



OPEN & PUBLIC IV:

A Guide to the Ralph M. Brown Act



ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this update to the original publication:

EDITORIAL BOARD FOR OPEN & PUBLIC IV

Michael Jenkins, Chair

Jenkins & Hogin LLP, Manhattan Beach
City Attorney
Cities of Diamond Bar, Hermosa Beach, Rolling Hills and West Hollywood

Sonia Rubio Carvalho

Best, Best & Krieger, Irvine
City Attorney
Cities of Azusa, Claremont, and Yorba Linda

Debra E. Corbett

City Attorney
City of Tracy

Theresa E. Fuentes

Deputy City Attorney
City of Pasadena

Daniel S. Hentschke

General Counsel
San Diego County Water Authority

Gerald L. Hobrecht

City Attorney
City of Vacaville

Hilda Cantú Montoy

Dowling, Aaron & Keeler, Fresno
City Attorney
Cities of San Joaquin and Lemoore

Eileen M. Teichert

City Attorney
City of Sacramento

League staff:

Patrick Whitnell

General Counsel

Rhonda Boglin

Legal Assistant

The Editors thank Manuela Albuquerque, City Attorney, Berkeley; Steven L. Dorsey, Richards, Watson & Gershon; Whitnie Henderson, Association of California Water Agencies; Craig Labadie, City Attorney, Concord; Tom Newton, California Newspaper Publishers Association; Ted Prim, Attorney General's Office; Cindra J. Smith, Community College League of California; and JoAnne Speers, Institute for Local Government, for their invaluable assistance.

OPEN & PUBLIC IV

A GUIDE TO THE RALPH M. BROWN ACT



CH. 1: IT IS THE PEOPLE'S BUSINESS

CH. 2: LEGISLATIVE BODIES

CH. 3: MEETINGS

CH. 4: AGENDAS, NOTICES, AND
PUBLIC PARTICIPATION

CH. 5: CLOSED SESSIONS

CH. 6: REMEDIES

OPEN & PUBLIC IV:
A GUIDE TO THE RALPH M. BROWN ACT



Copyright © 2000, 2007
League of California Cities

*All rights reserved. This publication, or parts thereof, may not be reproduced in any form
without the permission of the League of California Cities.*

TABLE OF CONTENTS

FOREWORD

CHAPTER 1: IT IS THE PEOPLE'S BUSINESS

The right of access	2
Broad coverage	3
Narrow exemptions	3
Public participation in meetings	4
Controversy	4
Beyond the law—good business practices	4
Achieving balance	5
Historical note	5

CHAPTER 2: LEGISLATIVE BODIES

What is a "legislative body" of a local agency?	8
What is <u>not</u> a "legislative body" for purposes of the Brown Act?	9

CHAPTER 3: MEETINGS

Brown Act meetings	12
Six exceptions to the meeting definition	12
Collective briefings	14
Retreats or workshops of legislative bodies	15
Serial meetings	15
Informal gatherings	17
Technological conferencing	17
Location of meetings	18

CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Agendas for regular meetings	22
Mailed agenda upon written request	23
Notice requirements for special meetings	23
Notices and agendas for adjourned and continued meetings and hearings	23
Notice requirements for emergency meetings	24
Educational agency meetings	24
Notice requirements for tax or assessment meetings and hearings	24
Non-agenda items	24
Responding to the public	25
The right to attend meetings	26
Records and recordings	26
The public's place on the agenda	27

CHAPTER 5: CLOSED SESSIONS

Agendas and reports	31
Litigation	32
Real estate negotiations	33
Public employment	33
Labor negotiations	35
Labor negotiations—school and community college districts	35
Other Education Code exceptions	36
Grand jury testimony	37
License applicants with criminal records	37
Public security	37
Multijurisdictional drug law enforcement agency	37
Hospital peer review and trade secrets	37
The confidentiality of closed session discussions	38

CHAPTER 6: REMEDIES

Invalidation	42
Civil action to prevent future violations	43
Costs and attorney's fees	43
Criminal complaints	43
Voluntary resolution	44

FOREWORD

The goal of this publication is to explain the requirements of the Ralph M. Brown Act, California's open meeting law, in lay language so that it can be readily understood by local government officials and employees, the public and the news media. We offer practical advice—especially in areas where the Brown Act is unclear or has been the subject of controversy—to assist local agencies in complying with the requirements of the law.

A number of organizations representing diverse views and constituencies have contributed to this publication in an effort to make it reflect as broad a consensus as possible among those who daily interpret and implement the Brown Act. The League thanks the following organizations for their contributions:

Association of California Healthcare Districts
Association of California Water Agencies
California Association of Sanitation Agencies (CASA)
California Attorney General – Department of Justice
City Clerks Association of California
California Municipal Utilities Association
California Redevelopment Association
California School Boards Association
California Special Districts Association
California State Association of Counties
Community College League of California
California First Amendment Project
California Newspaper Publishers Association
Common Cause
League of Women Voters of California

This publication is current as of April 2007. Updates to the publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengov.

This publication is not intended to provide legal advice. A public agency's legal counsel is responsible for advising its governing body and staff and should always be consulted when legal issues arise.

To improve the readability of this publication:

- Most text will look like this.
- Practice tips are in the margins
- Hypothetical examples are printed in blue
- Frequently asked questions, along with our answers, are in shaded text

Additional copies of this publication may be purchased by visiting CityBooks online at www.cacities.org/store.

CHAPTER 1:

IT IS THE PEOPLE'S BUSINESS



THE RIGHT OF ACCESS

BROAD COVERAGE

NARROW EXEMPTIONS

PUBLIC PARTICIPATION
IN MEETINGS

CONTROVERSY

BEYOND THE LAW - GOOD
BUSINESS PRACTICES

ACHIEVING BALANCE

HISTORICAL NOTE

CHAPTER 1: IT IS THE PEOPLE'S BUSINESS



■ THE RIGHT OF ACCESS

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

"In enacting this chapter, the Legislature finds and declares that the 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 authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."¹

The people reconfirmed that intent fifty years later at the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."²

The Brown Act's other unchanged provision is a single sentence:

"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."³

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Practice Tip:

The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

■ BROAD COVERAGE

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any medium of communication or device by which a majority of a legislative body develops "a collective concurrence as to action to be taken." They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an Internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, personal digital assistants, or cellular telephones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

■ NARROW EXEMPTIONS

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.⁴

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body don't discuss issues related to their local agency's business. Meetings of temporary advisory committees—as distinguished from standing committees—made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for collective action or discussion.⁵

The law on the one hand recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires—with certain specific exceptions to protect the community and preserve individual rights—that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

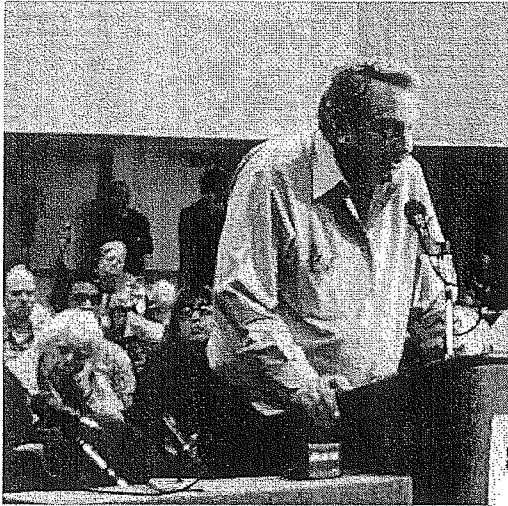
Practice Tip:

Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest.



■ PUBLIC PARTICIPATION IN MEETINGS

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.



Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

■ CONTROVERSY

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials, on the other hand, complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately—such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business—the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises—are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded more is to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

■ BEYOND THE LAW – GOOD BUSINESS PRACTICES

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorneys' fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices for itself and its subordinate committees and bodies that are more stringent than the law itself requires. Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act doesn't provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

Practice Tip:

Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law—but if the law were enough this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

Practice Tip:

The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

■ **ACHIEVING BALANCE**

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

On the one hand, there must be adequate notice of what discussion and action is to occur during a meeting; on the other there must be a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must assure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

■ **HISTORICAL NOTE**

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June of 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted a bill and Turlock Assembly Member Ralph M. Brown agreed to carry it. The bill passed the Legislature and was signed into law in 1953 by Governor Earl Warren.



The Ralph M. Brown Act (the "Brown Act"), as it is known, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws—such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown served in the Assembly for 19 years starting in 1942, the last three years as its Speaker. He then became an appellate court justice. But, he is best known for the open meeting law, which carries his name.

Endnotes

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3 (b)(1)
- 3 California Government Code section 54953 (a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the state's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2)
- 5 *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengov. A current version of the Brown Act may be found at www.leginfo.ca.gov.

CHAPTER 2: LEGISLATIVE BODIES



WHAT IS A "LEGISLATIVE BODY"
OF A LOCAL AGENCY?

WHAT IS NOT A "LEGISLATIVE BODY"
FOR PURPOSES OF THE BROWN ACT?

CHAPTER 2: LEGISLATIVE BODIES



The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.¹

■ WHAT IS A "LEGISLATIVE BODY" OF A LOCAL AGENCY?

A "legislative body" includes:

- **The "governing body"** of a local agency or any other local body created by state or federal statute.² This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A "local agency" is any city, county, school district, municipal corporation, redevelopment agency, district, political subdivision, or other public agency.³ A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.⁴ The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.⁵ Entities created pursuant to joint powers agreements are local agencies within the meaning of the Brown Act.⁶
- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.⁷ Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

Practice Tip:

The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- Q On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?
- A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies**—whether permanent or temporary, decision-making or advisory—such as planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and "blue ribbon committees" created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information, they would have been exempt from the Brown Act.⁸

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.⁹ Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, function over form controls. For example, a statement by the legislative body that "the advisory committee shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.¹⁰ "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.¹¹
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.¹² These include some nonprofit corporations created by local agencies.¹³ If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.¹⁴ When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.¹⁵

Practice Tip:

It can be difficult to determine whether a committee falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

Q: The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A: *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q: If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A: *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain kinds of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.¹⁶

WHAT IS NOT A "LEGISLATIVE BODY" FOR PURPOSES OF THE BROWN ACT?

- A temporary advisory committee **composed solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.¹⁷ Temporary committees are sometimes called *ad hoc*

committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.¹⁸

- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.¹⁹

Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

A. No, because the committee has not been established by formal action of the legislative body.

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.²⁰
- County central committees of political parties are also not Brown Act bodies.²¹

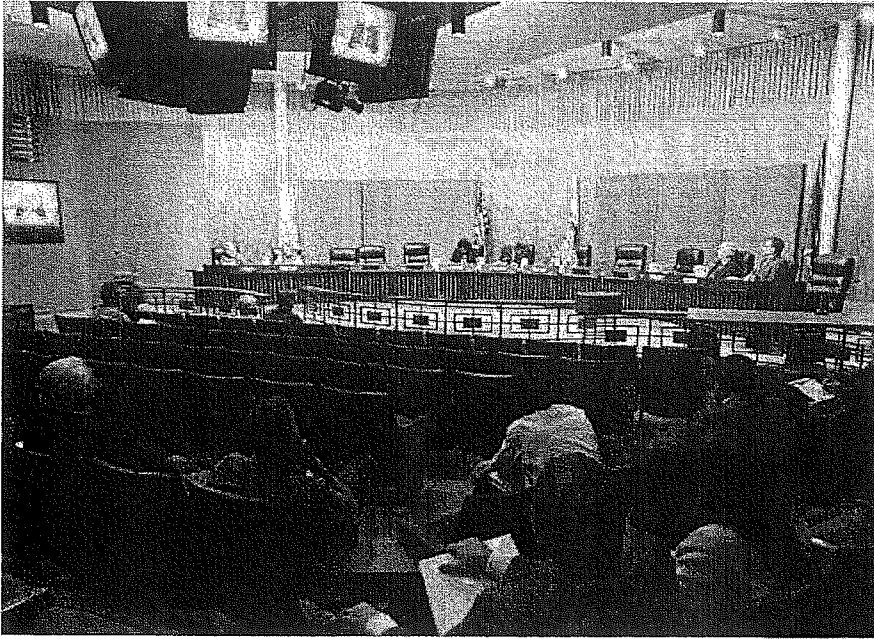
Endnotes

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 2 California Government Code section 54951
- 3 California Government Code section 54951. *But see:* Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799
- 9 California Government Code section 54952(b)
- 10 79 Ops. Cal.Atty.Gen. 69 (1996)
- 11 *Frazier v. Dixon Unified School District* (1993) 18 Cal.App.4th 781.
- 12 California Government Code section 54952(c)(1)(B). The same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862; *see also:* 81 Ops.Cal.Atty.Gen. 281 (1998); 85 Ops.Cal.Atty.Gen. 55
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287
- 15 "The Brown Act," California Attorney General (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); *see also: Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 19 56 Ops.Cal.Atty.Gen. 14 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 21 59 Ops.Cal.Atty.Gen. 162 (1976)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengov. A current version of the Brown Act may be found at www.leginfo.ca.gov.

CHAPTER 3:

MEETINGS



BROWN ACT MEETINGS

SIX EXCEPTIONS TO THE MEETING
DEFINITION

COLLECTIVE BRIFFINGS

RETREATS OR WORKSHOPS OF
LEGISLATIVE BODIES

SERIAL MEETINGS

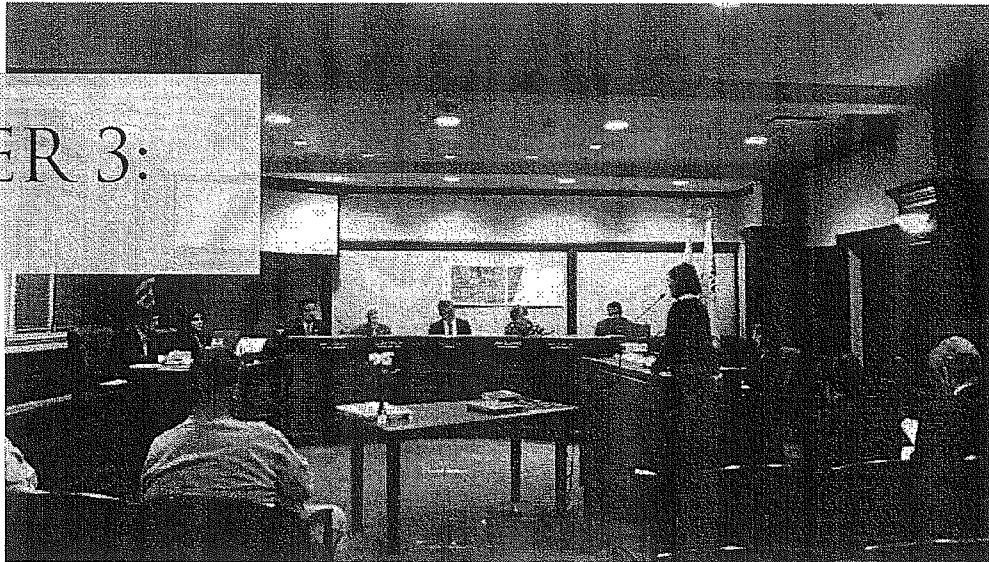
INFORMAL GATHERINGS

TECHNOLOGICAL CONFERENCING

LOCATION OF MEETINGS

CHAPTER 3:

MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... 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."¹ The term "meeting" under the Brown Act is not limited to gatherings at which action is taken but includes deliberative gatherings as well.

■ BROWN ACT MEETINGS

Brown Act gatherings include a legislative body's regular meetings, special meetings, emergency meetings and adjourned meetings.

- "Regular meetings" are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.²
- "Special meetings" are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda, under the Brown Act's notice
- "Emergency meetings" are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little
- "Adjourned meetings" are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.⁵

■ SIX EXCEPTIONS TO THE MEETING DEFINITION

The Brown Act creates six exceptions to the meeting definition: ⁶

Individual Contacts

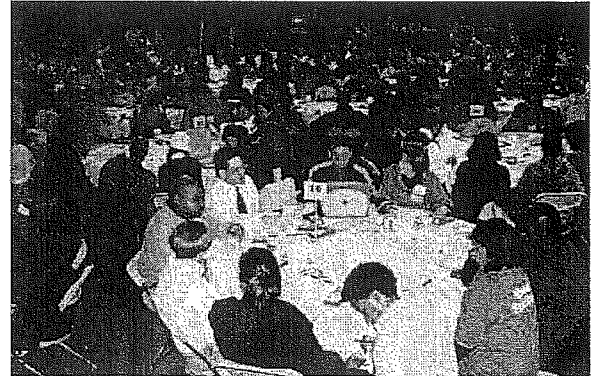
The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to a "collective concurrence" among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.



Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. Again, a majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition.

"I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority engages in a collective deliberation process during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.

Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.⁷ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example,

a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

- Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?
- A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*
- Q. The members then proceed upstairs to the office of their local assemblymember to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?
- A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the assemblymember.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).⁸

- Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
- A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The sixth and final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the local agency.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

■ COLLECTIVE BRIEFINGS

None of these six exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

■ RETREATS OR WORKSHOPS OF LEGISLATIVE BODIES

There is consensus among local agency attorneys that gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or on team building and group dynamics.⁹

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

■ SERIAL MEETINGS

One of the most frequently asked questions about the Brown Act involves serial meetings. Such meetings at any one time involve only a portion of a legislative body, but eventually involve a majority.

The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision-making. Except for teleconferencing discussed below, the Brown Act specifically prohibits "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body."¹⁰

The serial meeting may occur by either a "daisy-chain" or a "hub-and-spoke" sequence. In the daisy-chain scenario Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. The hub-and-spoke process involves, for example, a staff member (the hub) communicating with members of a legislative body (the spokes) one-by-one for a decision on a proposed action,¹¹ or a chief executive officer briefing a majority of redevelopment agency members prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague or appropriate staff about local agency business. However, if several one-on-one meetings or conferences leads to a "collective concurrence as to action to be taken" among a majority, the Brown Act has been violated. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.¹²

On the other hand, a unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.¹³ Such a memo, however, may be a public record.¹⁴

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

"Well, I don't know," replied Board Member Adams. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Baker and Charles lined up and another vote leaning. With you I'd be over the top ..."



Practice Tip:

Staff must exercise care not to achieve a collective concurrence by not disclosing the other members' views and positions when briefing legislative body members.

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff and news media against revealing such positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

A recent case supports the consensus among local agency attorneys that staff briefings of legislative body members are allowed if staff is not used as a conduit for developing collective concurrence on the matter, and if during such briefings staff does not disclose the views and positions of other members.¹⁵ Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a collective concurrence among the majority of the legislative body.

"Thanks for the information," said Council Member Smith. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

The planning director should not ask, and the member should not answer. A one-on-one meeting that involves a member of a legislative body takes a step toward collective concurrence if either person reveals or discusses the views of other members.

- Q. The agency's web-site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A. Yes, because it is a technological device that may serve to allow for the development of a collective concurrence as to action to be taken.
- Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A. No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

■ INFORMAL GATHERINGS

Often members are tempted to mix business with pleasure—for example, by holding a post meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.¹⁶ A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

Thursday, 11:30 a.m. As they did every week, the board of directors of Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues. But it is the kind of situation that should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

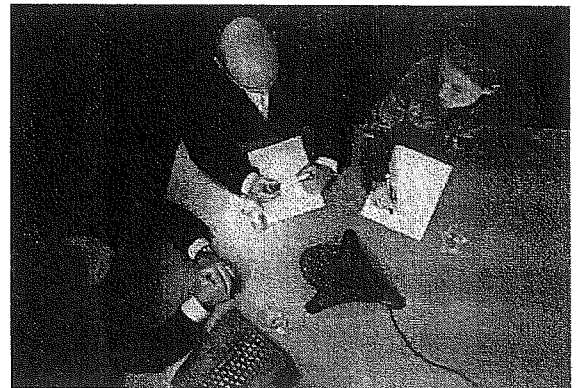
- Q. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?
- A. *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

■ TECHNOLOGICAL CONFERENCING

In an effort to keep up with information age technologies, the Brown Act now specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.¹⁷

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."¹⁸ In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:¹⁹

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction (except health authorities may count members located outside of their jurisdiction for up to 50% of the quorum as long as the notice and agenda for the meeting include the teleconference number and access code).
- Additional teleconference locations may be made available for the public.



Practice Tip:

Before teleconferencing a meeting, legal counsel for the local agency should be consulted.

- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable.
- Agendas must be posted at each teleconference location, even if a hotel room or a residence.
- Each teleconference location must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

- Q.** A member on vacation desires to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?
- A.** *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of new issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

LOCATION OF MEETINGS

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.²⁰

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is to:

- Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party.
- Inspect real or personal property, which cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property.

- Q.** The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?
- A.** *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be able to attend.*

- Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice.
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries or at its principal office if that office is located outside the territory over which the agency has jurisdiction.

- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.²¹

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.²² A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.²³

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.²⁴

Endnotes:

- 1 California Government Code section 54952.2(a)
- 2 California Government Code section 54954(a)
- 3 California Government Code section 54956
- 4 California Government Code section 54956.5
- 5 California Government Code section 54955
- 6 California Government Code section 54952.2(c)
- 7 California Government Code section 54952.2(c)(4)
- 8 California Government Code section 54952.2(c)(6)
- 9 "The Brown Act," California Attorney General (2003), p. 10
- 10 California Government Code section 54952.2(b)
- 11 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 12 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 14 California Government Code section 54957.5(a)
- 15 *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 16 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 17 California Government Code section 54953(b)(1)
- 18 California Government Code section 54953(b)(4)
- 19 California Government Code section 54953
- 20 California Government Code section 54954(b)
- 21 California Government Code section 54954(b)(1)-(7)
- 22 California Government Code section 54954(c)
- 23 California Government Code section 54954(d)
- 24 California Government Code section 54954(e)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengov. A current version of the Brown Act may be found at www.leginfo.ca.gov.