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# THE RALPH M. BROWN ACT

Cal. Gov't Code § 54950 *et seq.*

*Presented to the Domestic Violence Council  
Office of the County Counsel  
January 16, 2014*

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*The information set forth herein is intended to provide a general outline of issues that arise as a result of the Brown Act and is not intended to be a substitute for legal advice. If you have any questions about situations that may arise in the future, please contact the Office of the County Counsel at 650-363-4250.*

# Introduction

- Government Code § 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.”*

- Proposition 59 of 2004 – the right of the people to open meetings and public records is now in the State Constitution.

- Presumption in favor of access.
- Exceptions are narrowly construed.

# Six Primary Topics

1. What types of public groups are covered by the Brown Act?
2. What is a meeting?
3. What are the notice and agenda requirements?
4. What are the public's rights?
5. When are closed sessions permissible?
6. What are the consequences for violating the Brown Act?

# Groups Subject to the Brown Act

- “Legislative bodies” include governing bodies and their subsidiary bodies
  - Examples: boards, commissions, standing committees, committees or other bodies of a local agency that are created by charter, ordinance, or resolution
  - This applies regardless of whether the board or commission is “temporary” v. “permanent,” or “advisory” v. “decision making.”
- Exception for “Non-standing” advisory committees that are composed *solely* of less than a quorum of the legislative body.

# What is a “Meeting?”

- Any congregation of *a majority* of the members of legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction.
  - Can include lunches, social gatherings, board retreats.
  - Watch out for “serial” meetings (“chain communication” and “hub communication”)
    - Serial:  $A \rightarrow B \rightarrow C$
    - Hub:  $B \leftarrow A \rightarrow C$
  - Video teleconferences are “meetings” and must satisfy the requirements.

# What is a “meeting?” Teleconferencing/Video Conferencing

- Technology advancements → teleconference requests
  - Reduced expenses;
  - Greater accessibility of members for meetings;
  - Mobility and other concerns
- Cal. Govt Code § 54953
  - Teleconferencing may be used “for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law.”
  - A teleconferenced meeting “shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.”

# What is a “meeting?” Teleconferencing – Requirements

- Requirements - Cal. Govt Code § 54953(b)
  - Teleconferences must be conducted in a manner that “protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency”
  - Agendas shall be posted at all teleconference locations and each location shall be identified in the notice and agenda of the meeting or proceeding;
  - All votes taken during a teleconferenced meeting shall be by rollcall;
  - Each teleconference location shall be accessible to the public;
  - At least a quorum of the members must participate from locations within San Mateo County;
  - The agenda shall provide an opportunity for members of the public to address the legislative body directly at each location.

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# What is a “meeting?” - Social Media Concerns

- What is “social media?”
    - Facebook, Twitter, Youtube, Blogs, etc.
  - Because meetings can be “serial” or “hub”, this includes posts on social networking sites.
  - If a majority of a board comments on a Facebook post, a meeting may have taken place!
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# What is a “meeting?” Social Media Concerns

- How to avoid problems:
    - With your own social media
      - It is not recommended that you post your thoughts on an upcoming vote.
      - Don't comment on closed-session items – it is a violation to disclose closed-session discussions.
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# What is a “Meeting?”

- Exceptions
  - ❑ Conferences open to the general public which involve issues of interest to the body;
  - ❑ Other public meetings;
  - ❑ Meetings of other bodies under same local agency; or
  - ❑ Social or ceremonial occasions, *as long as a majority of the members do not discuss application of specific issues to the legislative body.*

# Notice and Agenda Requirements

- Regular Meetings
  - Post the agenda 72 hours in advance
    - In a place that is “freely accessible” AND
    - On the internet if the body has a website
  - Agenda must contain opportunity for public testimony but may contain reasonable time limitations
- Special Meetings
  - 24 hours notice
- Content of Agenda: brief description of matters to be considered in closed and open session
- Use of safe harbor language for closed session insulates body from liability

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# Location of Meeting

- In the geographic boundaries of the body's jurisdiction
    - Exceptions include compliance with law or court order to, for example, inspect real property, conduct meetings of multiagency significance, to meet with state or federal officials to discuss regulatory issues, to meet with legal counsel to reduce fees or interview a potential employee from another district
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# Rights of the Public

- Access
  - ❑ Right to be notified of items to be considered;
  - ❑ Right to attend meetings without having to identify oneself;
  - ❑ Right to record the meeting, to have access to documents distributed to members of the body;
  - ❑ Right not to pay for the agency's cost in complying with the Brown Act; and
  - ❑ Right to be free from discrimination

# Rights of the Public

- Other “access” issues:
  - ❑ Location of meetings = within the County (exceptions are limited, *e.g.*, land purchases/inspections outside of County, but even then the inspections must generally be open to the public.)
  - ❑ No secret ballots
  - ❑ Right to comment
    - Allowed to criticize the Council, members and even employees
    - But not shielded from defamation suits

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# Closed Session

- Allowed to meet without the public to discuss certain matters provided for in the Act
  - Three notice requirements for closed session:
    - List in the agenda
    - A pre-closed session announcement
    - Post-closed session report of action taken
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# Permissible Closed Meetings

- These exceptions to the open meeting requirement are *narrowly* construed
  - Personnel exception
  - Pending litigation or attorney-client privilege
  - Real estate negotiations
  - Labor negotiations
  - Public security
- Can't disclose “confidential information”



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# Consequences of Violation

## ■ Criminal Penalties

- ❑ Member must intend to violate the act
- ❑ Misdemeanor

## ■ Civil Remedies

- ❑ Declaratory/injunctive relief
  - ❑ Order to void actions
  - ❑ Where substantial compliance with Brown Act, cannot void action
  - ❑ Procedure to follow before filing suit to allow body to cure violation
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