

**BROWN ACT  
COMPLIANCE  
MANUAL  
FOR PUBLIC OFFICIALS  
2026**

**Conducting the People's Business**



## THE BROWN ACT

### Preface

The Ralph M. Brown Act (“Brown Act”)<sup>1</sup> was originally enacted in 1953 in response to a series of articles in the *San Francisco Chronicle* detailing the way local agencies at the time conducted secret meetings or caucuses even though state law had long required that local agencies conduct business publicly. The purpose behind the Brown Act, as initially adopted and as it remains today, is to ensure that actions of local public agencies—including their deliberations—are taken in open and public meetings, with posted and reasonably detailed agendas, and where all persons are permitted to attend and participate (including from remote locations).

The Brown Act and incorporated provisions of the Americans with Disabilities Act not only guarantee the public’s right to attend and participate in open and public meetings but ensure that the meetings will actually be accessible to all members of the public. Violations of the Brown Act, if not cured, can result in the action taken being invalidated and the award of attorney’s fees and costs if there is a successful legal action against a public agency. And regardless of the nature of the violation, the mere fact that the public perceives that an agency is improperly conducting business without public attendance or participation can indelibly damage the public’s trust in local government.

This manual is primarily intended for public officials who serve as members of a “legislative body” of a local agency subject to the Brown Act and provides general guidance for complying with the various requirements of the Brown Act in terms of conducting open and accessible public meetings. Please note, however, that many of the details of the Brown Act such as the preparation of agendas, website posting requirements, and other administrative procedures typically carried out by agency staff are not included in the manual to maintain brevity.<sup>2</sup>

We hope that this manual aids you in the conduct of the “people’s business.”

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***This manual is not intended to provide legal advice on any specific issue. Because the statutory law summarized in this manual is subject to change, agency officials should always seek the advice of agency legal counsel as to the application of the Brown Act in a particular situation and to ascertain whether there have been recent changes to the Brown Act or its interpretation by the courts.***

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<sup>1</sup> The Brown Act is codified in the Government Code starting at Section 54950. Unless otherwise indicated, all statutory references are to the California Government Code. The current provisions of the Brown Act are available on line through the California Legislative Information website at:

[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=9.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=9.&article=)

<sup>2</sup> For more detailed coverage of the Brown Act, the League of California Cities publishes and regularly updates a guide to the Brown Act entitled “Open and Public.”

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## I. Agency Legislative Bodies and Other Groups Covered

The Brown Act only applies to a local agency's "legislative body" as defined in Section 54952. Therefore, understanding the scope of that term is the critical first step in determining whether the Brown Act applies to a particular agency body or group.

### ***What bodies are considered a "legislative body" subject to the Brown Act?***

The **governing body** of a local agency (i.e., city council, board of supervisors, board of directors) is considered a "legislative body" subject to the Brown Act.<sup>3</sup>

**Standing committees** of a legislative body, regardless of their composition (i.e., including less than a quorum of the legislative body), that have either (a) continuing subject matter jurisdiction or (b) a meeting schedule fixed by charter, ordinance, resolution, or other formal action of a legislative body are subject to the Brown Act.<sup>4</sup>

**Appointed bodies**, whether permanent or temporary, decision-making or advisory, created by a *formal act* of the governing body are subject to the Brown Act.<sup>5</sup> The "formal act" required to create a Brown Act legislative body includes any official action and is not necessarily limited to formation by a formal vote or adoption of a resolution.<sup>6</sup>

**Joint Powers Authority** legislative bodies of a legally separate entity established by multiple agencies under the Joint Exercise of Powers Act must comply with the Brown Act.<sup>7</sup>

**Private organizations.** The board (or other governing body) of a private organization, such as a nonprofit corporation, is subject to the Brown Act, if either: (a) an agency legislative body created or was involved in bringing the organization into existence to exercise lawfully delegated authority, or (b) if both of the following requirements are met: (i) the organization receives funds from the agency and (ii) a member of the agency's legislative body has been appointed as a full voting member of such board by the agency's legislative body.<sup>8,9</sup>

### ***What agency bodies or groups are not considered a "legislative body" subject to the Brown Act?***

**A temporary advisory committee** (often referred to as an *ad hoc committee*) composed solely of less than a quorum of the legislative body that is created for a single or limited purpose (e.g., a recruitment committee for a vacant position or a committee to investigate

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<sup>3</sup> § 54952(a).

<sup>4</sup> § 54952(b).

<sup>5</sup> § 54952(b).

<sup>6</sup> See *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 805; *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 792-793.

<sup>7</sup> See *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354.

<sup>8</sup> § 54952(c).

<sup>9</sup> See also Op.Cal.Atty.Gen No. 01-401 (2002), available at <https://oag.ca.gov/system/files/opinions/pdfs/01-401.pdf>; and *International Longshoreman's & Warehouseman's Union v. L.A. Export Terminal, Inc.* (1999) 69 Cal.App.4th 287.

a particular incident or issue) and that will dissolve once its task is completed is not subject to the Brown Act.

**Groups advisory to a single member of a legislative body** created by the informal action of the particular member to advise the member are not covered by the Brown Act.<sup>10</sup>

**A group appointed by agency staff** for administrative or operational purposes (e.g., a committee to assist with an agency social or community event) is not subject to the Brown Act.

## II. Purpose and Basic Rule

The **purpose** of the Brown Act is elegantly stated in the opening declaration:

“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.***”<sup>11</sup>

The Brown Act’s **basic rule** provides:

***“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.”***<sup>12</sup>

As summarized by one court: “It is clearly the policy of this state that the proceedings of public agencies, and the conduct of the people’s business, [must] take place at open meetings, and that the deliberative process by which decisions related to the public’s business are made [must] be conducted in full view of the public.”<sup>13</sup> Thus, except for certain closed session items, all aspects of the decision-making process by legislative bodies—including the acquisition of information, discussion and debate—must be conducted in public, not merely the taking of final action.

## III. Meetings Covered and Exempted

The Brown Act only applies to “meetings” of agency legislative bodies. Thus, it is critical to understand the scope of covered meetings and what gatherings are not considered a meeting under the Brown Act.

### ***Definition of meeting.***

The Brown Act defines a “meeting” as any congregation of a majority of the members of a legislative body at the same time and location, including a teleconference location, to hear,

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<sup>10</sup> See 56 Ops. Cal Atty Gen 14 (1973). [

<sup>11</sup> § 54950.

<sup>12</sup> § 54953(a).

<sup>13</sup> *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862, 867.

discuss, deliberate, or take action on any item that is within the legislative body's subject matter jurisdiction.<sup>14</sup> As defined, the term "meeting" is not limited to gatherings at which action is taken but applies equally to situations where a quorum of the legislative body merely hears, discusses, or deliberates on agency business. These terms have their ordinary meaning, but there is a specific definition for "action taken," which includes: (1) a collective decision by a majority of the members of a legislative body; (2) a collective commitment, or promise by a majority of the members to make a positive or negative decision; or (3) an actual vote by a majority of the members of the legislative body sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.<sup>15</sup>

### ***Prohibition against serial meetings.***

Outside of a properly noticed and conducted Brown Act meeting, a majority of the members of a legislative body may not use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the body's subject matter jurisdiction.<sup>16</sup>

This type of **prohibited "serial meeting"** can occur in two ways:

1. **Chain:** If member A contacts member B, and B contacts member C, and C contacts member D, and so on, until a quorum of the legislative body has been involved.
2. **Hub-and-spoke:** An intermediary, such as the city manager, contacts at least a quorum of the members of the legislative body to develop a collective concurrence (or communicate each member's respective positions) on an action to be taken by the legislative body.

**Compliance Tip:** The use of email or texts can easily result in a serial meeting along with a paper trail establishing a potential violation of the Brown Act.<sup>17</sup> Agency legislative body members must be extremely careful with the use of email or texts, except to pass along general information. For example, members should refrain in emails or texts from stating or taking a position on matters that may come before the agency, including their respective legislative body.

### ***Teleconference Meetings.***

The Brown Act recognizes that members of a legislative body (as well as the public) are not always able to be physically present at the meeting and therefore provides multiple means of remote or "teleconference" participation.<sup>18</sup> The primary types of teleconference participation are outlined below with reference to the applicable Brown Act provisions, which should be reviewed for details with agency staff as to the specific requirements governing the manner of remote participation in a such a meeting.

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<sup>14</sup> § 54952.2(a).

<sup>15</sup> § 54952.6.

<sup>16</sup> § 54952.2(b)(1).

<sup>17</sup> See Op.Cal.Atty.Gen. No. 00-906 (2001), available at <https://oag.ca.gov/system/files/opinions/pdfs/00-906.pdf>.

<sup>18</sup> Teleconference" means 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. § 54953(e)(2)(A).

1. Traditional teleconferencing by individual members.<sup>19</sup>
2. Teleconferencing for “just cause” by individual members.<sup>20</sup>
3. Teleconferencing during a “state of emergency” for the legislative body.<sup>21</sup>
4. Teleconferencing by an “eligible subsidiary body.”<sup>22</sup>

**Compliance Tip:** A legislative body member’s use of teleconferencing may require the agency to provide a two-way audiovisual or two-way telephonic platform for public remote participation in circumstances 2, 3, and 4, above.<sup>23</sup>

### ***What is not a Brown Act meeting?***

The Brown Act lists multiple circumstances that are not considered a regulated “meeting.”

**Individual Contacts.** Individual legislative body members may engage in separate conversations or communications with staff, the public, and even another member of the legislative body, provided that the official or the person they contact “*does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.*”<sup>24</sup> In other words, the Brown Act does not restrain a member of a legislative body’s individual actions, but such contacts cannot lead to the type of prohibited serial meeting described above.

Recent Brown Act amendments clarified that a member of a legislative body may engage in conversations or communications on an “internet-based social media platform” (e.g., Facebook or X) to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body, provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. However, a member of the legislative body may not respond directly (including by use of a digital icon (e.g., a “like,” smile emoji, or thumbs up)) to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.<sup>25</sup>

### ***Meeting quorum exceptions.***

Attendance by a quorum of the members of a legislative body is permitted in the following circumstances, provided that a majority of the members do not discuss agency business amongst themselves (other than as part of the scheduled meeting, occasion or program).<sup>26</sup>

<sup>19</sup> § 54953.

<sup>20</sup> §§ 54953.8; 54953.8.3.

<sup>21</sup> §§ 54953.8; 54953.8.2.

<sup>22</sup> §§ 54953.8; 54953.8.6.

<sup>23</sup> §§ 54953.8 - 54953.8.7.

<sup>24</sup> §§ 54952.2(b)(2), 54952.2(c)(1).

<sup>25</sup> § 54952.2(b)(3).

<sup>26</sup> § 54952.2(c)(2)-(6).

**Conferences or similar gatherings** that are open to the public and are for purposes of discussing issues of general interest to the public or to public agencies such as your agency.<sup>27</sup>

**Community meetings** organized to address topics of local community concern by a person or organization other than the agency, provided the meeting is open and publicized.<sup>28</sup>

**Compliance Tip:** The Brown Act does not define what “publicized” means for the purposes of the community meeting exemption, but notice in a newspaper, a mass mailing, physical posting in multiple locations around a community, or posting on internet websites or social media platforms should be sufficient to satisfy the Brown Act’s openness requirements.

**Meetings of another legislative body of the local agency or of another public agency** that are open and noticed under the Brown Act.<sup>29</sup>

**Social or ceremonial events** such as parties, weddings, funerals, retirement celebrations or charitable fundraisers.<sup>30</sup>

**Meetings of a standing committee of the legislative body**, provided that the non-members of the committee attend only as observers.<sup>31</sup>

**Compliance Tip:** Public officials do not have to stop engaging with the public because of the Brown Act, but they should take some simple precautions to avoid unintentional violations of the law. This includes warning members of the public when engaging with them outside of a Brown Act open meeting that you cannot discuss the views of other officials and stopping any such discussion by a member of the public as soon as possible.

## IV. Categories of Meetings, and Applicable Notice, Location, Agenda and Procedural Requirements

### *Categories of meetings subject to the Brown Act.*

**Regular meetings** are meetings held at the dates, times and locations set by ordinance, resolution, bylaws or other formal action of a legislative body.<sup>32</sup>

**Special meetings** are meetings called by the presiding officer or a majority of the legislative body and may be held at any time subject to a 24-hour notice requirement. Such written notice must be delivered to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and

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<sup>27</sup> § 54952.2(c)(2).

<sup>28</sup> § 54952.2(c)(3).

<sup>29</sup> § 54952.2(c)(4).

<sup>30</sup> § 54952.2(c)(5).

<sup>31</sup> § 54952.2(c)(6).

<sup>32</sup> § 54954(a).

to each radio and television station that has requested such notice in writing. Only the business set forth in the notice may be considered at the meeting.<sup>33</sup>

**Adjourned meetings** are regular or special meetings that have been adjourned to a time and place specified in the order of adjournment.<sup>34</sup>

**Emergency meetings** may occur where the legislative body determines there is an “emergency situation” that severely impairs public health or safety or there is an existing or threatened situation that poses immediate and significant peril. Closed sessions are permitted during an emergency meeting if agreed to by 2/3 vote of the members present (or all of the members if less than 2/3 present).<sup>35</sup>

**Compliance Tip:** The emergency exception is strictly interpreted. Inconvenience, scheduling conflicts, or generalized urgency do not constitute an “emergency situation.” In such circumstances, the special meeting procedure should be used.

### ***Permitted locations for meetings.***

**Regular and special meetings** must be held *within the boundaries* of the agency’s jurisdiction except when:

- complying with federal or state law or court order;
- inspecting real property or personal property that cannot be conveniently brought to the agency;
- participating in multi-agency meetings (provided the meeting takes place in a member agency’s jurisdiction and is properly noticed);
- meeting in the closest meeting facility if the agency has no meeting facility within its boundaries;
- meeting with elected or appointed federal or state officials when a local meeting would be impractical (solely to discuss local issues over which such officials have jurisdiction);
- meeting in or nearby a facility owned by the agency (provided the meeting is limited to items directly related to the facility); and
- visiting the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal costs.<sup>36</sup>

**Compliance Tip:** When relying on a location exception, the reason for meeting outside the jurisdiction should be clearly stated on the agenda and a record made in the minutes.

**Joint powers agencies** may meet within the territory of any member, or if members are located throughout the state, then they can meet anywhere in the state, provided such facility is open to all members of the public.<sup>37</sup>

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<sup>33</sup> § 54956.

<sup>34</sup> § 54955.

<sup>35</sup> § 54956.5.

<sup>36</sup> § 54954(b).

<sup>37</sup> § 54954(d).

**Emergency meetings** may be moved to a location outside the jurisdiction if it is unsafe to meet in the regular designated meeting location, or, if the meeting is being conducted during a proclaimed state of emergency by remote teleconferencing pursuant to the provisions of Section 54953.8.3.<sup>38</sup>

## ***Agenda requirements.***

### **General Rules.**

- A written agenda must be prepared for each regular or adjourned regular meeting of the legislative body.
- The agenda must be posted at least 72 hours in advance of the regular meeting to which it relates.
- Each item of business to be transacted or discussed, including items to be discussed in closed session, must be the subject of a brief general description, which generally need not exceed 20 words.<sup>39</sup>
- If the agency has an internet website, agendas must be posted in the manner prescribed at least 72 hours before a regular meeting and at least 24 hours before a special meeting on the agency's website.<sup>40</sup>
- For certain "eligible legislative bodies" where a language other than English is spoken by 20% or more of the population within the jurisdiction, agendas and meeting-related information must be translated into such languages.<sup>41</sup>

**Compliance Tip:** Agencies may use digital translation services (e.g., Google Translate) for translations and are not responsible for agenda translation accuracy.<sup>42</sup>

### ***Non-Agenda items.***

**Action or discussion on any item not appearing on the posted agenda is generally prohibited except that members of the legislative body may:**

- briefly respond to statements made or questions posed by the public;
- ask a question for clarification;
- make a brief announcement;
- make a brief report on activities;
- provide a reference to staff or other sources for factual information;
- request staff to report back to the legislative body at a subsequent meeting;  
or
- direct staff to place a matter of business on a future agenda.<sup>43</sup>

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<sup>38</sup> § 54954(e).

<sup>39</sup> § 54954.2(a).

<sup>40</sup> § 54954.2(a).

<sup>41</sup> §§ 54953.4(c)(1)(a), 54953.4(e)(1)(A).

<sup>42</sup> §§ 54953.4(c)(2), 54953.4(c)(4).

<sup>43</sup> § 54954.2(a)(3).

**Compliance Tip:** When a member of the public raises a non-agendized topic during public comment, the safest course is to limit any response to brief clarifying questions and a direction to place the matter on a future agenda and avoid any detailed discussion or a debate of the merits until that time.<sup>44</sup>

### ***Exceptions to the general “no action rule” on non-agenda items.***

A legislative body may take action on items of business not appearing on the agenda under the following circumstances:

**Emergency:** When a majority decides that an emergency situation exists (i.e., work stoppage, crippling disaster, etc.).

**Subsequent need urgency item:** When 2/3 present (or all members if less than 2/3 are present) determine there is a need to take immediate action and that the need for action came to the attention of the agency subsequent to the agenda being posted.

**Hold over item:** When the item appeared on the agenda of, and was continued from, a regular meeting held not more than five days earlier. If the scope or substance of the item has materially changed since the prior meeting, the item must be re-agendized rather than treated as a hold over<sup>45</sup>

## **V. Rights of the Public at Meetings**

### ***Public attendance.***

The Brown Act’s mandate that all persons must be “permitted to attend any meeting of a legislative body”<sup>46</sup> is implemented in a variety of ways:

- Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise fulfill any condition precedent to attending. If an attendance list, register, questionnaire or similar document is circulated to persons present during the meeting, it must state that the signing, registering or completion of the document is voluntary.<sup>47</sup>
- No meeting may be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry, gender, sexual orientation or sex, or which is inaccessible to the disabled.<sup>48</sup>
- No meeting may be held where the public must pay or make a purchase to attend (this includes remote locations where teleconferencing is used).<sup>49</sup>
- If traditional teleconferencing from a remote location is used, members of the public must be given notice on the agenda of any remote teleconference location and be able

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<sup>44</sup> See *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239, 250.

<sup>45</sup> § 54954.2(b).

<sup>46</sup> § 54953.

<sup>47</sup> § 54953.3.

<sup>48</sup> § 54961(a).

<sup>49</sup> § 54961(a).

to address the legislative body from such location.<sup>50</sup> If the teleconferencing does not involve a remote location for the public, then the means by which the public may participate using the two-way audiovisual platform or two-way telephonic service provided by the legislative body must be described in the agenda.<sup>51</sup>

### ***Public accommodation (Americans With Disabilities Act).***

All open meetings under the Brown Act must also comply with the Americans with Disabilities Act (“ADA”) and its implementing rules and regulations.<sup>52</sup> In addition to ADA compliance with respect to the physical facilities of a meeting location, local officials should be aware that if requested by a person with a disability, the agenda and documents in the agenda packet must be made available in “appropriate alternative formats,” and that writings distributed at a public meeting must also be made available in “appropriate alternative formats” even when the materials are handed out by members of the public.<sup>53</sup>

### ***Public access to meeting records.***

The public has the right to review agendas and documents and other writings distributed to a majority of the legislative body (except for privileged documents).<sup>54</sup> The agenda must designate the address where such documents may be inspected by the public.<sup>55</sup> Documents and other writings related to a meeting must be made available to the public at the time of distribution to a majority of the legislative body meeting if prepared by the agency or a member of a legislative body, or after the meeting if prepared by some other person.<sup>56</sup>

### ***Public participation.***

A regular meeting agenda must allow an opportunity for members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body.<sup>57</sup> The public must be allowed to speak on a specific item of business before or during the legislative body’s consideration of such item.<sup>58</sup>

The legislative body may adopt reasonable regulations, including time limits, on public comments (e.g., 3-5 minutes/speaker).<sup>59</sup> However, when a legislative body limits time for public comment, the legislative body must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body.<sup>60</sup>

The public is allowed to use a device to “record” an open meeting, absent a reasonable finding by the legislative body that such recording, if continued, would persistently disrupt the proceedings due to noise, illumination, or obstruction of view.<sup>61</sup>

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<sup>50</sup> § 54953(b)(3).

<sup>51</sup> § 54953.8(b)(2).

<sup>52</sup> § 54953.2.

<sup>53</sup> §§ 54954.1, 54954.2(a), 54957.5(c).

<sup>54</sup> § 54957.5.

<sup>55</sup> § 54957.5(b)(2).

<sup>56</sup> § 54957.5(c).

<sup>57</sup> § 54954.3.

<sup>58</sup> § 54954.3(a).

<sup>59</sup> § 54954.3(b).

<sup>60</sup> § 54954.3(b)(2). Exception may apply if simultaneous translation equipment is provided.

<sup>61</sup> § 54953.5.

### ***Public conduct - disturbances.***

The legislative body may remove any person from a meeting, including a teleconferenced meeting, who willfully “interrupts” or “disrupts” the proceedings.<sup>62</sup> Disruption means “disturbs, impedes, or renders infeasible the orderly conduct of a meeting” including the failure to comply with local agency’s meeting regulations (e.g., time limits, request to speak, etc.) and “behavior that constitutes use of force or a true threat of force.”<sup>63</sup>

Prior to removing an individual, the presiding member of the legislative body must warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in removal. No warning is required if the individual’s behavior constitutes use of force or a true threat of force.<sup>64</sup> If the individual does not promptly cease their disruptive behavior, then the individual may be removed, by order of the presiding officer.<sup>65</sup>

If order still cannot be restored, however, the meeting room may be cleared.<sup>66</sup> Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may also re-admit individuals not responsible for the disturbance, once order has been restored.<sup>67</sup>

Non-disruptive criticism. The legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.<sup>68</sup> Expressions of opposition to actions of the agency (provided they are not overly disruptive) constitute protected speech.<sup>69</sup>

## **VI. Closed Sessions**

### ***Authorized subjects for closed session.***

The Brown Act recognizes that not all local agency business should be conducted in the open and provides limited exceptions termed “closed sessions” for sensitive matters such as certain personnel matters, real property and labor negotiations, litigation, and security threats to public facilities and services. If a matter is not listed in the Brown Act as an appropriate subject for a closed session, the matter must be discussed in public even if the subject is sensitive, embarrassing or controversial. In addition to listing the permissible subjects for closed sessions, the Brown Act outlines how such matters should be agendized, and when and how the matters must be disclosed in an open meeting or otherwise made public.<sup>70</sup>

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<sup>62</sup> §§ 54957.9, 54957.95.

<sup>63</sup> § 54957.95(b).

<sup>64</sup> § 54957.95(a)(2).

<sup>65</sup> § 54957.95(a).

<sup>66</sup> § 54957.9.

<sup>67</sup> § 54957.9.

<sup>68</sup> § 54954.3(c).

<sup>69</sup> See *White v. City of Norwalk* (9th Cir. 1990) 900 F.2d 1421, 1425-1426.

<sup>70</sup> The Brown Act provides complete list of permissible closed session matters and an agenda format for describing closed sessions, which if substantially followed, create a “safe harbor” from any alleged notice violations of the Brown Act. See § 54954.5.

### ***Procedure for adjourning to closed session.***

Prior to holding any closed session, the legislative body must disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may simply refer to the items as they are listed on the closed session agenda. This announcement may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement and being able to comment on any of the listed items.<sup>71</sup>

### ***Who may be present in closed session?***

Closed sessions should only include those members of the legislative body and support staff or consultants necessary to conduct business regarding the specific item (e.g., legal counsel, consultants, real estate or labor negotiators, etc.).<sup>72</sup>

**Compliance Tip:** The presence of unnecessary staff, consultants, or observers in closed session may undermine the confidentiality of the discussion and may also result in a cure and correct or cease and desist demand.

### ***Reporting after closed sessions.***

The legislative body must reconvene in open session to report any “action taken” in closed session, and the vote on that action of every member present.<sup>73</sup> In general, only *final* action on a matter need be reported (e.g., an agreement to buy property, settlement of a lawsuit where the other party has signed the agreement, acceptance of an employee resignation, etc.). Once final approval occurs, the agency must disclose the action taken “upon inquiry by any person.”<sup>74</sup> Copies of contracts, settlement agreements, or other documents finalized in closed session must be made available within 24 hours of the action, or, in the case of substantial amendments or rewriting, when complete.<sup>75</sup>

### ***Improper disclosure of closed session information.***

The disclosure of confidential information acquired in a closed session is prohibited unless the legislative body authorizes the disclosure of the information. “Confidential information” means communication made in closed session that is specifically related to the basis for the closed session meeting. Violations of this disclosure prohibition may be addressed by any legal remedy, including: injunctive relief to prevent future disclosures; disciplinary action (against employees); or referral to a grand jury (for violations by members of the legislative body).<sup>76</sup>

**Compliance Tip:** A joint powers agency may authorize in its agreement or bylaws the disclosure of confidential information by members of the agency’s legislative body to their agency legislative body in a closed session as well as to legal counsel of a member agency.<sup>77</sup>

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<sup>71</sup> § 54957.7.

<sup>72</sup> See Op.Cal.Atty.Gen. No. 03-604 (2003), available at <https://oag.ca.gov/system/files/opinions/pdfs/03-604.pdf>.

<sup>73</sup> § 54957.1.

<sup>74</sup> §§ 54957.1, 54957.7.

<sup>75</sup> § 54957.1.

<sup>76</sup> § 54963.

<sup>77</sup> § 54956.96.

## VII. Penalties and Remedies for Violations

### ***Criminal penalties.***

A member of a legislative body may be charged with a misdemeanor where (a) the member attends a meeting where an action is taken in violation of the Brown Act, and (b) the member *intends to deprive* the public of information to which the public is entitled under the Brown Act.<sup>78</sup>

**Note:** If the challenged meeting involves only deliberation and no action is taken, there can be no misdemeanor penalty. Moreover, because it is difficult to prove criminal intent, criminal enforcement of the Brown Act is rare.

### ***Civil action to prevent future violations.***

The district attorney or any interested person may file a civil action to:

- Stop or prevent a threatened violation of the Brown Act.<sup>79</sup>
- Determine the applicability of the Brown Act to ongoing actions or threatened future action of the legislative body.<sup>80</sup>
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law.<sup>81</sup>
- Compel the legislative body to tape record its closed sessions.<sup>82</sup>
- Determine that an action of a legislative body violated the Brown Act and the action is null and void.<sup>83</sup>

### ***Opportunity for the legislative body to cure and correct alleged violations.***

Before filing a legal action alleging that a legislative body violated the Brown Act, the complaining party must send a written “cure or correct” demand to the legislative body. The demand must clearly describe the challenged action, the nature of the alleged violation, and the “cure” sought, and must be sent within 90 days of the alleged violation (or 30 days if the action was taken in open session but in violation of Section 54952.2, which defines “meetings”). The legislative body has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be commenced within 15 days after: (a) receipt of written notice from the legislative body of such non-action, or (b) the expiration of the 30-day cure period if the legislative body does not respond to the cure request.<sup>84</sup>

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<sup>78</sup> § 54959.

<sup>79</sup> § 54960(a).

<sup>80</sup> § 54960(a).

<sup>81</sup> § 54960(a).

<sup>82</sup> § 54960(b).

<sup>83</sup> § 54960.1(a).

<sup>84</sup> § 54960.1.

### ***Opportunity for the legislative body to commit to cease and desist alleged past actions or practices.***

Prior to commencing an action to determine if past actions of a legislative body are a violation of the Brown Act under Section 54960, the complaining party must send a “cease and desist letter.” The cease and desist letter must be sent within nine months of the alleged violation. The legislative body may respond to the cease and desist letter within 30 days by making an unconditional commitment to cease and desist from the past action in the form provided in the statute, which will preclude the complaining party from bringing a legal action.

If the legislative body does not timely provide an unconditional commitment to cease and desist from the challenged conduct or fails to respond at all, then the complaining party can commence a lawsuit.<sup>85</sup>

**Compliance Tip:** These cure and correct/cease and desist procedures allow a legislative body to avoid litigation over alleged Brown Act violations unless it is abundantly clear that no violation occurred and an agency wants to defend what it believes to be a correct policy or procedure. And even if a legislative body waits to cure or correct an alleged violation until after a lawsuit is commenced, an action seeking invalidation must be dismissed. Because a subsequent cure or correction cannot be introduced as evidence of a violation of the Brown Act, there is rarely a legitimate reason for a legislative body not to take any post-lawsuit steps to cure or correct an alleged violation if there is any question as to Brown Act compliance.<sup>86</sup>

### ***Invalidation of certain types of actions.***

Only actions taken in violation of the Brown Act under the following circumstances may be invalidated:<sup>87</sup>

- the basic open meeting provision;<sup>88</sup>
- notice and agenda requirements for regular meetings and closed sessions;<sup>89</sup>
- tax hearings;<sup>90</sup>
- special meetings;<sup>91</sup> and
- emergency situations.<sup>92</sup>

Certain actions taken in violation of the Brown Act will not be invalidated if they involve:<sup>93</sup>

- substantial compliance;
- sale or issuance of notes, bonds or other indebtedness, or related contracts or agreements;

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<sup>85</sup> § 54960.2.

<sup>86</sup> § 54960.1(e) and (f).

<sup>87</sup> § 54960.1(a).

<sup>88</sup> § 54953.

<sup>89</sup> §§ 54954.2 and 54954.5.

<sup>90</sup> § 54954.6.

<sup>91</sup> § 54956.

<sup>92</sup> § 54956.5.

<sup>93</sup> § 54960.1(d).

- a contractual obligation upon which a party has in good faith relied to its detriment;
- the collection of any tax; or
- the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

***Award of costs and attorney fees.***

If a court finds that a legislative body violated the Brown Act, the plaintiff may be awarded costs and attorney fees.<sup>94</sup> The costs and fees are the liability of the agency and not its officers or employees. An agency may only recover its costs and attorney fees if it wins, and the court determines that the lawsuit was “clearly frivolous and totally lacking in merit.”<sup>95</sup>

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<sup>94</sup> § 54960.5.

<sup>95</sup> § 54960.5.