenda but within the subject matter jurisdiction of the city.

K. Ordinances and Non-Binding Resolutions

1. Ordinance and non-binding resolution preparation must be referred to the Law and Legislation Committee (L&L) before coming to council, as described in Rule 13. However, ceremonial city council resolutions (see Rule 7.L, below) need not be referred to the Law and Legislation Committee.
2. Ordinances on the agenda may be passed for publication or adopted in accordance with the procedures in [Sacramento City Charter § 32](#).
3. Ordinance changes during the review and adoption process.
  - a. The text of an ordinance as approved by the L&L Committee, receiving the necessary votes to bring the matter to council under Rule 13, must be the text that is included in the published agenda as pass-for-publication.

- b. If an ordinance is brought to council under Rule 13, the text of the ordinance brought to council must be the same text as was submitted to the L&L Committee.
  - c. The text of an ordinance passed for publication must be the text that is included in the published agenda for the meeting at which the adoption of the ordinance is discussed.
  - d. Notwithstanding subsections a, b, and c, typographical and clerical errors may be corrected at any time during the ordinance review and adoption process.
  - e. If a member intends to make a substantive (i.e., anything not typographical or clerical) change to an ordinance after it is included in a published agenda, at or before the time the ordinance adoption item is called on the agenda, the member shall distribute sufficient written copies of the proposed change so that all other members, the charter officers, relevant city staff, and the public audience have copies.
  - f. If the legislative body's motion to adopt a resolution or ordinance includes a change to the resolution or ordinance text from that published in the agenda, prior to the vote the city clerk shall repeat verbatim the proposed change or otherwise indicate the change is reflected in the circulated written copy of the change.
  - g. Ordinances bypassing the pass-for-publication requirement under Sacramento City Charter § 32 are subject to this Rule 7.K.3, as applicable.
4. Except as set forth in section (a) below, council can consider adoption of non-binding resolutions. Non-binding resolutions are those within which the council declares its position and opinions on an issue, policy, or other matter that falls outside of the jurisdiction of the city and the council lacks legal authority to establish or regulate. The council may act on such a non-binding resolution if it determines that the matter is of such importance that the council should make the symbolic gesture of adopting a resolution declarative of council's position.
- a. The city council shall not act or take a position on matters concerning foreign policy, except upon a 2/3 vote of the Council determining that those matters directly affect the City of Sacramento.

## L. Ceremonial City Council Resolutions

1. A ceremonial city council resolution is non-binding and has no authority.
  - a. The city council may recognize and celebrate community members, organizations, and events for their contributions to the City of Sacramento and raise awareness surrounding important issues that affect the greater community.
  - b. Ceremonial city council resolutions are not intended for political, commercial, or narrow individual purposes, and should be consistent with the overall policies of the city council. These resolutions shall not inhibit, benefit, or promote religious activities, shall be non-discriminatory, and may not promote political advocacy activities.
2. Requests for ceremonial city council resolutions should be directed to the city clerk, who will work in collaboration with the mayor to finalize language and schedule for presentation at an upcoming city council meeting.
  - (i) A ceremonial city council resolution is the highest council honor reserved for individuals and organizations who have made extraordinary, lasting, or significant contributions to the City of Sacramento and its residents and who should be held in high esteem.
  - (ii) This type of recognition should be awarded to City of Sacramento residents, organizations, businesses, dignitaries, and other similar entities who have made significant contributions to the community; non-profit corporations, sports teams, or individuals who have won state, regional, or national titles; acts of heroism, including those as defined by police, fire, and other public safety departments; and individuals deserving exceptional commendation for their contribution to the City as a whole and its residents.
  - (iii) An Obituary Resolution may be issued to the family in honor of a deceased community member in memoriam of an individual who has made a significant contribution to the City of Sacramento and is generally presented in the community and not at a city council meeting.
3. Individual councilmembers may also create and present ceremonial council-district recognitions in their specific community. An individual councilmember recognition may be issued to individuals, organizations, or groups who have made significant contributions within a specific council district or districts or in support of programs or organizations of interest to the residents of the district.

## Chapter 8 – Conduct of Meeting

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### A. Call to Order – Presiding Officer

1. The mayor, or in the mayor's absence the vice mayor, shall take the chair at the hour appointed for the meeting and shall immediately call the meeting of the council to order.
2. In the absence of the mayor and vice mayor, the mayor pro tem shall preside over the meeting.
3. Upon the arrival of the mayor, the vice mayor shall immediately relinquish the chair at the conclusion of the business then before the council.
4. For council standing committees the chair shall call to order and preside over the meeting. In the absence of the chair, the vice chair shall perform the duties and obligations of the chair.
5. For all other city established legislative bodies the chair shall call to order and preside over the meeting. In the absence of the chair, the vice chair shall perform the duties and obligations of the chair. In the absence of chair and vice chair, the city clerk shall call the meeting to order, and a temporary chairperson shall be elected from among the members present. Upon arrival of the chair or vice chair, the temporary chairperson shall relinquish the position upon conclusion of the item then before the legislative body.

### B. Roll Call/Attendance

1. A majority of the members of the council then in office constitutes a quorum ([Sacramento City Charter § 30](#)).
2. A majority of members of the council established legislative body constitutes a quorum.
3. Before the legislative body proceeds with the business before it, the city clerk shall note the members present for the minutes. The late arrival and early departure of members will be entered into the action minutes.
4. A councilmember is considered present at a meeting if the member is either physically in the council chamber or is participating in the meeting through teleconference in accordance with the [Brown Act](#). Meeting attendance of the mayor or councilmembers through teleconference is permitted only in extraordinary circumstances.
5. Members must be physically present at the council chamber dais or teleconference location to vote. Proxy or absentee voting is not permitted.

## C. Order of Discussion

The order of business must be carried out as listed on the agenda as set out below; however, the presiding officer may reorder the items at the meeting, unless members object. Members may request items be reordered by motion.

- I. Consent calendar, and any items removed for discussion.
  - a. Mayor, members, or charter officers may request that any matter be removed from the consent calendar and a separate vote taken.
  - b. All matters remaining on the consent calendar shall be approved by a single action, such single action to have the legal effect of individual action on each matter.
  - c. If consent calendar items are removed, they shall be discussed immediately after adoption of the balance of the consent calendar.
2. Public Hearings
  - a. The order of public hearings will generally be as follows:
    - (i) **Open the public hearing.**
    - (ii) Member report of ex parte communications.
    - (iii) Staff comments, information, and reports, followed by member questions.
    - (iv) Proponent, if applicable, speaks, followed by member questions.
    - (v) Opponent, if applicable, speaks, followed by member questions.
    - (vi) If the public hearing is on an appeal that does not require council de novo review, then the appellant (opponent) speaks before the applicant (proponent) in accordance with the allotted time.
    - (vii) Public comments.
    - (viii) If the public hearing is a de novo review appeal, the applicant speaks in rebuttal, but if not a de novo review appeal, the appellant speaks in rebuttal.
    - (ix) Closure of public comment period.
    - (x) Further member discussion.
    - (xi) **Motion to close public hearing and take action.**

- b. The presiding officer may direct speakers to avoid repetition in order to permit maximum information to be provided the legislative body within the time allotted for the hearing.
  - c. The appellant and applicant shall be allocated sufficient time to address the legislative body. However, reasonable time limits on persons addressing the legislative body, including applicants, proponents, and opponents may be imposed if necessary for the orderly conduct of the hearing and the limits are fairly applied.
3. Discussion Calendar
- a. The order of discussion after introduction of an item will generally be as follows:
    - (i) Staff comments, information, and reports, followed by questions from the members.
    - (ii) Public comments and information, followed by questions from the members.
    - (iii) Member discussion, motion, and action.
  - b. Once the item is placed before the council for discussion, motion, or action, no member of staff or the public is allowed to address the council without the consent of the mayor or members.
4. Council Comments – Ideas, Questions, and ABI234 Reports
- a. Brief oral or written reports summarizing meeting or conference attendance at city expense, as required by Assembly Bill 1234 ([Government Code, § 53232.3](#));
  - b. Requests for the city manager or staff to report on various issues;
  - c. Requests to place items on a future council meeting agenda; or
  - d. Reports on district and citywide activities or news.
5. City Manager’s Report
- a. Brief oral report from the City Manager or their designee.
6. Public Comment for Matters Not on the Agenda
- a. As required by the Brown Act, a portion of each council meeting agenda will provide an opportunity for members of the public to address the council on any agenda item, including closed session and consent calendar items. Regular meeting agendas also will provide for public comment on any unagenda item that is within the subject matter jurisdiction of the city.

- b. In response to public comment on unagendized items, the members may individually:
  - (i) Briefly respond to statements made or questions posed by members of the public;
  - (ii) Ask questions for clarification;
  - (iii) Provide a reference to staff or other resources for factual information or response;
  - (iv) Request staff to report to the council at a subsequent meeting; or
  - (v) Request staff to place a matter of business on a future agenda as needed.

#### D. Quorum Call

1. During the course of the meeting, should the presiding officer note a quorum is lacking, the presiding officer shall call this fact to the attention of the city clerk.
2. The presiding officer then shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the presiding officer may declare a recess for a reasonable period of time in order to reestablish a quorum.
3. If no quorum is reestablished within a reasonable time, the presiding officer shall adjourn the meeting.
4. Continuation of a council meeting extending past 9:30 p.m. requires a majority vote of the councilmembers present.
5. Continuation of a Housing Code Advisory and Appeals Board, Planning and Design Commission, or Preservation Commission meeting extending past 9:30 p.m. requires a majority vote of the commissioners present.
6. A meeting of any other city established legislative body shall automatically adjourn after two hours, unless extended by a 2/3 vote of the members present; but in no case shall an advisory body meeting exceed three hours.

#### E. Obtaining the Floor

1. Any member wishing to speak must first obtain the floor by being recognized by the presiding officer. The presiding officer shall recognize any member who seeks the floor when appropriately entitled to do so.
2. With the concurrence of the presiding officer, a member holding the floor may address a question to another member and that member may respond while the floor is still held by the member asking the question. A member may opt not to answer a question while another member has the floor.

F. Motions

- I. [Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century](#) governs the management of motions.

## G. Voting

### I. Requirements for Action.

- a. Unless a higher vote is required by the city charter, the city code, or otherwise by law, the affirmative votes of at least five members of the council shall be required:
  - (i) For the council to take action on an item of business;
  - (ii) To pass any ordinance, resolution, or motion; or
  - (iii) To make or approve any order for the payment of money requiring council approval.
- b. Any ordinance declared by the council to be necessary as an emergency measure and containing a statement of the facts constituting such emergency as provided in the city charter may be introduced and adopted at the same meeting if passed by at least six affirmative votes ([Sacramento City Charter, § 32](#)).

### 2. Voting Disqualification.

- a. A member shall not vote upon a matter if the member is disqualified from voting on that matter due to a conflict of interest. Nor shall any member vote on a quasi-judicial matter if the member is biased regarding that matter.
- b. A member shall openly state an abstention due to a conflict of interest or bias. A member shall only abstain when there is an actual (or reasonably perceived) financial conflict of interest or bias, and the member is prohibited from voting on the item.
- c. A member who is abstaining due to a financial conflict of interest shall publicly identify the financial interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
- d. Under SB 1439, an officer who is abstaining (Government Code, § 84308, the “Levine Act”) shall disclose that fact on the record of the proceeding. Under SB 1439, an officer of an agency shall not make, participate in making, or in any way attempt to use the officer’s official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or a party’s agent, or from any participant or a participant’s agent if the officer knows or has reason to know that the participant has a financial interest in the decision.
- e. As to any other conflict of interest, the member's determination may be accompanied by an oral or written disclosure of the conflict of interest.

- f.** A member who is disqualified by a conflict of interest in any matter shall not remain on the dais during the discussion and shall not vote on that matter. However, the member may remain on the dais for Consent Calendar items if the member states the abstention from the vote due to the described conflict of interest before the Consent Calendar is voted on in one motion.

## Chapter 9 – Council Vacancies

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### A. Procedures

1. As provided in the Sacramento City Charter, absence from five consecutive regular meetings of the council, unless excused by resolution of the council, operates to vacate the seat of the mayor or councilmember so absent. (Sacramento City Charter, §§ [28](#) and [46](#).)
2. A vacancy in the office of councilmember or mayor shall be filled by special election called by the council as provided in [Sacramento City Charter § 154](#), unless the vacancy occurs within one year of the next general election at which that office would normally be filled, in which case the vacancy shall be filled by appointment. The city clerk shall take the necessary actions to accomplish the recruitment and appointment of candidates as provided in [Sacramento City Code § 1.14](#).

## Chapter 10 - Facilities

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### A. Meeting Locations

1. Whenever practical, legislative body meetings shall be held at the City Hall Complex, located at 915 I Street, Sacramento, CA 95814 to facilitate video streaming to the city's [website](#) and archiving for future access.

### B. Meeting Capacity

1. Council chamber and historic hearing room attendance is limited to the posted seating capacity. The maximum occupancy of council chambers is 230 and historic hearing room is 70. The city manager shall appropriately regulate entrance to the council chamber when the council chamber capacity is likely to be exceeded. When legislative bodies are in session, members of the public shall not remain standing in the seating area or aisles of the council chamber. Sitting on the floor is not permitted. The sergeant-at-arms shall enforce this chapter.
2. In compliance with the Americans with Disabilities Act, meeting locations are accessible to the public. If a member of the public needs special assistance, a disability-related modification or accommodation, agenda materials in an alternative format, or auxiliary aids to participate in this meeting, they should contact the Office of the City Clerk at 916-808-7200 or [clerk@cityofsacramento.org](mailto:clerk@cityofsacramento.org) as soon as possible. Providing at least 72 hours' notice will help ensure that reasonable arrangements can be made.

## Chapter 11 - City Council Committees and Regional Organizations

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### A. General

1. The mayor shall make all appointments to council standing committees, subject to the approval of the council. The mayor shall make all appointments to council ad hoc committees.
2. A standing committee is a permanent committee of the council established to consider subjects of a particular class, with regularly scheduled meeting dates and times.
3. An ad hoc committee is a temporary committee of the council established for a special purpose and of limited duration.
4. Standing and ad hoc committees have fact-finding, informative, and recommendatory powers only, and such other powers delegated by the council.
5. The council intends that council committees, to the extent possible, conduct a full hearing on any matter referred to that committee before the committee refers the matter back to the council.
6. The city clerk shall maintain and keep on file a list of the standing committees, ad hoc committees, regional organizations, and joint powers agencies to which councilmembers are appointed.

### B. Council Standing Committees

#### I. General Guidelines

- a. Standing committee appointments shall be made by the mayor each at the beginning of each calendar year or as necessary.
- b. Standing committees shall meet at the city hall complex.
- c. Standing committees are subject to the [Brown Act](#) and the Sacramento Sunshine Ordinance ([Sacramento City Code § 4.04](#)). Standing committee agendas shall be prepared, posted, and distributed in accordance with the Brown Act and the Sacramento Sunshine Ordinance (Sacramento City Code Chapter 4.04), stating the time and place of the meeting and the subject matters to be discussed.
- d. A councilmember who is not a member of the standing committee may attend a standing committee meeting, provided the member attends only as an observer, does not testify or otherwise participate in any discussion, and sits amongst the public.
- e. Except as provided in subsection f, all items on a standing committee's agenda must first be referred to the committee by the council for review, with a recommendation returned to the council within 120 days, subject to the exceptions set forth below or as otherwise modified by the council.

- f. With approval of the city clerk, city manager, or committee chair, an item may be sent directly to a standing committee without council referral. If a matter is so referred to a standing committee, the committee agenda must note that fact on the face of the agenda and the committee chair shall notify the council. Such referrals are not required to be forwarded to the council unless council action is recommended by the standing committee.
- g. The city clerk shall assign staff to assist the committee chair with the operation of the committee.

### C. Council Ad Hoc Committees

#### 1. Establishment.

- a. The mayor or a majority of the council may request the creation of an ad hoc committee.
- b. The city manager or a department director, together with the city attorney, shall work with the appropriate supporting department(s) and determine the scope and approximate duration the ad hoc committee.
- c. The department director shall submit a request to the mayor, with a copy to the city clerk, requesting the creation of and appointment of up to four members to an ad hoc committee.

#### 2. Scheduling Ad Hoc Committee Meetings.

- a. Once an ad hoc committee has been established, the city clerk shall schedule the first meeting. Once confirmed, the city clerk shall notify the members, mayor's office, city manager (or designee), and the city attorney (or designee) of the meeting details. A regular meeting calendar will be established and adopted by the ad hoc committee.
- b. A councilmember who is not a member of the ad hoc committee may attend an ad hoc committee meeting, provided the member attends only as an observer, does not testify or otherwise participate in any discussion, and sits amongst the public.
- c. Ad hoc committees are subject to the [Brown Act](#) and the Sacramento Sunshine Ordinance ([Sacramento City Code § 4.04](#)).

### 3. Dissolution

- a. Once an ad hoc committee has completed its task, the supporting department shall submit a report to the mayor, with a copy to the city clerk, stating completion of the ad hoc committee tasks and request the dissolution of the ad hoc committee.
- b. An ad hoc committee is automatically dissolved one year after its first meeting, unless it is dissolved earlier under Rule 12.C.3.a.
- c. The city clerk will provide a periodic report to council announcing the dissolution of ad hoc committees.

### D. Regional Organizations

The mayor shall appoint council representatives to regional organizations and joint powers agencies listed in the documents maintained by the city clerk, subject to council approval. Appointments shall be made at the beginning of each calendar year or as necessary.

## Chapter 12 – Councilmember Proposal Requests

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### A. General

- I. This chapter outlines the process for councilmembers to propose an idea for council action. It modulates the agenda requests of individual councilmembers by referring those requests to the relevant city council standing committee for review, as appropriate, and in so doing provides clear guidance to the council appointees that their work demands are serving the council as a whole. It also ensures councilmember requests are duly tracked and assigned, thus promoting transparency and accountability.

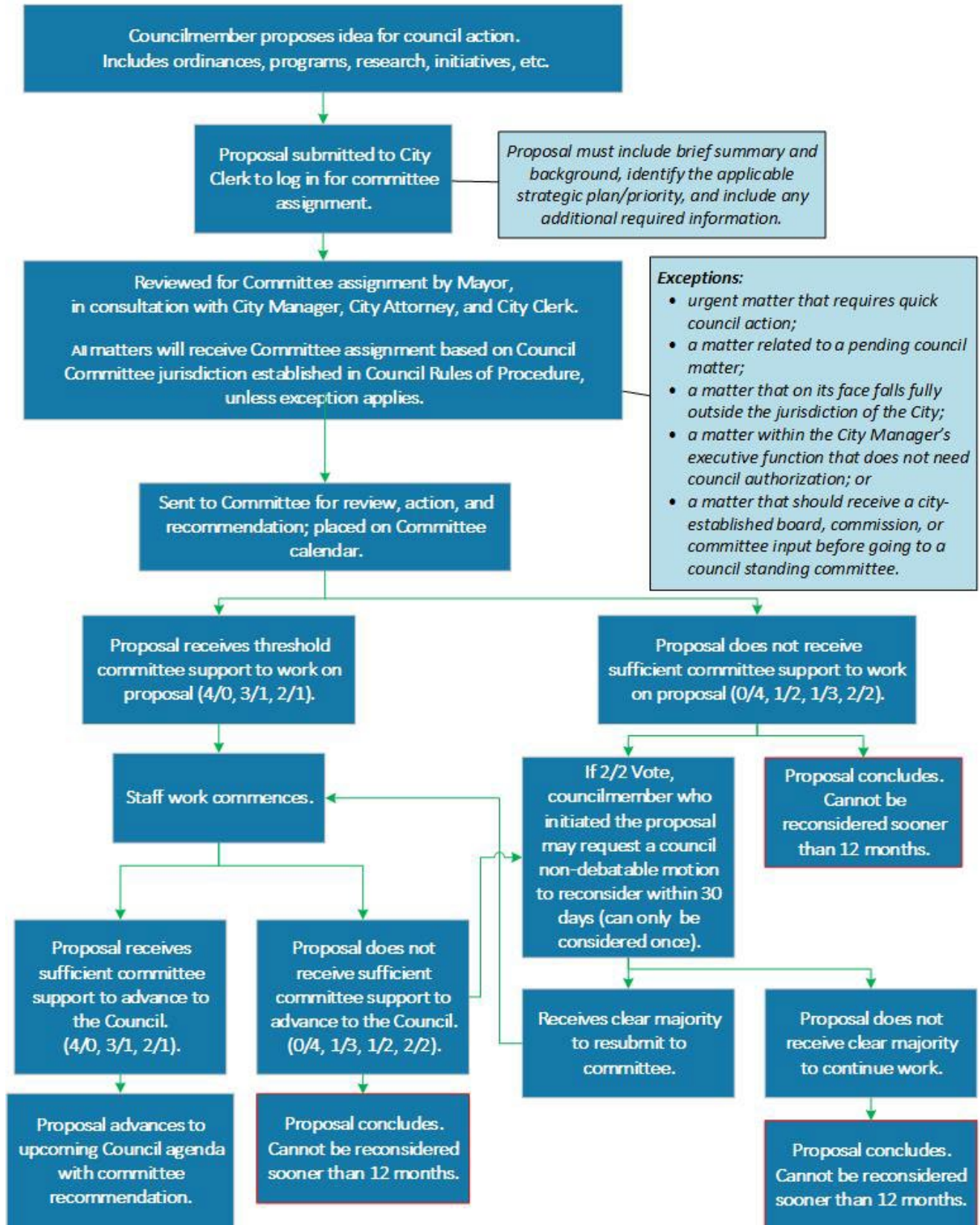
### B. Procedures

- I. Councilmember proposal requests must be submitted in writing to the city clerk. The proposal must include a brief summary and background, identify the applicable strategic plan/priority, estimate any budget adjustment or impact, and include additional information sufficient for committee deliberation.
2. The mayor, in consultation with the city manager, city attorney, and city clerk, shall review all requests and will assign each proposal to a committee based on committee jurisdiction, unless an exception applies.
  - a. Exceptions:
    - i. Urgent matter that requires quick council action;
    - ii. A matter related to a pending council matter;
    - iii. A matter that on its face falls fully outside the jurisdiction of the City;
    - iv. A matter within the City Manager’s executive function that does not need council authorization; or
    - v. A matter that should receive a city-established board, commission, or committee input before going to a city council standing committee.

3. Standing committees shall review each proposal and vote whether to approve staff work.
  - a. If the proposal receives threshold committee support to work on the proposal (i.e., a vote of 4/0, 3/1, or 2/1), staff work commences.
  - b. If the proposal receives a 2/2 vote, within 30 days thereafter the city councilmember who initiated the proposal may ask that the city council vote on a non-debatable motion to reconsider, which motion will be placed on the next available city council agenda. If the motion receives five or more “aye” votes, the item will be resubmitted to the committee. If the motion fails, the proposal concludes. The non-debatable motion to consider may only be considered once. Once a proposal concludes, it cannot be reconsidered sooner than 12 months.
  - c. If the proposal does not receive sufficient committee support (i.e., a 0/4, 1/3, or 1/2 vote) for further work on the proposal, the proposal concludes.
4. If directed by the standing committee to commence work, staff will bring back to the committee a report for its consideration.
  - a. If the proposal receives a vote of 4/0, 3/1, or 2/1, the proposal advances to the city council with a committee recommendation.
  - b. If the proposal receives a 2/2 vote, within 30 days thereafter the city councilmember who initiated the proposal may ask that the city council vote on a non-debatable motion to reconsider, which motion will be placed on the next available city council agenda. If the motion receives five or more “aye” votes, the item will be resubmitted to the committee. If the motion fails, the proposal concludes. The non-debatable motion to consider may only be considered once. Once a proposal concludes, it cannot be reconsidered sooner than 12 months.
  - c. If the proposal does not receive sufficient committee support (i.e., a 0/4, 1/3, or 1/2 vote) to advance to the city council, the proposal concludes and cannot be reconsidered sooner than 12 months.

C. Councilmember Proposal Request Flowchart (following page)

# COUNCILMEMBER PROPOSAL REQUEST FLOWCHART



## Chapter 13 – Law and Legislation Committee

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### A. Authority; Purposes

#### I. Authority to Represent City Positions.

- a. The Law and Legislation (L&L) Committee has the authority to take positions on behalf of the city on state and federal legislation as outlined in the city's legislative platform.
  - b. The mayor or the chair of the L&L Committee has the authority to take positions, consistent with the adopted legislative platform, on behalf of the city when the need to react quickly does not allow for a matter to be considered by the L&L Committee.
  - c. Except as provided in subsections a and b, no person or committee has authority to represent the council on policy matters, unless that authority has been granted by the council or the information is limited to a factually accurate statement of the council's publicly-adopted position.
2. Purposes. The purposes of the L&L Committee are to consider, evaluate, conduct fact-finding, and recommend to council positions on proposed city ordinances and non-binding resolutions.

### B. Procedures

#### I. Ordinances and Non-Binding Resolutions.

##### a. Origination.

- (i) Requests to prepare, amend, draft, or process ordinances and non-binding resolutions shall be made in one of the following ways:
  - (A) In writing to the city clerk; or
  - (B) By the city manager or other city staff.
- (ii) All non-binding resolution requests must be referred to the L&L Committee. Except as provided in subsection b below, all ordinance requests must be referred to the L&L Committee.
- (iii) The requesting member(s), city manager, or staff is considered the sponsor. City staff shall work directly with the sponsor in developing the proposed ordinance language.

- b. Ordinances not requiring L&L Committee review prior to council review and adoption are those that are:
  - (i) Deemed urgent by the mayor or city manager;
  - (ii) Voted on by the majority of council to bypass the L&L Committee;
  - (iii) Voted on by the majority of the L&L Committee to go to council without full L&L Committee review;
  - (iv) Zoning code amendments for specific development projects;
  - (v) Listings on, or deletions from, the Sacramento register under Sacramento City Code chapter 17.604, article II;
  - (vi) Adopting property-related fees or fee increases that require public notice before the Utilities Rate Advisory Commission;
  - (vii) Authorizing the execution of a development agreement;
  - (viii) Establishing or adjusting parking meter rates
  - (ix) The biennial update for campaign contribution limits, as required by Sacramento City Code section 2.13.120; or
  - (x) Levying a special tax on land within a community facilities district.
  - (xi) Those reviewed by the P&PE Committee related to a city advisory body's creating authority.
- c. After passing the threshold vote required by the councilmember proposal request flowchart in Chapter 12, ordinances and non-binding resolutions referred to the L&L Committee shall be placed on the legislation log, with new items placed at the end of the log, to establish a priority order; provided, the L&L Committee or council may reorder the priority.
- d. The log will be scheduled for the consent agenda at every L&L Committee meeting. Any committee member may pull an item from consent for discussion.
- e. Items on the log may be removed at the request of the sponsor. Staff shall note the removal request on the log and remove the item after the log has been approved by the committee.
- f. The process for advancing an item to the city council is outlined in Chapter 12.

### C. Requirements for Agenda Item Submission

- I. The city manager and city clerk shall develop the agenda for the L&L Committee meetings in consultation with the chair of the committee.
  - a. The chair shall have the right to make recommendations to the committee on matters of policy and programs that require committee decisions.
  - b. Charter officers, the director of the office of public safety accountability, and the Sacramento Housing and Redevelopment Agency executive director may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.
  - c. Department directors, subject to the discretion of the city manager, may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.

## Chapter 14 – Personnel and Public Employees Committee

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### A. Purposes

The purposes of the Personnel and Public Employees (P&PE) Committee are to:

1. Review applications received for membership to various city boards, commissions, and committees;
2. Conduct interviews for such membership appointment;
3. Make recommendations to the mayor concerning such appointments;
4. Review advisory body reports and recommendations, as provided in Rule 17.C;
5. Review ordinances related to an advisory body's creating authority prior to council review and adoption;
6. Lead the recruitment process for council-appointed officers; and
7. Develop and lead annual performance metrics and evaluations for council-appointed officers, as provided in Rule 18.

### B. Procedures

1. Applications for seats on city boards, commissions, and committees will be reviewed by the P&PE Committee.
2. The P&PE Committee shall conduct interviews of qualified applicants.
3. Recommendations by the P&PE Committee shall be submitted to the city clerk for distribution to the mayor to consider appointment.
4. After the mayor's appointment, the city clerk shall submit a report for a council agenda requesting confirmation of the mayor's appointment.

### C. Requirements for Agenda Item Submission

1. The city manager and city clerk shall develop the agenda for the P&PE Committee meetings in consultation with the chair of the committee.
  - a. The chair shall have the right to make recommendations to the committee on matters of policy and programs that require committee decisions.
  - b. Charter officers, the director of the office of public safety accountability, and the Sacramento Housing and Redevelopment Agency executive director may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.
  - c. Department directors, subject to the discretion of the city manager, may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.

## Chapter 15 – Budget and Audit Committee

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### A. Purposes

The purposes of the Budget and Audit Committee (B&A) are to:

1. Assist the council in overseeing and supervising the city auditor;
2. Assist the council in evaluating the proposed budget, including a mid-year report, and any amendments thereto;
3. Assist the council in understanding the budget impacts resulting from council's actions; and
4. Assist the council in reviewing and evaluating the Innovation and Growth Fund.
5. Assist the council in enhancing the city's ability to:
  - a. Improve the effectiveness and efficiency of city operations;
  - b. Improve the city's fiscal operations;
  - c. Adopt and adhere to a balanced budget; and
  - d. Comply with city policies, procedures, and regulatory requirements.
6. Review councilmember proposals for funding allocations that fall outside of the budget process.

### B. Procedures

1. The B&A Committee shall receive, review, and forward to the council as appropriate, reports, recommendations, and updates from the city auditor.
2. The B&A Committee shall receive and review the proposed budget and any material amendments thereto.
3. The B&A Committee shall receive and review any key budget policy issues, including but not limited to, Annual Comprehensive Financial Report (ACFR) results, use of any year-end surplus, the mid-year report, budget priorities, use of unanticipated revenue, or proposed budget issues such as fee increases, prior to bringing forward to council.
4. The B&A Committee may:
  - a. Receive, review, and forward to the council, when relevant to city audits, any reports from the city treasurer, the department of finance, other city offices, or external auditors;

- b. Receive, review, and forward to the city council any reports and recommendations from the economic development department or city manager regarding the Innovation and Growth Fund; and
  - c. Propose that the council adopt ordinances, resolutions, or take other actions, provided that such ordinances, resolutions, or actions are within the jurisdiction of the B&A Committee.
5. The process for advancing an item to the city council is outlined in Chapter 12.

C. Requirements for Agenda Item Submission

- I. The city manager, city auditor, and city clerk shall develop the agenda for the B&A Committee meetings in consultation with the chair of the committee.
  - a. The chair shall have the right to make recommendations to the committee on matters of policy and programs that require committee decisions.
  - b. Charter officers, the director of the office of public safety accountability, and the Sacramento Housing and Redevelopment Agency executive director may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.
  - c. Department directors, subject to the discretion of the city manager, may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.

## Chapter 16 – Racial Equity Committee

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### A. Purposes

The purposes of the Racial Equity Committee are to:

1. Help the council align its advancement of racial equity in city decision-making with the impacts resulting from city policy, budget, and service-delivery decisions;
2. Provide a space to help coordinate the various city racial equity initiatives, efforts, metrics, and best practices into a holistic citywide informed approach (rather than a case-by-case approach); and
3. Increase engagement, transparency, and accountability for the City's ongoing racial equity work.

### B. Procedures

1. The Racial Equity Committee shall receive, review, and forward to the council as appropriate, reports, recommendations, policy proposals, and updates regarding racial equity issues. Review and approval of ordinances and adoption of positions on state and federal legislation shall be undertaken by the Law and Legislation Committee, unless an ordinance or legislation is referred directly to the Racial Equity Committee by the council.
2. The process for advancing an item to the city council is outlined in Chapter 12.

### C. Requirements for Agenda Item Submission

1. The city manager and city clerk shall develop the agenda for the Racial Equity Committee meetings in consultation with the chair of the committee.
  - a. The chair shall have the right to make recommendations to the committee on matters of policy and programs that require committee decisions.
  - b. Charter officers, the director of the office of public safety accountability, and the Sacramento Housing and Redevelopment Agency executive director may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.
  - c. Department directors, subject to the discretion of the city manager, may submit staff reports or descriptions of oral reports to the city clerk for placement on the agenda.

## Chapter 17 – City Advisory Bodies

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### A. Vacancies and Appointments

1. When any vacancy occurs on a board, commission, or committee (advisory body) the city clerk shall announce that vacancy pursuant to the standard outreach procedures. The city clerk's office maintains the board and commission files and performs all clerical and administrative support tasks related to the application process.
2. At the close of the application period, all applications received for the vacancy are referred by the city clerk to the appropriate nominating body or person for review and recommendation.
3. If the recommending body is the Personnel and Public Employees Committee (P&PE) the applicant will be invited to interview in person before P&PE at the next available meeting. Following review and recommendation by P&PE, the city clerk shall forward to the mayor for review.
4. If the recommending body is a councilmember, following review, the member shall send the board and commission recommendation(s) to the city clerk who will forward to the mayor for review.
5. After reviewing the submitted recommendation(s) made by P&PE or a member, the mayor shall direct the city clerk to prepare a staff report with the mayor's appointment to fill the vacancy at the next council meeting. Concurrence in an appointment for a seat on a city board, commission or committee shall be by vote of the city council.
6. If the council does not approve the appointment, then the mayor shall make another appointment, and at the soonest regular meeting following the meeting at which the subsequent appointment was made, the council shall vote whether to confirm the new appointment.
7. This procedure shall be followed until an appointment has been approved by the council. No request by a member to delay the appointment or approval will be allowed unless approved by a majority vote of the council.
8. At the direction of the council, all vacancies, application periods, and close of application periods for boards and commissions shall be monitored and maintained by the city clerk.

9. In making nominations and appointments to city boards and commissions, the mayor, P&PE Committee, and members should consider persons of various ethnicities, ages, genders, education, and occupational experience as reflected in the general population of the city; and should, as appropriate for the vacancy, consider persons from all districts of the city.

#### B. Requests for Future Agenda Items

1. Members may submit items under the purview of the advisory body for inclusion on a future agenda by orally making the request under Ideas, Comments, and Questions.
  - a. The department staff shall add a member's requests to a chronologically-ordered log that contains all pending requests, i.e., those not having been heard as an agenda item or not otherwise having been removed from the log.
  - b. The log shall appear on the Consent Calendar of each regular meeting and include estimated agenda date or disposition.

#### C. Advisory Body Reports

1. Advisory body recommendations and reports to the city council shall follow the procedure set forth in this Rule 17.C.
2. Annual report preparation.
  - a. Each advisory body shall provide an annual report for review by the Personnel and Public Employees (P&PE) Committee.
  - b. The annual report shall be provided in a format established by the city clerk and should include highlights and accomplishments from the prior year's work; proposed projects, priorities, and recommendations for the upcoming year; and any other information required of the advisory body according to the Sacramento City Code.
  - c. The city clerk shall manage an advisory body annual report calendar so that city staff can gather input to prepare a proposed report to the advisory body in a timely manner.
  - d. Each advisory body must approve its annual report before presentation to the P&PE Committee. When presenting proposed reports to advisory bodies, staff should include information on the feasibility of any recommendations therein.

3. Review by P&PE Committee.
  - a. Annual reports approved by advisory bodies shall be placed on an upcoming P&PE Committee meeting agenda.
  - a. The city clerk shall act as a liaison and collaborate with city staff to collect any additional information that may be helpful to the committee's evaluation of advisory body annual reports.
  - b. The P&PE Committee shall review advisory body annual reports and give staff direction on those reports' stated projects, priorities, and recommendations. Before forwarding the report to the city council, the committee may request supplemental information from staff or the advisory body.
4. Other recommendations. If an advisory body has recommendations outside the annual review process, the city clerk shall coordinate with the advisory body to have those recommendations brought before the P&PE Committee, which may consider and act on those recommendations in the same way it does advisory body annual reports.

## Chapter 18 – Annual Review of City Council Appointive Officers

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### A. Purposes

1. The city council is committed to performing regular annual reviews of its appointive officers, which include the following positions: city attorney, city auditor, city clerk, city manager, city treasurer, director of the office of public safety accountability, and executive director of the Sacramento Housing and Redevelopment Agency. These positions report directly to the city council.
2. Clear communication and performance metrics are at the core of the work of the council and the city. To evaluate council appointive officers on a consistent basis, the P&PE Committee will assume the role and responsibility of developing and leading annual performance metrics and evaluations.

### B. Procedures

1. With direction from the P&PE Committee, the city clerk shall coordinate and schedule appointive officer annual reviews.
2. Annually, appointive officers shall present their annual report, including past year accomplishments and strategic goals and objectives for the upcoming year, to the P&PE Committee. Once approved by the P&PE Committee the report will be forwarded to the city council for approval.
3. Performance Evaluations: The city council shall meet in closed session to conduct a performance evaluation of an appointive officer.
  - a. The city council may hold closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of an appointive officer or to hear complaints or charges brought against the appointive officer by another person or employee unless the appointive officer requests a public session ([Government Code § 54957](#) (b)).
  - b. As a condition to holding a closed session on specific complaints or charges brought against an appointive officer by another person or employee, the appointive officer shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the appointive officer personally or by mail at least 24 hours before the time for holding the session.
  - c. The city council also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the city council.
  - d. Closed sessions held pursuant to this rule shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

4. Salary and Benefit Negotiations: The city council may meet in closed session with the city's designated representative to discuss salaries, salary schedules, or compensation paid in the form of fringe benefits of an appointive officer. ([Government Code § 54957.6](#))
  - a. The agenda for a closed session under this rule must identify the city's designated representatives. Unless specifically directed otherwise by the mayor, the designated representatives shall be personnel from the Human Resources Department.
  - b. Closed sessions of the city council under this rule shall be for the purpose of reviewing its position and instructing the designated representatives.
  - c. Closed sessions held pursuant to this rule shall not include final action on the proposed compensation or benefits.
5. Final approval of compensation adjustments, by resolution or contract, shall be made at an open meeting of the city council. See Rule 7.A.1 for agendaizing such an item.

## **Glossary**

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### **Decorum Officer**

The decorum officer is a council-selected person who sits on the dais and has responsibility for enforcing council meeting decorum.

### **et seq**

et seq means “and the following one or ones”.

### **Ex Parte Communications**

An ex parte communication is a written or oral communication between a decisionmaker and an interested person concerning any issue in a formal proceeding, other than procedural matters that does not occur in a public forum established in the proceeding or on the record of the proceeding.

Members shall disclose the substance of all ex parte communications at the beginning of a public hearing for any item brought before the legislative body for hearing, consideration, or action.

### **Non-Binding Resolution**

A non-binding resolution is a resolution in which the council declares its position and opinions on an issue, policy, or other matter that the council lacks legal authority to establish or regulate, but that the council determines is of such importance that the council should make the symbolic gesture of adopting a resolution declarative of council’s position.

### **Presiding Officer**

The Presiding Officer is the person who presides over a meeting and is charged with maintaining order and decorum, recognizing members to speak, and interpreting the rules, practices, and precedents. In the city council the presiding officer is the Mayor. In advisory bodies established by the city council the presiding officer is the Chair. In the absence of Mayor or Chair, the Vice Mayor or Vice Chair shall preside.

### **Quasi-judicial**

Quasi-judicial action means any council action that implicates constitutionally protected property or liberty interests, such as issuance or denial of discretionary land use permits, subdivision maps, business licenses, and other similar action in which a property interest is at stake and the council is charged with applying legal standards to a specific factual situation.

### **Sergeant-at-Arms**

The sergeant-at-arms is the principal law enforcement official of the legislative body and is charged with maintaining security within the chamber (meeting location) and surrounding areas. The sergeant-at-arms also enforces protocol and ensures public decorum is followed as noted in the body’s rules of procedure.

**Teleconference**

A meeting conducted among participants in different locations via telecommunications equipment such as telephones, computers, or other devices.

# Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024



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# Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT  
 REVISED JANUARY 2024

**CHAPTER 1: IT IS THE PEOPLE’S BUSINESS**.....5

**CHAPTER 2: LEGISLATIVE BODIES**.....11

**CHAPTER 3: MEETINGS** .....17

**CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION** .....29

**CHAPTER 5: CLOSED SESSIONS** .....41

**CHAPTER 6: REMEDIES** .....55

# TABLE OF CONTENTS

<b>CHAPTER 1: IT IS THE PEOPLE’S BUSINESS</b> .....	<b>5</b>
The right of access .....	6
Broad coverage .....	6
Narrow exemptions .....	7
Public participation in meetings .....	7
Controversy .....	8
Beyond the law — good business practices.....	8
Achieving balance .....	9
Historical note .....	9
<b>CHAPTER 2: LEGISLATIVE BODIES</b> .....	<b>11</b>
What is a “legislative body” of a local agency? .....	12
What is <u>not</u> a “legislative body” for purposes of the Brown Act? .....	14
<b>CHAPTER 3: MEETINGS</b> .....	<b>17</b>
Brown Act meetings.....	18
Six exceptions to the meeting definition .....	18
Collective briefings.....	21
Retreats, trainings, and workshops of legislative bodies.....	21
Serial meetings.....	22
Informal gatherings .....	24
Technological conferencing .....	25
Location of meetings.....	26
<b>CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION</b> .....	<b>29</b>
Agendas for regular meetings.....	30
Mailed agenda upon written request.....	31
Notice requirements for special meetings .....	32
Notices and agendas for adjourned and continued meetings and hearings .....	32
Notice requirements for emergency meetings .....	33
Notice of compensation for simultaneous or serial meetings .....	33
Educational agency meetings.....	33
Notice requirements for tax or assessment meetings and hearings.....	33

Non-agenda items.....	34
Responding to the public.....	35
The right to attend and observe meetings.....	36
Records and recordings.....	37
The public’s right to speak during a meeting.....	38
<b>CHAPTER 5: CLOSED SESSIONS .....</b>	<b>41</b>
Agendas and reports.....	42
Litigation.....	43
Real estate negotiations.....	45
Public employment.....	46
Labor negotiations.....	47
Labor negotiations — school and community college districts.....	48
Other Education Code exceptions.....	48
Joint powers authorities.....	48
License applicants with criminal records.....	49
Public security.....	49
Multijurisdictional law enforcement agency.....	49
Hospital peer review and trade secrets.....	49
Other legislative bases for closed session.....	50
Who may attend closed sessions.....	50
The confidentiality of closed session discussions.....	51
<b>CHAPTER 6: REMEDIES .....</b>	<b>55</b>
Invalidation of action taken.....	56
Declaratory relief to determine whether past action violated the act.....	57
Civil action to prevent future violations.....	57
Costs and attorney’s fees.....	58
Misdemeanor penalties.....	58
Voluntary resolution.....	59





# Chapter 1

## IT IS THE PEOPLE’S BUSINESS

The right of access.....	6
Broad coverage .....	6
Narrow exemptions .....	7
Public participation in meetings .....	7
Controversy.....	8
Beyond the law — good business practices .....	8
Achieving balance .....	9
Historical note.....	9

# Chapter 1

## IT IS THE PEOPLE'S BUSINESS



### The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the act's initial section, declaring the Legislature's intent:

*"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.*

*"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 not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."<sup>1</sup>*

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

*"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."<sup>2</sup>*

The Brown Act's other unchanged provision is a single sentence:

*"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 a local agency, except as otherwise provided in this chapter."<sup>3</sup>*

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

### Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates, or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference or videoconference.

**PRACTICE TIP:** The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Social Media posts, comments, and “likes” can result in a Brown Act violation. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions, and some state legislatures have banned the practice. On the other hand, widespread video streaming and videoconferencing of meetings has greatly expanded public access to the decision-making process.

### Narrow exemptions

The express purpose of the Brown Act is to ensure that local government agencies conduct the public’s business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.<sup>4</sup>

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multimember government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency’s business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.<sup>5</sup>

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents and staff. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

### Public participation in meetings

In addition to requiring the public’s business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public’s participation is further enhanced by the Brown Act’s requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and limits on the time allotted to each speaker. For more information, see chapter 4.

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**PRACTICE TIP:** Think of the government’s house as being made of glass. The curtains may be drawn only to further the public’s interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

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## Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Some public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately, such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and businesslike, but it may be perceived as unresponsive and untrustworthy.

**PRACTICE TIP:** Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

## Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling, for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.<sup>6</sup> Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.



- A local agency's right to confidentially address certain negotiations, personnel matters, claims, and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

A detailed and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law and look at its unique circumstances to determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

### Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action are to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

### Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series titled "Your Secret Government" that ran in May and June 1952.

Out of the series came a decision to push for a new state open-meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill, and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open-meeting laws, such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open-meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

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**PRACTICE TIP:** The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

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Updates to this publication responding to changes in the Brown Act or new court interpretations are available at <https://www.calcities.org/home/resources/open-government2>. A current version of the Brown Act may be found at <https://leginfo.ca.gov>.

### ENDNOTES

- 1 Cal. Gov. Code, § 54950.
- 2 Cal. Const., Art. 1, § 3, subd. (b)(1).
- 3 Cal. Gov. Code, § 54953, subd. (a).
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Const., Art. 1, § 3, subd. (b)(2).
- 5 Cal. Gov. Code, § 54952.2, subds. (b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533.
- 6 Cal. Gov. Code, § 54953.7.



# Chapter 2

## LEGISLATIVE BODIES

What is a “legislative body” of a local agency? ..... 12

What is not a “legislative body” for purposes of the Brown Act? ..... 14

# Chapter 2

## LEGISLATIVE BODIES

*The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.<sup>1</sup>*



### What is a “legislative body” of a local agency?

A “legislative body” includes the following:

- The “**governing body** of a local agency” and certain of its subsidiary bodies; “or any other local body created by state or federal statute.”<sup>2</sup> This includes city councils, boards of supervisors, school boards, and boards of trustees of special districts. A “local agency” is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision, or other local public agency.<sup>3</sup> A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.<sup>4</sup> The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.<sup>5</sup> Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.<sup>6</sup>

- **Newly elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.<sup>7</sup> Thus, meetings between incumbents and newly elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

**Q.** On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

**A.** *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation, but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

**PRACTICE TIP:** The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions, and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.<sup>8</sup>
- **Standing committees** of a legislative body, irrespective of their composition, which have either (1) a continuing subject matter jurisdiction or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.<sup>9</sup> Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates committees on budget and finance or on public safety that are not limited in duration or scope, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee “shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.<sup>10</sup> “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.<sup>11</sup> A majority of the members of a legislative body may attend an open and public meeting of a standing committee of that body, provided the members who are not part of the standing committee only observe.<sup>12</sup> For more information, see chapter 3.
- The governing body of any **private organization** either (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company, or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.<sup>13</sup> These include some nonprofit corporations created by local agencies.<sup>14</sup> If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.<sup>15</sup> When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.<sup>16</sup>

**PRACTICE TIP:** It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a nonexempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee’s charge, or whether the committee exists long enough to have “continuing jurisdiction.”

- Q.** The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?
- A.** *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*
- Q.** If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?
- A.** *Yes. But if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.<sup>17</sup>

### What is not a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.<sup>18</sup> Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.<sup>19</sup>
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.<sup>20</sup>

- Q.** A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?
- A.** *No, because the committee has not been established by formal action of the legislative body.*
- Q.** During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?
- A.** *Possibly, because the direction from the city council might be regarded as a formal action of the body, notwithstanding that the city manager controls the committee.*

- Individual decision-makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads is not subject to the Brown Act since such assemblies are not those of a legislative body.<sup>21</sup>
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.<sup>22</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>23</sup>

Legal counsel for a governing body is not a member of the governing body, therefore, the Brown Act does not apply to them. But counsel should take care not to facilitate Brown Act violations by members of the governing body.<sup>24</sup>

## ENDNOTES

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127.
- 2 Cal. Gov. Code, § 54952, subs. (a) and (b).
- 3 Cal. Gov. Code, § 54951; Cal. Health & Saf. Code, § 34173, subd. (g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Cal. Ed. Code § 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550.
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990).
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362.
- 7 Cal. Gov. Code, § 54952.1.
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805.
- 9 Cal. Gov. Code, § 54952, subd. (b)
- 10 79 Ops.Cal.Atty.Gen. 69 (1996).
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793.
- 12 Cal. Gov. Code § 54952, subd. (c)(6).
- 13 Cal. Gov. Code, § 54952, subd. (c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996, who, after that date, is made a nonvoting board member by the legislative body. Cal. Gov. Code § 54952, subd. (c)(2).
- 14 Cal. Gov. Code, § 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002).
- 15 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300 fn. 5.
- 16 "The Brown Act, Open Meetings for Local Legislative Bodies," California Attorney General's Office (2003), p. 7.

- 17 Cal. Gov. Code, § 54952, subd. (d).
- 18 Cal. Gov. Code, § 54952, subd. (b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.
- 19 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129.
- 20 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973).
- 21 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879.
- 22 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513.
- 23 59 Ops.Cal.Atty.Gen. 162, 164 (1976).
- 24 *GFRCO, Inc. v. Superior Court of Riverside County* (2023) 89 Cal.App.5th 1295, 1323; *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95, 105 (a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting).



# Chapter 3

## MEETINGS

Brown Act meetings .....	18
Six exceptions to the meeting definition.....	18
Collective briefings.....	21
Retreats, trainings, and workshops of legislative bodies .....	21
Serial meetings .....	22
Informal gatherings .....	24
Technological conferencing .....	25
Location of meetings .....	26

# Chapter 3

## MEETINGS



The Brown Act only applies to meetings of local legislative bodies. It defines a meeting as “any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body.”<sup>1</sup> The term *meeting* is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.<sup>2</sup>

### Brown Act meetings

Brown Act meetings include a legislative body’s regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **“Regular meetings”** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.<sup>3</sup>
- **“Special meetings”** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act’s notice requirements for special meetings and are subject to 24-hour posting requirements.<sup>4</sup>
- **“Emergency meetings”** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.<sup>5</sup>
- **“Adjourned meetings”** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.<sup>6</sup>

### Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:<sup>7</sup>

#### *Individual contacts*

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on their own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

## Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, as long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

## Community meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

**"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**

*The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for reelection and all three participate. All of the candidates are asked their views on a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.
- Q.** May the three incumbents accept an invitation from the editorial board of a local paper to all candidates to meet as a group and answer questions about and/or debate city issues?
- A.** No, unlike the chamber of commerce event, this would not be allowed under the Brown Act because it is not an open and publicized meeting.

### Other legislative bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of (1) another body of the local agency and (2) a legislative body of another local agency.<sup>8</sup> Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony, trying to influence the outcome of proceedings before a subordinate body, or discussing the merits with interested parties.

**Q.** The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

**A.** *No, because the members are attending and participating in an open meeting of another governmental body that the public may attend.*

**Q.** The members then proceed upstairs to the office of their local assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

**A.** *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the assembly member.*

### Standing committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting, and they must sit where members of the public sit).<sup>9</sup>

**Q.** The legislative body establishes a standing committee of two of its five members that meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

**A.** *She may attend, but only as an observer; she may not participate.*

**Q.** Can the legislative body establish multiple standing committees with partially overlapping jurisdiction?

**A.** *Yes. One result of this overlap in jurisdiction may be that three or more of the members of the legislative body ultimately end up discussing an issue as part of a standing committee meeting. This is allowed under the Brown Act provided each standing committee meeting is publicly noticed and no more than two of the five members discuss the issue at any given standing committee meeting.*

### **Social or ceremonial events**

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attend the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. As long as no such business is discussed, there is no violation of the Brown Act.

### **Grand Jury Testimony**

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.<sup>10</sup> This is the equivalent of a seventh exception to the Brown Act’s definition of a “meeting.”

### **Collective briefings**

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements. Staff may provide written briefings (e.g., staff updates, emails from the city manager, confidential memos from the city attorney) to the full legislative body, but apart from privileged memos, the written materials may be subject to disclosure as public records as discussed in chapter 4.

### **Retreats, trainings, and workshops of legislative bodies**

Gatherings by a majority of legislative body members at the legislative body’s retreats, study sessions, trainings, or workshops are subject to the requirements of the Brown Act. This is the case whether the gathering focuses on long-range agency planning, discussion of critical local issues, satisfying state-mandated ethics training requirements, or team building and group dynamics.<sup>11</sup>



- Q.** The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?
- A.** *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

### Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings include only a portion of a legislative body, but eventually they comprise a majority. The Brown Act provides that “[a] majority of the members of a legislative body shall not, outside a meeting ... use a series of communications of any kind, directly or through

intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”<sup>12</sup> The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D, and so on until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, D, and so on (the spokes) until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body

or one of its members, communicates with a majority of members (the spokes) one by one for discussion, deliberation, or a decision on a proposed action.<sup>13</sup> Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members’ respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting “with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”<sup>14</sup>

The Brown Act is violated, however, if several one-on-one meetings or conferences lead to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum



Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.<sup>15</sup>

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.<sup>16</sup> Such a memo, however, may be a public record.<sup>17</sup>

**The phone call was from a lobbyist. “Say, I need your vote for that project in the south area. How about it?”**

**“Well, I don’t know,” replied Board Member Aletto. “That’s kind of a sticky proposition. You sure you need my vote?”**

**“Well, I’ve got Bradley and Cohen lined up and another vote leaning. With you, I’d be over the top.”**

**Moments later, the phone rings again. “Hey, I’ve been hearing some rumbles on that south area project,” said the newspaper reporter. “I’m counting noses. How are you voting on it?”**

*The lobbyist and the reporter are facilitating a violation of the Brown Act. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members’ positions by asking, “You sure you need my vote?” The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.*

**The mayor sat down across from the city manager. “From now on,” he declared, “I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don’t want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting.”**

*Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting “with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”<sup>18</sup> Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation, or action taken among the majority of the legislative body.*

**“Thanks for the information,” said Council Member Kim. “These zoning changes can be tricky, and now I think I’m better equipped to make the right decision.”**

**“Glad to be of assistance,” replied the planning director. “I’m sure Council Member Jones is OK with these changes. How are you leaning?”**

**“Well,” said Council Member Kim, “I’m leaning toward approval. I know that two of my colleagues definitely favor approval.”**

**PRACTICE TIP:** When briefing legislative body members, staff must exercise care not to disclose other members’ views and positions.

*The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.*

- Q.** Various social media platforms and websites include forums where agency employees and officials can discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the “reply all” option that may inadvertently result in a Brown Act violation. Staff should consider using the “bcc” (blind carbon copy) option when addressing an email to multiple members of the legislative body and remind recipients not to “reply all.”

Social media should also be used with care. A member of the legislative body cannot respond directly to any communication on an internet-based social media platform that is made, posted, or shared by any other member of the legislative body. This applies to matters within the subject matter jurisdiction of the legislative body. For example, if one member of a legislative body “likes” a social media post of one other member of the same body, that could violate the Brown Act, depending on the nature of the post.<sup>19</sup>

Finally, electronic communications (such as text messaging) among members of a legislative body during a public meeting should be discouraged. If such communications are sent to a majority of members of the body, either directly or through an intermediary, on a matter on the meeting agenda, that could violate the Brown Act. Electronic communications sent to less than a majority of members of the body during a quasi-judicial proceeding could potentially raise due process concerns, even if not per se prohibited by the Brown Act. Additionally, some legislative bodies have rules governing electronic communications during meetings of the legislative body and how their members should proceed if they receive a communication on an agenda item that is not part of the record or not part of an agenda packet.

### **Informal gatherings**

Members of legislative bodies are often tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.<sup>20</sup> A gathering at which a quorum of the legislative body discusses matters within their jurisdiction violates the Brown Act even if that gathering occurs in a public place. The Brown Act is not satisfied by public visibility alone. It also requires public notice and an opportunity to attend, hear, and participate.

Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop’s Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.

*A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive’s presence does not lessen the potential for a violation of the Brown Act.*

### Technological conferencing

Except for certain non-substantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But in an effort to keep up with modern technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.<sup>21</sup> While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

Teleconference is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”<sup>22</sup> In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:<sup>23</sup>

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body must participate from locations within the local agency’s jurisdiction.
- Additional teleconference locations may be made available for the public.
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable.
- Agendas must be posted at each teleconference location, even if a hotel room or a residence.
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.



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**Q.** A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C., to New York. May she?

**A.** *She may not participate or vote because she is not in an open, noticed, and posted teleconference location.*

Until Jan. 1, 2026, teleconferencing may also be used on a limited basis where a member indicates their need to participate remotely for “just cause” (e.g., childcare or a contagious illness) or due to

“emergency circumstances” (e.g., a physical or family medical emergency). This teleconferencing option has extremely detailed requirements, and careful review is needed. If the City experiences a technical issue that prevents members of the public from viewing the meeting and/or offering comments virtually, then no further action can be taken until the technical issue is resolved.<sup>24</sup>

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

### Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.<sup>25</sup>

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:<sup>26</sup>

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party.
- Inspect real or personal property that cannot be conveniently brought into the local agency’s territory, provided the meeting is limited to items relating to that real or personal property.

**Q.** The agency is considering approving a major retail mall. The developer has built other similar malls and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

**A.** *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice.
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction.



- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal fees or costs.<sup>27</sup>

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.<sup>28</sup> A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.<sup>29</sup>

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.<sup>30</sup> State law has also allowed for virtual meetings under certain emergency situations.<sup>31</sup>

## ENDNOTES

- 1 Cal. Gov. Code, § 54952.2, subd. (a).
- 2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870.
- 3 Cal. Gov. Code, § 54954, subd. (a).
- 4 Cal. Gov. Code, § 54956.
- 5 Cal. Gov. Code, § 54956.5.
- 6 Cal. Gov. Code, § 54955.
- 7 Cal. Gov. Code, § 54952.2, subd. (c).
- 8 Cal. Gov. Code, § 54952.2, subd. (c)(4).
- 9 Cal. Gov. Code, § 54952.2, subd. (c)(6). See 81 Ops.Cal.Atty.Gen. 156 (1998).
- 10 Cal. Gov. Code, § 54953.1.
- 11 "The Brown Act," California Attorney General (2003), p. 10.
- 12 Cal. Gov. Code, § 54952.2, subd. (b)(1).
- 13 *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95.
- 14 Cal. Gov. Code, § 54952.2, subd. (b)(2).
- 15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518.
- 16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.
- 17 Cal. Gov. Code, § 54957.5, subd. (a).
- 18 Cal. Gov. Code, § 54952.2, subd. (b)(2).
- 19 Cal. Gov. Code, § 54952.2, subd. (b)(3).

- 20 Cal. Gov. Code, § 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964).
- 21 Cal. Gov. Code, § 54953, subd. (b)(1).
- 22 Cal. Gov. Code, § 54953, subd. (b)(4).
- 23 Cal. Gov. Code, § 54953. Until Jan. 1, 2024, the legislative body could use teleconferencing “during a proclaimed state of emergency” by the Governor in specified circumstances, and teleconference locations were exempt from certain requirements, such as identification in and posting of the agenda.
- 24 Cal Gov. Code, § 54953, subd. (f) (which will become Govt. §54953(e) as of Jan. 1, 2024).
- 25 Cal. Gov. Code, § 54954, subd. (b).
- 26 Cal. Gov. Code, § 54954, subd. (b)(1)-(7).
- 27 94 Ops.Cal.Atty.Gen. 15 (2011).
- 28 Cal. Gov. Code, § 54954, subd. (c).
- 29 Cal. Gov. Code, § 54954, subd. (d).
- 30 Cal. Gov. Code, § 54954, subd. (e).
- 31 Cal. Gov. Code, § 54953, subd. (e) (exp. January 1, 2026).



# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Agendas for regular meetings .....	30
Mailed agenda upon written request .....	31
Notice requirements for special meetings .....	32
Notices and agendas for adjourned and continued meetings and hearings .....	32
Notice requirements for emergency meetings .....	33
Notice of compensation for simultaneous or serial meetings .....	33
Educational agency meetings .....	33
Notice requirements for tax or assessment meetings and hearings .....	33
Non-agenda items .....	34
Responding to the public .....	35
The right to attend and observe meetings .....	36
Records and recordings .....	37
The public’s right to speak during a meeting .....	38

# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

### Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”<sup>1</sup> The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this

provision to require posting in a location open and accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.<sup>2</sup> This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.<sup>3</sup> While posting an agenda on an agency’s internet website will not, by itself, satisfy the “freely accessible” requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more members that are also members of a governing body.<sup>4</sup>

- Q.** May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city’s website or if the website was not operational during part or all of the 72-hour period preceding the meeting?
- A.** *At a minimum, the Brown Act calls for “substantial compliance” with all agenda posting requirements, including posting to the agency website.<sup>5</sup> Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties that cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.<sup>6</sup> This inquiry requires a fact-specific examination of whether the agency or its legislative body made “reasonably effective efforts to notify interested persons of a public meeting” through online posting and other available means.<sup>7</sup> The Attorney General’s opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

*awareness, among other factors.<sup>8</sup> For these reasons, obvious website technical difficulties might not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.*

The agenda must state the meeting time and place and must contain “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.”<sup>9</sup> For a discussion of descriptions for open and closed-session agenda items, see chapter 5. Special care should be made to describe on the agenda each distinct action to be taken by the legislative body, while an overbroad description of a “project” must be avoided if the “project” is actually a set of distinct actions, in which case each action must be listed separately on the agenda.<sup>10</sup> For example, the listing of an “initiative measure” alone on an agenda was found insufficient where the agency was also deciding whether to accept a gift from the measure proponent to pay for the election.<sup>11</sup>

**PRACTICE TIP:** Putting together a meeting agenda requires careful thought.

**Q.** The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street.
- Consideration of a contract with ABC Consulting.

Are these descriptions adequate?

**A.** *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read, “Consideration of a contract with ABC Consulting in the amount of \$50,000 for traffic engineering services regarding traffic on Eighth Street.”*

**Q.** The agenda includes an item entitled City Manager’s Report, during which time the city manager provides a brief report on notable topics of interest, none of which is listed on the agenda.

Is this permissible?

**A.** *Yes, as long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed-session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions.<sup>12</sup> Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

### **Mailed agenda upon written request**

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted or upon distribution to all, or a majority of all, of the members of the legislative body, whichever occurs first. If the local agency has an internet website, this requirement can be satisfied by emailing a copy of, or website link to, the agenda or agenda packet if the person making the request asks for it to be emailed. Further, if requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.<sup>13</sup>



### Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation and each radio and television station that has requested such notice in writing. This notice must be delivered at least 24 hours before the time of the meeting by personal delivery or any other means that ensures receipt.

The notice must state the time and place of the meeting as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda, that is, with a brief general description. Some items must appear on a regular, not special, meeting agenda (e.g., general law city adoption of an ordinance or consideration of local agency executive compensation).<sup>14</sup>

As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: at a site that is freely accessible to the public, and on the agency's website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more

members that are also members of a governing body.<sup>15</sup>

### Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.<sup>16</sup> If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.<sup>17</sup> A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.<sup>18</sup>

## Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>19</sup> News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

## Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.<sup>20</sup>

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

## Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.<sup>21</sup> However, they are generally consistent with the Brown Act. An item is probably void if not posted.<sup>22</sup> A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and can address the board on those items.<sup>23</sup>

## Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.<sup>24</sup> Although written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments, as those are governed by the California Constitution, Article XIII C or XIII D, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a



mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.<sup>25</sup> As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

### Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:<sup>26</sup>

- When a majority decides there is an “emergency situation” (as defined for emergency meetings).
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action, and the need to take action “came to the attention of the local agency subsequent to the agenda being posted.” This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline.
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

**“I’d like a two-thirds vote of the board so we can go ahead and authorize commencement of phase two of the East Area Project,” said Chair Lopez.**

**“It’s not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I’d like to keep it that way. Do I hear a motion?”**

*The desire to stay ahead of schedule generally would not satisfy “a need for immediate action.” Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.*

**“We learned this morning of an opportunity for a state grant,” said the chief engineer at the regular board meeting, “but our application has to be submitted in two days. We’d like the board to give us the go-ahead tonight, even though it’s not on the agenda.”**

*A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:*

**PRACTICE TIP:** Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

- First, make two determinations: (1) that there is an immediate need to take action and (2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

## Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on their own activities.<sup>27</sup> However, caution should be used to avoid any discussion or action on such items.



**Council Member Jefferson: I would like staff to respond to Resident Joe’s complaints during public comment about the repaving project on Elm Street. Are there problems with this project?**

**City Manager Frank: The public works director has prepared a 45-minute PowerPoint presentation for you on the status of this project and will give it right now.**

**Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.**

*It is clear from this dialogue that the Elm Street project was not on the council’s agenda but was raised during the public comment period for items not on the agenda. Council Member Jefferson properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.*

### The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.<sup>28</sup>

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.<sup>29</sup> This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.<sup>30</sup>

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.<sup>31</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>32</sup>

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.<sup>33</sup>

**Q.** The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

**A.** *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt or disrupt proceedings.<sup>34</sup> Ejection is justified only when audience members actually disrupt the proceedings,<sup>35</sup> or, alternatively, if the presiding member of the legislative body warns a person that their behavior is disruptive and that continued disruption may result in their removal (but no prior warning is required if there is a use of force or true threat of force).<sup>36</sup> If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to readmit an individual or individuals not responsible for the disturbance.<sup>37</sup>

## Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.<sup>38</sup> A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.<sup>39</sup>

- Q.** In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?
- A.** *No. The memorandum is a privileged attorney-client communication.*
- Q.** In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?
- A.** *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A nonexempt or otherwise non-privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose, and the agendas for all meetings of the legislative body must include the address of this office or location.<sup>40</sup> The location designated for public inspection must be open to the public, not a locked or closed office. Alternatively, the documents can be posted on the city's website for public review if statutory requirements are met.<sup>41</sup>

A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body.
- After the meeting if prepared by some other person.<sup>42</sup>

This requirement does not prevent assessing a fee or deposit for providing a copy of a public record pursuant to the California Public Records Act except where required to accommodate persons with disabilities.<sup>43</sup>

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.<sup>44</sup> The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.<sup>45</sup>

In addition, the public is specifically allowed to use audio or videotape recorders or still or motion picture cameras at a meeting to record meetings of legislative bodies, absent a reasonable finding by the body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.<sup>46</sup>

**PRACTICE TIP:** Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record but must respect a speaker's desire for anonymity.

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.<sup>47</sup>

### The public's right to speak during a meeting

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, as long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.<sup>48</sup>

- Q.** Must the legislative body allow members of the public to show videos or make a PowerPoint presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?
- A.** *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the Brown Act, as well as case law, prevents legislative bodies from prohibiting public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.<sup>49</sup> However, this prohibition does not provide immunity for defamatory statements.<sup>50</sup>

- Q.** May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?
- A.** *No, as long as the criticism pertains to job performance.*
- Q.** During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?
- A.** *There is no case law on this subject. Some would argue that purely campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section where relevant to the governing of the agency and an implicit criticism of the incumbents' performance of city business.*

The legislative body may adopt reasonable regulations, including a limit on the total time permitted for public comment and a limit on the time permitted per speaker.<sup>51</sup> Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.<sup>52</sup>

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a regular (but not special) public meeting if all interested members of the public had the opportunity to

speak on the item before or during its consideration, and if the item has not been substantially changed.<sup>53</sup>

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.<sup>54</sup>

## ENDNOTES

- 1 Cal. Gov. Code, § 54954.2, subd. (a)(1).
- 2 78 Ops.Cal.Atty.Gen. 327 (1995).
- 3 88 Ops.Cal.Atty.Gen. 218 (2005).
- 4 Cal. Gov. Code, §§ 54954.2, subd. (a)(1) and 54954.2, subd. (d).
- 5 Cal. Gov. Code, § 54960.1, subd. (d)(1).
- 6 99 Ops.Cal.Atty.Gen. 11 (2016).
- 7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432.
- 8 99 Ops.Cal.Atty.Gen. 11 (2016).
- 9 Cal. Gov. Code, § 54954.2, subd. (a)(1).
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of California Environmental Quality Act [CEQA] action [mitigated negative declaration] without specifically listing it on the agenda violates the Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis). See also *GI Industries v. City of Thousand Oaks* (2022) 84 Cal.App.5th 814 (depublished) (Brown Act requires CEQA finding of exemption to be listed on agenda items that are projects under CEQA).
- 11 *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194.
- 12 Cal. Gov. Code, § 54954.5.
- 13 Cal. Gov. Code, § 54954.1.
- 14 Cal. Gov. Code, §§ 36934; 54956, subd. (b).
- 15 Cal. Gov. Code, § 54956, subds. (a) and (c).
- 16 Cal. Gov. Code, § 54955.
- 17 Cal. Gov. Code, § 54954.2, subd. (b)(3).
- 18 Cal. Gov. Code, § 54955.1.
- 19 Cal. Gov. Code, § 54956.5.
- 20 Cal. Gov. Code, § 54952.3.
- 21 Cal. Edu. Code, §§ 35144, 35145, and 72129.
- 22 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196.
- 23 Cal. Edu. Code, § 35145.5
- 24 Cal. Edu. Code, § 54954.6
- 25 See Cal. Const. Art. XIII C, XIII D; Cal. Gov. Code, § 54954.6, subd. (h).
- 26 Cal. Gov. Code, § 54954.2, subd. (b).
- 27 Cal. Gov. Code, § 54954.2, subd. (a)(2); *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239 (six-minute colloquy on non-agenda item with staff answering questions and advising that matter could be placed on future agenda fell within exceptions to discussing or acting upon non-agenda items).



- 28 Cal. Gov. Code, § 54953.3.
- 29 Cal. Gov. Code, § 54961, subd. (a); Cal. Gov. Code, § 11135, subd. (a).
- 30 Cal. Gov. Code, § 54952.2, subd. (c)(2).
- 31 Cal. Gov. Code, § 54953, subd. (b).
- 32 Cal. Gov. Code, § 54953, subd. (c).
- 33 Cal. Gov. Code, § 54953, subd. (c)(2).
- 34 Cal. Gov. Code, §§ 54957.9, 54957.95.
- 35 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed toward mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption); but see *Kirkland v. Luken* (S.D. Ohio 2008) 536 F.Supp.2d 857 (finding no First Amendment violation by mayor for turning off microphone and removing speaker who used foul and inflammatory language that was deemed as “likely to incite the members of the audience during the meeting, cause disorder, and disrupt the meeting”).
- 36 Cal. Gov. Code, § 54957.95.
- 37 Cal. Gov. Code, § 54957.9.
- 38 Cal. Gov. Code, § 54957.5.
- 39 Cal. Gov. Code, § 54957.5, subd. (d).
- 40 Cal. Gov. Code, § 54957.5(b); see also *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.
- 41 Cal. Gov. Code § 54957.5.
- 42 Cal. Gov. Code, § 54957.5, subd. (c).
- 43 Cal. Gov. Code, § 54957.5, subd. (d).
- 44 Cal. Gov. Code, § 54953.5, subd. (b).
- 45 Cal. Gov. Code, § 54957.5, subd. (d).
- 46 Cal. Gov. Code, § 54953.5, subd. (a).
- 47 Cal. Gov. Code, § 54953.6.
- 48 Cal. Gov. Code, § 54954.3, subd. (a).
- 49 Cal. Gov. Code, § 54954.3, subd. (c); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800.
- 50 Cal. Gov. Code, § 54954.3, subd. (c).
- 51 *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150 (public comment time limit of three minutes for each speaker did not violate First Amendment).
- 52 Cal. Gov. Code, § 54954.3, subd. (b); *Chaffee v. San Francisco Public Library Commission* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992).
- 53 Cal. Gov. Code, § 54954.3, subd. (a); *Preven v. City of Los Angeles* (2019) 32 Cal.App.5th 925.
- 54 Cal. Gov. Code, § 54954.3, subd. (a).



# Chapter 5

## CLOSED SESSIONS

Agendas and reports.....	42
Litigation.....	43
Real estate negotiations .....	45
Public employment .....	46
Labor negotiations .....	47
Labor negotiations — school and community college districts.....	48
Other Education Code exceptions.....	48
Joint powers authorities .....	48
License applicants with criminal records .....	49
Public security.....	49
Multijurisdictional law enforcement agency .....	49
Hospital peer review and trade secrets .....	49
Other legislative bases for closed session .....	50
Who may attend closed sessions .....	50
The confidentiality of closed session discussions.....	51

# Chapter 5

## CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.<sup>1</sup>



As summarized in chapter 1 of this guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.<sup>2</sup> The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. However, there is no prohibition in putting overlapping exceptions on an agenda in order to provide an opportunity for more robust closed session discussions. As an example, a city council cannot give direction to the city manager about a property

negotiation during a performance evaluation exception. However, if both real property negotiation and performance evaluation exceptions are on the agenda, those discussions might be conducted. Similarly, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.<sup>3</sup>

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions applies to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),<sup>4</sup> the Brown Act does not authorize closed sessions for other contract negotiations.

### Agendas and reports

Closed session items must be briefly described on the posted agenda, and the description must state the specific statutory exemption.<sup>5</sup> An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly put on the agenda as a

**PRACTICE TIP:** Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

closed session item or unless it is properly added as a closed-session item by a two-thirds vote of the body after making the appropriate urgency findings.<sup>6</sup>

The Brown Act supplies a series of fill-in-the-blank sample agenda descriptions for various types of authorized closed sessions that provide a “safe harbor” from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multijurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor’s Office.<sup>7</sup>

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda, and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.<sup>8</sup> The legislative body must take public comment on the closed session item before convening in a closed session.

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report vary according to the reason for the closed session and the action taken.<sup>9</sup> The announcements may be made at the site of the closed session, as long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.<sup>10</sup>

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential “minute book” be kept to record actions taken at closed sessions.<sup>11</sup> If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.<sup>12</sup> A court may order the disclosure of minute books for the court’s review if a lawsuit makes sufficient claims of an open meeting violation.

## Litigation

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation.<sup>13</sup> The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. Essentially, a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.<sup>14</sup> The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body’s conferring with its own legal counsel and required support staff.<sup>15</sup> For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.<sup>16</sup>

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**PRACTICE TIP:** Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

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The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.<sup>17</sup> In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.<sup>18</sup>

### *Existing litigation*

- Q.** May the legislative body agree to settle a lawsuit in a properly noticed closed session without placing the settlement agreement on an open session agenda for public approval?
- A.** *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*<sup>19</sup>

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local

agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.<sup>20</sup>

### *Anticipated exposure to litigation against the local agency*

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.<sup>21</sup> The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and

circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff. If an agency receives a documented threat of litigation, and intends to discuss that matter in closed session, the record of a litigation threat must be included in the body's agenda packet.<sup>22</sup>



### **Anticipated initiation of litigation by the local agency**

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed session. Other actions, such as when final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.<sup>23</sup> Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

### **Real estate negotiations**

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.<sup>24</sup> Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues, such as site design, architecture, or other aspects of the project for which the transaction is contemplated.<sup>25</sup>

**Q.** May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

**A.** *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern,<sup>26</sup> and the names of the parties with whom its negotiator may negotiate.<sup>27</sup>

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person as soon as the agency is informed of it.<sup>28</sup>

**"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.**

**"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."**

**"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."**

*A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.*

**PRACTICE TIP:** Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

### Public employment

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.”<sup>29</sup> The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.<sup>30</sup> The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.<sup>31</sup> That authority may be delegated to a subsidiary appointed body.<sup>32</sup>

An employee must be given at least 24 hours’ notice of any closed session convened to hear specific complaints or charges against them. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,<sup>33</sup> and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.<sup>34</sup> The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.<sup>35</sup> If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.<sup>36</sup>

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.<sup>37</sup>

- Q.** Must 24 hours’ notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?
- A.** *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.<sup>38</sup> An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, “employee” specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager, or superintendent. Examples of the latter include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.<sup>39</sup> Action on individuals who are not “employees” must also be public — including discussing and voting on appointees to committees, debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay. That means, among other things, there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

Reclassification of a job must be public, but an employee’s ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.<sup>40</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>41</sup>

**“I have some important news to announce,” said Mayor Garcia. “We’ve decided to terminate the contract of the city manager effective immediately. The council has met in closed session, and we’ve negotiated six months’ severance pay.”**

**“Unfortunately, that has some serious budget consequences, so we’ve had to delay phase two of the East Area Project.”**

*This may be an improper use of the personnel closed session if the council agenda described the item as the city manager’s evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution must be exercised not to discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

## Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,<sup>42</sup> on employee salaries and fringe benefits for both represented (“union”) and unrepresented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an “employee” includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.<sup>43</sup>

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**PRACTICE TIP:** The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

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**PRACTICE TIP:** Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.<sup>44</sup>

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.<sup>45</sup> The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

### Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization.
2. A meeting of a mediator with either side.
3. A hearing or meeting held by a fact finder or arbitrator.
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.<sup>46</sup>

Public participation under the Rodda Act also takes another form.<sup>47</sup> All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.<sup>48</sup> The final vote must be in public.

### Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.<sup>49</sup>

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.<sup>50</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>51</sup>

**PRACTICE TIP:** Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

## Joint powers authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.<sup>52</sup>

## License applicants with criminal records

A closed session is permitted when an applicant who has a criminal record applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw it, the body must deny the license in public, either immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.<sup>53</sup>

## Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings; essential public services, including water, sewer, gas, or electric service; or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials, including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.<sup>54</sup> Action taken in closed session with respect to such public security issues is not reportable action.

## Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an ongoing criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.<sup>55</sup>

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.<sup>56</sup>

## Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals under other provisions of law:<sup>57</sup>

1. A meeting to hear reports of hospital medical audit or quality assurance committees or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.



A “trade secret” is defined as information that is not generally known to the public or competitors and that (1) “derives independent economic value, actual or potential” by virtue of its restricted knowledge; (2) is necessary to initiate a new hospital service or program or facility; and (3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district’s dissolution.<sup>58</sup>

### Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to review the Brown Act carefully to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently

encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including a response to a confidential final draft audit report from the Bureau of State Audits,<sup>59</sup> consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,<sup>60</sup> hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medical services,<sup>61</sup> discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,<sup>62</sup> and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.<sup>63</sup>

**PRACTICE TIP:** Meetings are either open or closed. There is nothing “in between.”<sup>64</sup>

### Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official or essential role in the closed session subject matters must be excluded from closed sessions.<sup>65</sup>

**Q.** May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

**A.** *No, attendance in closed sessions is reserved exclusively for the agency’s advisors.*

## The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.<sup>66</sup> It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.<sup>67</sup> Only the legislative body acting as a body may agree to divulge confidential closed session information. With regard to attorney-client privileged communications, the entire body is the holder of the privilege, and only the entire body can decide to waive the privilege.<sup>68</sup>

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information regarding pending litigation that was received during a closed session,<sup>69</sup> though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.<sup>70</sup> In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief and, if the breach is a willful disclosure of confidential information, disciplinary action against an employee and referral of a member of the legislative body to the grand jury.<sup>71</sup>

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure (1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; (2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or (3) is information that is not confidential.<sup>72</sup>

The interplay between these possible sanctions and an official’s First Amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

**“I want the press to know that I voted in closed session against filing the eminent domain action,” said Council Member Chang.**

**“Don’t settle too soon,” reveals Council Member Watson to the property owner, over coffee. “The city’s offer coming your way is not our bottom line.”**

*The first comment to the press may be appropriate if it is a part of an action taken by the city council in closed session that must be reported publicly.<sup>73</sup> The second comment to the property owner is not. Disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

**PRACTICE TIP:** There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

## ENDNOTES

- 1 Cal. Gov. Code, § 54962.
- 2 Cal. Const. , Art. 1, § 3.
- 3 61 Ops.Cal.Atty.Gen. 220 (1978); but see Cal. Gov. Code, § 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations and other related matters).
- 4 Cal. Gov. Code, § 54957.1.
- 5 Cal. Gov. Code, § 54954.5.
- 6 Cal. Gov. Code, § 54954.2.
- 7 Cal. Gov. Code, § 54954.5.
- 8 Cal. Gov. Code, §§ 54956.9, 54957.7.
- 9 Cal. Gov. Code, § 54957.1, subd. (a).
- 10 Cal. Gov. Code, § 54957.1, subd. (b).
- 11 Cal. Gov. Code, § 54957.2.
- 12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal. Code Regs. § 18707.
- 13 But see *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 (protection of the attorney-client privilege alone cannot by itself be the reason for a closed session).
- 14 Cal. Gov. Code, § 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 15 82 Ops.Cal.Atty.Gen. 29 (1999).
- 16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471.
- 17 “*The Brown Act*,” California Attorney General (2003), p. 40.
- 18 Cal. Gov. Code, § 54956.9, subd. (g).
- 19 See e.g., *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.
- 20 *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.
- 21 Cal. Gov. Code, § 54956.9, subd. (e).
- 22 *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360.
- 23 Cal. Gov. Code, § 54957.1.
- 24 Cal. Gov. Code, § 54956.8.
- 25 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904. See also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner, and timing of consideration and other items that cannot be disclosed without revealing price and terms).
- 26 73 Ops.Cal.Atty.Gen. 1 (1990).
- 27 Cal. Gov. Code, §§ 54956.8, 54954.5, subd. (b).
- 28 Cal. Gov. Code, § 54957.1, subd. (a)(1).
- 29 Cal. Gov. Code, § 54957, subd. (b).
- 30 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duwall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

- 31 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002).
- 32 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty.Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.
- 33 Cal. Gov. Code, § 54957, subd. (b)(3).
- 34 88 Ops.Cal.Atty.Gen. 16 (2005).
- 35 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860.
- 36 Cal. Gov. Code, § 54957, subd. (b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges when there was a public evidentiary hearing prior to closed session).
- 37 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87.
- 38 *Moreno v. City of King* (2005) 127 Cal.App.4th 17.
- 39 Cal. Gov. Code, § 54957.
- 40 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165.
- 41 Cal. Gov. Code, § 54957.1, subd. (a)(5).
- 42 Cal. Gov. Code, § 54957.6.
- 43 Cal. Gov. Code, § 54957.6, subd. (b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
- 44 Cal. Gov. Code, § 54957.6; 51 Ops.Cal.Atty.Gen. 201 (1968).
- 45 Cal. Gov. Code, § 54957.1, subd. (a)(6).
- 46 Cal. Gov. Code, § 3549.1.
- 47 Cal. Gov. Code, § 3540.
- 48 Cal. Gov. Code, § 3547.
- 49 Cal. Edu. Code, § 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).
- 50 Cal. Edu. Code, § 72122.
- 51 Cal. Edu. Code, § 60617.
- 52 Cal. Gov. Code, § 54956.96.
- 53 Cal. Gov. Code, § 54956.7.
- 54 Cal. Gov. Code, § 54957.
- 55 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354.
- 56 Cal. Gov. Code, § 54957.8.
- 57 Cal. Gov. Code, § 54962.
- 58 Cal. Health and Saf. Code, § 32106.
- 59 Cal. Gov. Code, § 54956.75.
- 60 Cal. Gov. Code, § 54956.81.

- 61 Cal. Gov. Code, § 54956.86.
- 62 Cal. Gov. Code, § 54956.87.
- 63 Cal. Gov. Code, § 54956.95.
- 64 Ops.Cal.Atty.Gen. 34 (1965)
- 65 82 Ops.Cal.Atty.Gen. 29 (1999); 2022 WL 1814322, 105 Ops. Cal.Atty.Gen. 89 (2022).
- 66 Cal. Gov. Code, § 54963.
- 67 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327. See also Cal. Gov. Code, § 54963.
- 68 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.
- 69 80 Ops.Cal.Atty.Gen. 231 (1997).
- 70 76 Ops.Cal.Atty.Gen. 289 (1993).
- 71 Cal. Gov. Code, § 54963.
- 72 Cal. Gov. Code, § 54963.
- 73 Cal. Gov. Code, § 54957.1.



# Chapter 6

## REMEDIES

Invalidation of action taken .....	56
Declaratory relief to determine whether past action violated the act.....	57
Civil action to prevent future violations.....	57
Costs and attorney’s fees .....	58
Misdemeanor penalties .....	58
Voluntary resolution.....	59

# Chapter 6

## REMEDIES



A violation of the Brown Act can lead to invalidation of the agency's action, payment of a challenger's attorney fees, public embarrassment, and even criminal prosecution. As explained below, a legislative body often has an opportunity to correct a violation prior to the filing of a lawsuit. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

### Invalidation of action taken

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the grounds that they violate the Brown Act.<sup>1</sup> The following actions cannot be invalidated:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites the wrong Brown Act section but adequately advises the public that the legislative body will meet with legal counsel to discuss potential litigation in closed session.<sup>2</sup>
- Those involving the sale or issuance of notes, bonds, or other indebtedness, or any related contracts or agreements.<sup>3</sup>
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment.<sup>4</sup>
- Those connected with the collection of any tax.<sup>5</sup>
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.<sup>6</sup>

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation, or within 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that a legislative body may act only on items posted on the agenda.<sup>7</sup> The legislative body then has up to 30 days to cure and correct its action.<sup>8</sup> The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and, if so, consider correcting the action to avoid the costs of litigation. If the legislative body does not act, any lawsuit must be filed within the next 15 days.<sup>9</sup>

Although just about anyone has standing to bring an action for invalidation,<sup>10</sup> the challenger must show prejudice as a result of the alleged violation.<sup>11</sup> An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.<sup>12</sup>

### Declaratory relief to determine whether past action violated the act

Any interested person, including the district attorney, may file a civil action to determine whether a past action of a legislative body constitutes a violation of the Brown Act and is subject to a mandamus, injunction, or declaratory relief action.<sup>13</sup> Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a “cease and desist” letter to the legislative body clearly describing the past action and the nature of the alleged violation.<sup>14</sup> The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.<sup>15</sup> If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, the interested person has 60 days to file an action.<sup>16</sup>

The legislative body’s unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.<sup>17</sup> The unconditional commitment must be substantially in the form set forth in the Brown Act.<sup>18</sup> No legal action may thereafter be commenced regarding the past action.<sup>19</sup> However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act, and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.<sup>20</sup>

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.<sup>21</sup>

### Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to do the following:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body.
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body.
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law.
- Compel the legislative body to audio-record its closed sessions.<sup>22</sup>

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**PRACTICE TIP:** A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

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It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future when the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.<sup>23</sup> A court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>24</sup>

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to audio record its future closed sessions.<sup>25</sup> In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the audio recording if it finds there is good cause to think the Brown Act has been violated and make public a certified transcript of the relevant portion of the closed session recording.<sup>26</sup>

### Costs and attorney's fees

A plaintiff who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.<sup>27</sup> When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Brown Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.<sup>28</sup>

### Misdemeanor penalties

A violation of the Brown Act is a misdemeanor if (1) a member of the legislative body attends a meeting where action is taken in violation of the Brown Act, and (2) the member intends to deprive the public of information that the member knows or has reason to know the public is entitled to.<sup>29</sup>

"Action taken" is not only an actual vote but also a collective decision, commitment, or promise by a majority of the legislative body to make a positive or negative decision.<sup>30</sup> If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.<sup>31</sup> In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.<sup>32</sup> There is no case law to support this view. If anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.<sup>33</sup>

**PRACTICE TIP:** Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

## Voluntary resolution

Successful enforcement actions for violations of the Brown Act can be costly to local agencies. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body and its members. It is in the agency's interest to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

Overall, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.



Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

## ENDNOTES

- 1 Cal. Gov. Code, § 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision), sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions), 54954.6 (tax hearings), 54956 (special meetings), and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but they are subject to the other remedies listed in section 54960.1.
- 2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198.
- 3 Cal. Gov. Code, § 54960.1(d)(2).
- 4 Cal. Gov. Code, § 54960.1(d)(3).
- 5 Cal. Gov. Code, § 54960.1(d)(4).
- 6 Cal. Gov. Code, § 54960.1(d)(5).
- 7 Cal. Gov. Code, § 54960.1, subs. (b), (c)(1).
- 8 Cal. Gov. Code, § 54960.1, subd. (c)(2).
- 9 Cal. Gov. Code, § 54960.1, subd. (c)(4).
- 10 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310, 1318-1319.
- 11 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561.
- 12 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118.
- 13 Cal. Gov. Code, § 54960.2, subd. (a); Senate Bill No. 1003, Section 4 (2011-2012 Session).
- 14 Cal. Gov. Code, § 54960.2, subs. (a)(1), (2).
- 15 The legislative body may provide an unconditional commitment after the 30-day period. If the commitment is made after the 30-day period, however, the plaintiff is entitled to attorneys' fees and costs. Cal. Gov. Code, § 54960.2, subd. (b).
- 16 Cal. Gov. Code, § 54960.2, subd. (a)(4).
- 17 Cal. Gov. Code, § 54960.2, subd. (c)(2).

- 18 Cal. Gov. Code, § 54960.2, subd. (c)(1).
- 19 Cal. Gov. Code, § 54960.2, subd. (c)(3).
- 20 Cal. Gov. Code, § 54960.2, subd. (d).
- 21 Cal. Gov. Code, § 54960.2, subd. (e).
- 22 Cal. Gov. Code, § 54960, subd. (a).
- 23 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 916 and fn.6.
- 24 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36.
- 25 Cal. Gov. Code, § 54960, subd. (b).
- 26 Cal. Gov. Code, § 54960, subd. (c).
- 27 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein.
- 28 Cal. Gov. Code, § 54960.5.
- 29 Cal. Gov. Code, § 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both (California Penal Code section 19). Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 30 Cal. Gov. Code, § 54952.6.
- 31 61 Ops.Cal.Atty.Gen. 283 (1978).
- 32 California Government Code section 1222 provides that “[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”
- 33 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.





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