

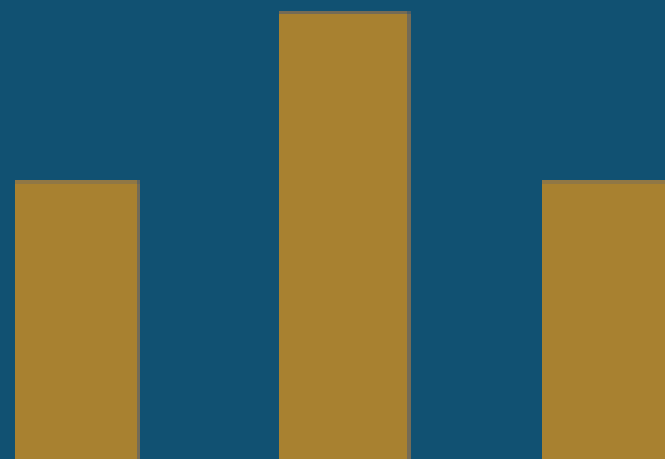


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WHAT'S OLD AND WHAT'S NEW UNDER THE BROWN ACT

PRESENTED BY RAUL F. SALINAS
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**In-person attendance no longer required under
Governor Newsom's Executive Orders.**

BROWN ACT BASICS

An overview of maintaining compliance:

- History and Intent
- Legislative Bodies
- Meetings
- Notice/Agenda and Public Participation Requirements
- Closed Sessions

HISTORY OF THE BROWN ACT

- Authored by Ralph M. Brown (1908-1966), a Central Valley assemblyman, the Legislature adopted the Brown Act in 1953 to safeguard the public's right to access and participate in local government meetings.
- “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, except as otherwise provided in this chapter.”
- Legislative bodies covered by the Brown Act should conduct their affairs as if within a “house of glass” (meaning, be entirely transparent)
- The Brown Act is found at **California Government Code Sections 54950-54963.**

INTENT OF THE BROWN ACT

- To ensure that deliberations and actions of legislative bodies are open and public.
- To ensure meaningful public access to local government decisions.
- Meetings must be open to the public, held on a regular schedule, follow a noticed agenda.
- No secret votes.
- Not just the law, but a good business practice as well.

MEETINGS:

WHEN DOES THE BROWN ACT APPLY?

Meetings:

- Congregation of a majority of the members of a legislative body
 - ✓ Same time and place
 - ✓ To hear, discuss or deliberate
 - ✓ Agency business
- Can include use of technology (email, phone) by a majority of board members to discuss an issue (though teleconference meetings can legally occur if requirements are met)
- Meeting requires quorum to get started and stay in business

MEETINGS:

WHEN DOES THE BROWN ACT NOT APPLY?

- Individual contacts & conversations
- Conferences open to the public (e.g., annual association conferences)
- Open and publicized community meetings (e.g., local service club)
- Other legislative bodies (e.g., members of city council attending meeting of planning commission)
- Social/ceremonial events (e.g. football game, wedding, retirement party, etc.)

BUT DON'T DISCUSS AGENCY BUSINESS UNLESS PART OF AGENDA OR PROGRAM

CLOSED SESSIONS: PERSONNEL

- **Limited Topics:** Appointment, employment, evaluation of performance, discipline or dismissal of a public employee or to hear complaints or charges brought against the employee
- Restricted to discussing particular employees, **not** general personnel policies or employee compensation (consider **labor negotiation** closed session instead)
- For disciplinary issues considered by governing body (rather than settled at staff level), must give employee 24 hours' notice – they have a right to a public meeting. Failure to notice makes any action void.

CLOSED SESSIONS: LABOR NEGOTIATION

- To instruct bargaining representatives on employee salaries and benefits
- May occur before, during, or after negotiation sessions
- Prior to closed session, must identify designated representatives and employee(s) or employee groups

CLOSED SESSIONS: PENDING LITIGATION

- “Litigation” includes lawsuits, arbitration, administrative proceedings
- Existing litigation
 - ✓ May discuss existing litigation with counsel, approval to settle, etc.
- Threatened litigation
 - ✓ Legal counsel can inform body of exposure to litigation
- Potential litigation initiated by the agency
 - ✓ May seek legal advice about whether to initiate litigation

CLOSED SESSIONS: REPORTING OUT

- Not all decisions must be reported. Some examples of items that must be reported include:
 - ✓ Real estate agreement
 - ✓ Approval of lawsuit initiation or intervention
 - ✓ Settlement of litigation (if action makes it final)
 - ✓ Agreement with labor union actions affecting employee's status
- Some reports not required until issue is finalized (i.e., administrative remedies are exhausted.)

WHAT'S NEW: EXEC. ORDER N-25-20 BROWN ACT IN LIGHT OF COVID-19

REQUIREMENT	NEW
Remote (Offsite) Participation Location	Remote participation must be connected to the main meeting site via telephone, audio or both <ul style="list-style-type: none"> The Board may hold its meetings via teleconferencing and make public meetings accessible telephonically or otherwise electronically to all members of the public. Public comment is still required but in-person participation or attendance is waived. The Board may still make available a location for the public to attend but it is discouraged, and may be prohibited by stay at home orders.
Notice of Meetings	Timely compliance with the Brown Act is still required and must specifically list the location that will be publicly accessible. This means 24 hours' notice for special meetings and 72 hours' notice for regular meetings.
Voting	Every vote during the meeting must be by roll call.
Public Comment	Same as before: Must allow for the public to comment on agenda and non-agenda items.
Remote Locations	Need not be identified in the Agenda as required before, and the remote location need not be accessible to the public, as required before.
Quorum	A quorum of the city council members need not be physically present within the District boundary.

UNDER EXECUTIVE ORDER N-29-20

A public agency may conduct meetings telephonically or through other electronic means. Reasonable access must be provided to the public



QUESTIONS?



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