

## OPEN AND PUBLIC MEETINGS - THE BROWN ACT

The Ralph M. Brown Act, (Government Code section 54950 et seq.), requires meetings of legislative bodies of public agencies to be open and public.

### *LEGISLATIVE BODY*

#### **A. A LEGISLATIVE BODY IS:**

1. Governing body includes a commission that is composed of a quorum of the members, or a standing committee with continuing jurisdiction or a fixed meeting schedule.
2. Governing body of a private entity if it is created by the legislative body to exercise delegated authority; or receives funds from local agency and membership of the governing body includes a member of the legislative body of the local agency.
3. Hospital lessees.
4. Elected official who has not yet assumed office is treated as a member of the legislative body.

#### **B. A LEGISLATIVE BODY IS NOT:**

1. Advisory committee composed solely of members of the legislative body, which is less than a quorum of the legislative body, unless it is a "standing committee with either continuing subject matter jurisdiction or a fixed meeting schedule.

### *MEETING*

#### **A. A MEETING IS:**

1. Any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the jurisdiction of the legislative body or local agency.
2. Any form of communication, including intermediaries and technological devices, used by a majority of the members to develop a collective opinion.

#### **B. A MEETING IS NOT:** The following activities or functions are not meetings even if attended by a majority of the legislative body:

1. Individual contact or conversation between a member of the legislative body and any other person so long as the contact is not used to develop a collective consensus.
2. Conference or Seminar.
3. Open and publicized meeting to discuss an issue of community concern not organized by local agency.
4. Social gathering.
5. Open and noticed meeting of another body of the local agency.

#### **C. MEETINGS MUST BE OPEN AND PUBLIC:**

1. Open attendance with no preconditions.

2. Meeting place must be accessible to all and may not discriminate.
3. Video teleconferencing (audio and visual) by all members and public for receipt of public comment or testimony and deliberations of legislative body.
  - a. Agenda must be posted at all video teleconference locations.
  - b. Agency may adopt regulations to safeguard statutory and constitutional rights of participants.
4. Tape recording of meeting must be permitted and agency's recording must be kept for 30 days.
5. Secret ballots, whether preliminary or final, are prohibited.

### ***TYPES OF MEETINGS***

**A. REGULAR MEETING:** Time and place set by ordinance, resolution, bylaws or other rule required for conduct of business by legislative body.

1. Location: Except under specified circumstances, must be held within boundaries of agency's jurisdiction.
2. Agenda must be posted 72 hours prior to regular meeting.

**B. SPECIAL MEETING:** Called by presiding officer or majority of legislative body. Only business described in notice shall be discussed or transacted.

1. Notice of time and place of special meeting must be:
  - a. Posted in freely accessible location 24 hours prior to meeting, and
  - b. Delivered personally or by mail and received 24 hours prior to meeting by each member of legislative body and each local newspaper of general circulation, radio or television requesting notice in writing. Notice may be waived.

**C. EMERGENCY MEETING:** A majority of legislative body must make determination that emergency exists that is either a work stoppage, activity which severely impairs public health and/or safety, or a crippling disaster which severely impacts public health and/or safety.

1. Notice:
  - a. Each newspaper, radio or television station that has requested notice of special meetings shall be notified by telephone by presiding officer (or designee) one hour before meeting.
  - b. If telephone service is not functioning, notice is waived and legislative body must notify media of meeting and action taken as soon as possible.
2. Minutes of meeting shall include a list of all persons notified or attempted to be notified, roll call vote and any action taken at meeting must be posted for 10 days in public place as soon as possible.

**D. ADJOURNED MEETING AND CONTINUED HEARING:** Any regular or special meeting (or adjourned regular or special meeting) or hearing may be adjourned to a time and place specified in an order of adjournment or continuance.

1. Notice:
  - a. Posted near door at place of adjourned meeting within 24 hours of adjournment.
  - b. New agenda must be prepared if subsequent meeting is more than five days from original meeting.

- c. Notice of continuance is given in same manner as adjourned meeting, unless continued to time less than 24 hours after order of continuance in which case notice must be posted immediately following order of continuance.

**E. ADJOURNMENT IN CASE OF LESS THAN A QUORUM:**

1. Adjournment maybe ordered if less than quorum of members is present.
2. If no members are present, clerk shall declare meeting adjourned to a stated time and place.
3. Notice must be posted near door of meeting room within 24 hours of adjournment.

***AGENDA REQUIREMENTS***

**A. REQUIREMENTS:**

1. Agenda must specify time and location of meeting and a brief general description of each item of business to be transacted or discussed (20 words generally). Except as provided below, no action or discussion may occur with respect to any item not on the agenda.
2. Closed session business must be on agenda.
3. Posted in freely accessible place.
4. Notice or agenda for special meeting must include opportunity for public comment on item to be discussed.

**B. & EXCEPTIONS TO AGENDA REQUIREMENTS:**

1. Non-agendized responses permitted:
  - a. Brief responses to public comments and questions.
  - b. Questions for clarification; announcements and reports.
  - c. Reference to staff or others for factual background.
  - d. Requests for staff to report back on an issue at a later date.
  - e. Requests to agendize a matter for a later meeting.
2. Consideration of non-agendized items permitted:
  - a. Emergency: Majority vote to determine that emergency exists. Definition of emergency is same as for emergency meeting.
  - b. Need for immediate action: Legislative body by two-thirds vote must find that there is a need to take immediate action, and the need for action came to attention of agency after agenda posting.
  - c. Item was on an agenda and continued from a meeting held not more than 5 days prior to the new meeting.

***CLOSED SESSION***

**A. CLOSED SESSION:** Meetings conducted in private without public or press are permitted for specific statutory reasons and only at general or special meetings.

1. Requirements:

- a. Closed session must appear on agenda.
  - b. Statutory closed session description on agenda must be adequate.
2. Subject matter of closed session must be announced in open, public meeting (or noted on the agenda).
    - a. If closed session concerns real estate negotiation, announcement must specify property concerned and persons authorized to negotiate.
    - b. If closed session concerns pending litigation, legislative body must announce which statutory provision authorizes the closed session or, if litigation is on file, the name of the case must be announced.
    - c. If closed session involves a personnel matter, the employee must be given 24 hours written notice of the right to have charges heard in open session.
  3. After closed session, legislative body must report certain action taken and vote of each member. Requirements differ depending on subject matter of closed session.

### ***PUBLIC PARTICIPATION***

#### **A. WRITTEN MATERIAL:**

1. Writings distributed to majority of members are public records and must be made available upon request.
2. Public Records Act privileges apply.
3. Copying charges may be assessed.

#### **B. & THE PUBLIC HAS A RIGHT TO BE HEARD AT MEETING:**

1. In public comment period.
2. During special meetings concerning item under discussion.
3. Legislative body may adopt reasonable regulations.

### ***VIOLATIONS AND REMEDIES***

#### **A. CRIMINAL PENALTIES:**

1. Member of legislative body attending meeting in violation of Brown Act with intent to deprive public of information, to which member knows or should know the public is entitled, is guilty of misdemeanor.

#### **B. CIVIL RELIEF:**

1. Lawsuit to enjoin violation, to determine validity of action or to compel taping of closed session.
2. Prerequisite to civil relief: Written demand and request to cure within 30 days of violation in open session or within 90 days of closed session; agency has 30 days to cure.
3. Cure of violation results in dismissal of suit.
4. Costs and attorneys' fees to prevailing party.
5. Invalidation will not apply if: action on note, some contractual obligations, tax collection, actual notice received, lack of prejudice.