COUNTY COUNSEL GUIDE

TO

BROWN ACT REQUIREMENTS

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FORWARD

The following is a brief outline on the key provisions of the Brown Act and how they apply to the Board of Supervisors and County commissions, committees, etc.

This is an overview and is not intended to be a comprehensive summary.

The Ralph M. Brown Act was enacted by the Legislature in 1953. Beginning at Government Code section 54950[1], it contains a myriad of detailed and technical requirements governing the conduct of meetings of local agencies[2], as well as the conduct of the governing officials of those agencies.

Although there have been some revisions throughout the years, two key provisions of the Brown Act have remained unchanged since its passage. The first is the intent section, which provides as follows:

> "In enacting this chapter, the Legislature finds and declares that 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 their authority, do not give their public servants the right to decide what is good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (Section 54950)

The second key provision of the Act is contained in section 54953:

> "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."

The main focus of the Brown Act is the public's right to attend and participate in the decision making process of local legislative bodies.

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[1] All references to sections refer to the Government Code.

[2] The terms "legislative body, local agency, and body," are used throughout this summary to refer to government entities subject to the Brown Act.

I. APPLICABILITY OF THE ACT

Section 54952 sets forth a comprehensive definition of "legislative body" which includes commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.

Advisory committees comprised solely of less than a quorum of the legislative body are not legislative bodies as long as they are not standing committees. (Section 54952(b)) Standing committees of the legislative body, despite their composition, which have continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of the legislative body, are legislative bodies for purposes of the Act. (Section 54952(b))

Sections 54952.2(c)(4) and (6) provide for non-compliance by a Brown Act legislative body to attend a Brown Act meeting of another local agency provided that business within the subject matter jurisdiction of the attending body is not discussed. In addition, the majority of a legislative body may attend a Brown Act meeting of one of its standing committees, provided that they do not participate in the meeting unless they are members of that standing committee.

II. WHAT IS A MEETING?

If official business is discussed, any gathering of a quorum, no matter how informal, is a "meeting" subject to the requirements of the Brown Act. (61 Ops.Atty.Gen. 220 (1978).)

The Brown Act does not apply to:

A) individual contacts between a member and any other person that do not violate section 54952.2(b) (Section 54952.2(c)(1));

B) attendance by the majority at a conference or similar gathering open to the public that involves a discussion of issues of general interest, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(2));

C) attendance by a majority at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(3));

D) attendance by a majority at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of another legislative body of another local agency, provided that a majority do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency (Section 54952.2(c)(4));

E) attendance by a majority at a purely social or ceremonial occasion, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(5)); and

F) attendance by a majority at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers (Section 54952.2(c)(6)).

III. AGENDA REQUIREMENTS

Regular Meetings:

At least 72 hours before a regular meeting, the legislative body, or its designee, shall post an agenda containing 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. A brief general description is defined to generally not exceed twenty words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

In general, no action can be taken if the item is not listed on the agenda.

One exception is made upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as required. (Section 54954.2(b)(2))[3]

Action may also be taken on an item not listed in the agenda if a determination is made, by a majority vote, that an "emergency situation" exists. (Section 54954.2(b)(1)). "Emergency situation" is defined narrowly as either a work stoppage or other activity which severely impairs the public health or safety, or a crippling disaster which severely impairs public health or safety. (Section 54956.5)

[3] For our Board, if 5 members are present, two-thirds vote is 4; if 4 members are present, two-thirds vote is 3; and if 3 members are present, a unanimous vote is required.

Each legislative body shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required, for the conduct of business of that body, and the time and place for holding regular meetings. This requirement does not apply to advisory and standing committees. (Section 54954)

Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting, shall be considered as regular meetings of those bodies. (Section 54954)

Special Meetings:

A special meeting may be called at any time by the presiding officer of the legislative body, or by a majority of the members of the legislative body, by delivering personally or by any other means, written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing.

The notice shall be received at least 24 hours before the meeting and shall specify the time and place, and the business to be transacted or discussed. No other business shall be considered by the legislative body.

The written notice may be dispensed with as to any member who at, or prior to the time that the meeting convenes, files with the clerk or secretary of the legislative body a written waiver of the notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

Notice shall be required pursuant to the section, regardless of whether any action is taken at the special meeting. The call and notice shall be posted at least 24 hours prior to the special meeting, in a location that is freely accessible to members of the public. (Section 54956)

Emergency Meetings

There are two definitions of emergency situations which can result in the necessity for a legislative body to hold an emergency meeting.

Emergency situations are defined as either a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

Dire emergency situations are defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist act that poses immediate and significant peril as determined by a majority of the members of the legislative body.

In both situations, the legislative body may hold an emergency meeting without complying with either the 24 hour notice or posting requirements. Instead, notice shall be given by telephone and each local newspaper of general circulation and radio or

television station which has requested notice of special meetings must be telephonically notified by the presiding officer of the legislative body one hour prior to the emergency meeting, or in the case of a dire emergency meeting, at or near the time of the emergency meeting, notice shall be given.

All telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings must be exhausted. In the event that telephone services are not functioning, the notice requirements are waived and the legislative body or designee of the legislative body must notify those newspapers, radio and television stations, as soon as possible after the meeting, of the purpose of the meeting and any action taken

During an emergency meeting, the legislative body may meet in closed session if agreed to by two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by unanimous vote. In addition, with the exception of the 24 hour notice requirement, all of the requirements of special meetings must apply to emergency meetings. (Section 54956.5)

Regular & Special Meetings:

Any person may request a copy of the agenda, or a copy of all documents constituting the agenda packet of any meeting of the legislative body. Upon receipt of the written request, the legislative body or its designee shall mail the materials at the time the agenda is posted or upon distribution to the legislative body, whichever occurs first. Any request for mailed copies of agendas shall be valid for the calendar year in which it is filed, and must be renewed the following January 1 of each year. The legislative body may establish a fee that does not exceed the cost of providing the service.

Failure of the requesting person to receive the agenda pursuant to this section, shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda was not received. (Section 54954.1)

Supporting Documentation

All disclosable writings related to an agenda item that are distributed to a majority of the members of the legislative body must be made available to the public upon request without delay. (Section 54957.5(a))

If these writings are distributed to a majority of the members of the legislative body less than 72 hours before the meeting (i.e. after the agenda is posted), they must be made available for public inspection at a public office or location designated by the local agency. (Section 54957.5(b)(1)) The address of the designated office or location must be listed on the agenda. (Section 54957.5(b)(2))

If these writings are distributed to a majority of the members of the legislative body during the meeting, they must be made available for public inspection at the meeting if prepared by the local agency or a member of the legislative body, or after the meeting if prepared by another person. (Section 54957.5(c))

Compliance with ADA

The agenda and all disclosable writings related to an agenda item which are distributed to a majority of the members of the legislative body must be made available in appropriate alternate formats upon request by a person with a disability, as required by the Americans with Disabilities Act of 1990. (Sections 54954.2(a)(1) and 54957.5(c))

The agenda must include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. (Section 54954.2(a)(1))

IV. TELECONFERENCING PERMITTED

All meetings of the legislative body shall be open and public, and all persons shall be permitted to attend any meeting, except as otherwise provided. Notwithstanding any other provision of law, the legislative body may use teleconferencing for the benefit of the public in connection with any meeting.

Teleconferencing may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during the teleconference meeting shall be by roll call. If the legislative body elects to use teleconferencing equipment, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body.

Each teleconference location shall be identified in the agenda and shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly at each location. (Section 54953.)

V. WHAT IS ACTION TAKEN?

"Action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body, upon a motion, proposal, resolution, order or ordinance. (Section 54952.6)

Many items are discussed when no action is taken. However, if discussion has proceeded to a point where a general consensus by a majority of the members has been reached, a court could conclude that action has been taken, even though a formal vote is put off to a later date.[4]

VI. KNOWINGLY TAKING ACTION IN VIOLATION OF THE ACT MAY BE A CRIME

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of the Act, with wrongful intent to deprive the public of information to which it is entitled under this chapter, is guilty of a misdemeanor. (Section 54959)

Examples of conduct which could constitute a violation are:

(1) taking action on an item in closed session when an open meeting is required;

(2) taking action on an item not listed on the agenda; and

(3) taking action at a meeting held without notice.

The standard for criminal culpability in terms of a mental state is "wrongful intent" to deprive the public of information to which it is entitled to, pursuant to the Brown Act.This is a very difficult standard to prove and there are no reported cases involving criminal liability.

VII. PUBLIC COMMENT

Every agenda for regular meetings must include an opportunity for members of the public to address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item.

In addition, every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity to members of the public to address the legislative body concerning that item prior to action on that item. (Section 54954.3)

VIII. PUBLIC'S RIGHTS WHILE ATTENDING A MEETING

In order to attend a public meeting of a legislative body, a member of the public shall not be required to register his or her name, to complete a questionnaire, or otherwise to fulfill any condition in order to attend the meeting. (Section 54953.3)

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[4] Pursuant to Section 54952.2(b), the sending of e-mails would be the "use of ... technological devices, therefore, a majority of the board members of the legislative body may not e-mail each other to develop a collective concurrence as to action to be taken by the body.

If an attendance list or similar document is posted or circulated, it must clearly state that signing or completing it is voluntary.

In the absence of a reasonable finding by the legislative body that the recording would constitute a disruption of the proceeding, any member of the public has a right to record the proceeding with an audio, videotape recorder or motion picture camera. (Section 54953.5)

IX. CLOSED SESSIONS

Agenda items may be discussed in closed session under certain limited circumstances. The four exceptions are:

(1) litigation - to discuss actual or the threat of litigation involving the local agency (section 54956.9);

(2) personnel - to discuss matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or facilities, to consider the appointment, employment, performance evaluation, discipline, or dismissal of a public employee, or to hear complaints or charges brought against the employee, unless the employee requests a public session (section 54957);

(3) real estate negotiations - to discuss the purchase, sale, exchange or lease of real property by or for the local agency (section 54956.8); and

(4) labor negotiations - to discuss with designated representatives the salaries, salary schedules, or compensation paid in the form of fringe benefits for represented and unrepresented employees (section 54957.6).

The legislative body shall describe the closed session item on the agenda and state the section that authorizes the closed session. (Section 54954.5) The local agency must disclose the name(s) of its real property negotiators prior to discussing the purchase, sale, exchange or lease of real property. This requirement also applies to disclosing the name(s) of designated representatives regarding labor negotiators. (Section 54954.5)

While still in open session, the local agency, must identify the negotiators, the real property and the persons with whom the negotiators may negotiate. Negotiators may be members of the local agency. (Section 54956.8)

The local agency must also identify its designated representatives, to discuss the salary, salary schedules, or fringe benefits of its represented and unrepresented employees, (Section 54957.6)

Prior to adjournment, the body must reconvene in open session and publicly report any action taken in closed session. (Section 54957.1)

Disclosure of confidential information that is acquired during closed session is prohibited unless the legislative body authorizes such disclosure. Confidential information is defined as a communication made in closed session that is specifically related to the basis for the legislative body to lawfully meet in closed session.

X. CIVIL REMEDIES AND ENFORCEMENT

A civil action can be commenced to stop or prevent violations or threatened violations of the Act. (Section 54960)

As a condition precedent to bringing the lawsuit, a demand of the legislative body to cure or correct the action must be made within 30 days from the date the alleged violation occurred. (Section 54960.1)

A civil action can then be filed against the legislative body. Any action taken in violation of the open meeting requirement, the agenda posting requirements or the special meeting requirements, can be declared null and void by the court. (Section 54960.1)

If a court determines that the Brown Act was violated, court costs and reasonable attorney fees may be awarded to the complaining party. (Section 54960.5)