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The Brown Act: California's Open Government Law

By: Sandra J. Levin
Executive Director, LA Law Library



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“Government ought to be all outside and no inside.”

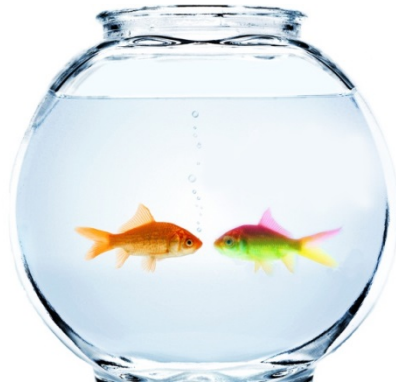
Pres. Woodrow Wilson



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Purpose of the Brown Act

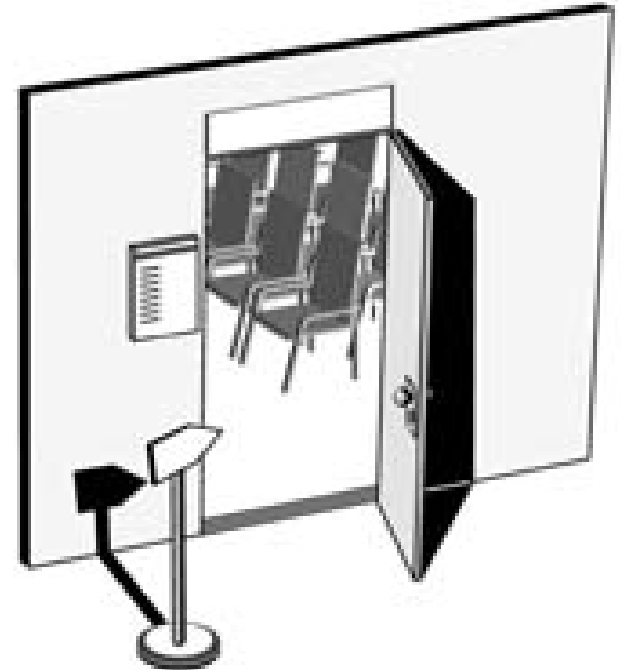
To ensure that almost all aspects of the decision-making process of legislative bodies of local agencies are conducted in public and open to public scrutiny.



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Open and Public

“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 provided in this chapter.”



Who?

“Local agency” includes any city, county, district “**or other local public agency**” GC §54951

[Note: the Bagley-Keene Act exempts anyone required to comply with the Brown Act.]



What Is a Legislative Body?

Governing Body – City Council, Board of Supervisors

Any committee or commission created by formal action of the Governing Body – by resolution or minute action or other vote taken

Any committee created by a committee
GC §54952



Exception!

The Brown Act does NOT apply to ad hoc committees:

an **advisory** committee of less than a quorum of members without continuing subject matter jurisdiction

(Does apply to Standing Committees – continuing subject matter jurisdiction OR fixed meeting schedule)



What if...?

City Council of 5 appoints:

- FY 2015 budget subcommittee of 3
- FY 2015 budget subcommittee of 2
- Finance subcommittee of 2
- Citizen committee to develop a strategic plan for traffic reduction

The City Manager appoints:

- Citizen committee to develop a strategic plan for traffic reduction

The Mayor appoints:

- A finance committee of 2



Private Entities Too!

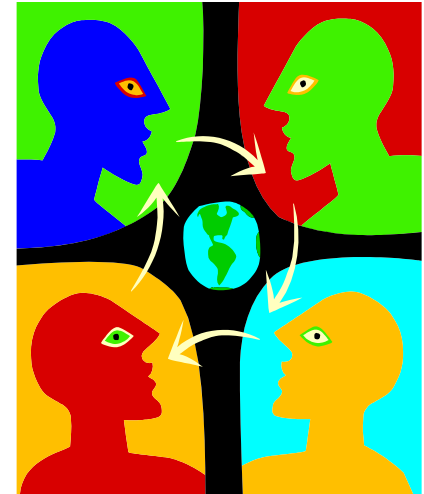
Private board, LLC, or other entity that:

- Is created by the governing body;
OR
- Receives funds and a designated member from the legislative body



What's a Meeting?

“ Any congregation of a majority of the members of a legislative body at the same time and place, to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.”

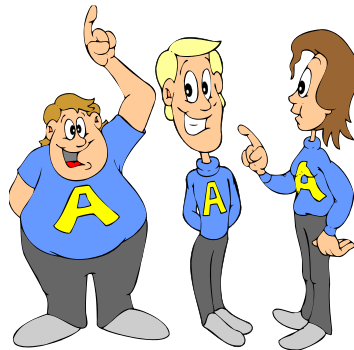


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More on definition of “meeting”

Also prohibited:

Any use of 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.



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Serial Meetings

Daisy Chain

Hub and Spoke

Email: Members of a legislative body should refrain from e-mailing a majority of members of the same legislative body about any item that is within the subject matter jurisdiction of the legislative body or of the agency.



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Serial Briefings

One-way transmission of information:

- By staff for review by board members
- Orally or in writing
- E.g., memorandum from attorney

Caveat: Staff cannot act as a go between to share views from one member to another. Passive receipt only is best policy.



Practical Advice to Legislative Bodies:

“Live so that you wouldn’t be ashamed to sell the family parrot to the town gossip.”

Will Rogers



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Exceptions to the Meeting Definition

Individual Contacts

Conferences (open to public; of general interest)

Community Meetings (not initiated by the local agency)

Meetings of another Legislative Body (open & noticed)

Attendance at a standing committee meeting (observer only)

Purely Social or Ceremonial Occasions



What if...?

Majority of council members attend:

- A meeting of the judges of the superior court?
- A meeting of the county board of supervisors?
- A meeting with one supervisor to talk about funding?
- Private retirement dinner for one of the council members?
- A fundraiser for a local charity?



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Conducting a Lawful Meeting

BASIC RULES:

Post an Agenda

In location freely accessible to public

On agency website

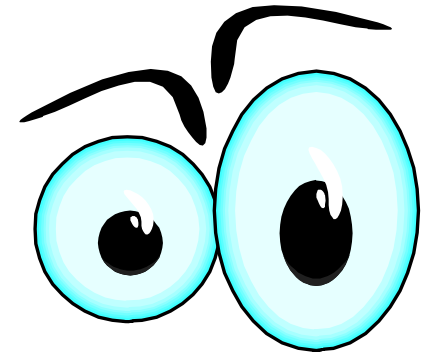
72 hours before regular meeting

24 hours before special meeting

Make materials available to public

Discuss only agendized matters

Allow for public comment



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Notice/Agenda Posting

- Must include time, place and brief general description of each item of business to be discussed, including closed-session items
- If requested, notice shall be available in alternative formats
- Instructions on ADA assistance for meeting should appear on agenda



Agenda Item Descriptions

Description should identify:

- What is to be discussed under each item
- What actions are under consideration (e.g., including CEQA)
- Need not exceed 20 words
- Goal is to allow reader to understand enough about what is being considered to determine whether to attend



Only Agendized Matters

No action or discussion allowed for item not listed on agenda except :

- Brief response to statement or question from public
- Questions to staff for clarification of a matter based upon public comment
- Brief announcement or report on staff's activities



What if...?

Is this agenda title permissible:

- Temporary Employee Contract
- Approval of Construction Contract
- Responses to Public Comment
- Approval of Contract with Jane Smith in Amount to Be Determined
- Discussion of Library Collection Cuts



Agenda Materials Are Public

- Documents related to agenda item must be available at the meeting
- Documents submitted to a quorum in connection with an agenda item must be available upon request
- Agenda must designate where to obtain documents distributed to Board less than 72 hours before the meeting



Items Added to the Agenda (without posting)

- Majority vote to add discussion of emergency
- 2/3 vote to add items because of needed immediate action that came to the attention of the agency (not just the legislative body) after the agenda was posted
- Item continued from another meeting within 5 calendar days



Meeting Location

Meetings must occur within the agency's jurisdiction, except to:

- Comply with a court order or attend a judicial proceeding
- Inspect real or personal property
- Attend a meeting with another legislative body meet with a state or federal representative
- Meet in a facility owned by the agency
- Visit legal counsel's office for a closed session



Teleconferencing

May be used if:

- There is audio or video connecting locations;
- Notice and agenda identify
- The remote location;
- Remote location is posted and accessible to public;
- All votes are by roll call;
- All locations observe Brown Act, e.g., allowing public participation;
- A quorum participates from within the jurisdiction



Public Comment

Every agenda must allow comment on items on the agenda prior to action

Regular agendas must allow comment on items not on the agenda but within agency's jurisdiction ("Public Input")



Limits on Public Comment

The legislative body may:

- Adopt reasonable regulations limiting total amount of time for public testimony for certain issues & for each speaker
- Order the room to be cleared of persons actually disrupting the meeting
- Refuse to allow public comment where previously taken at agendized meeting



New Rule: Translators for Public Comment

- AB 1787 Govt. Code §§ 54954.3 (2016)
- If public comment is limited, must provide at least twice the time to anyone using a translator
- If there is a simultaneous translation equipment system, no extra time is required



What if...?

Board limits all public comment to:

- 60 minutes at end of meeting
- 20 minutes at beginning of meeting
- 3 minutes at beginning of meeting
- 1st 3 people can speak
- All speakers commenting on the agenda but only 3 off agenda



What If...?

Board says:

- All off agenda comments at the end
- Only respectful comments allowed

Member of public wants to tell my Board:

Sandi is lying to you and stealing money from the Library?

The library aide who works on Sundays is fat and ugly?



Closed Sessions

Limited topics

Specified agenda
format and
“reporting out”
requirements



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Closed Session

There is statutory safe-harbor language:

- Real Property Transactions (Price & Terms of Payment Only)
- Litigation – Existing, Anticipated and Initiation
- Liability claims
- Labor negotiations
- Personnel Issues – Appointment, Performance Evaluation, Discipline/Dismissal/Release



What If...?

Can the City Council go into closed session to discuss:

- City Manager's compensation?
- Resident's claim without a lawsuit?
- Performance evaluation for City Manager?
- Director's goals for next year?
- Performance evaluations for staff?



Closed Session Confidences

- Willful disclosure of confidential information obtained during closed session is subject to:
 - Injunctive relief; disciplinary action; and referral to a grand jury (§ 54963)
- Person who discloses the confidential information must have been informed of obligation not to disclose confidential information before discipline can be imposed. (§ 54963(d))



Photography

The Public Has a Right to Photograph or Videotape

Agency Can Impose Reasonable time/place/manner restrictions



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Enforcement

Court of Public Opinion

Written Notice and Opportunity to
Cure

Civil Action

Criminal Action



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Enforcement

Each member of a legislative body who attends a meeting at which action is taken in violation of the Act, **with intent to deprive the public of information to which it is entitled**, is guilty of a misdemeanor.



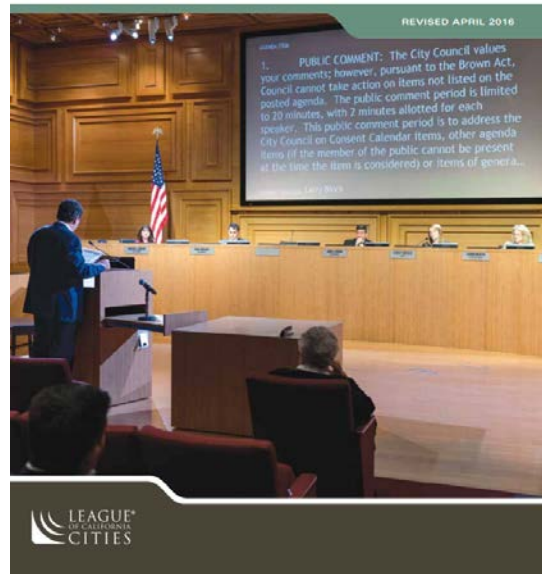
Enforcement

- Violations may be prevented by mandamus, injunction or declaratory relief
- Actions not in substantial compliance may be invalidated after demand for cure



Resources

Open & Public V A GUIDE TO THE RALPH M. BROWN ACT



<https://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>



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Conclusion

Complicated Details
Simple General Rule

Government Agencies Must:

- Do the **public's business in public**
- Give the public **notice and an opportunity to participate**





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