

The Ralph M. Brown Act

Open Government in California

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Overview

- **Who is Covered?**
- **What is a Meeting?**
- **Illegal Meetings**
- **Notices & Agendas**
- **Public Participation Rights**
- **Closed Sessions**
- **Criminal Penalties & Civil Remedies**



The People's Business

“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.” (Gov. Code, § 54950.)



City Charter on “Citizen” Participation

- All regular and special meetings of the City Council shall be open and public . . . and all persons shall be permitted to attend such meetings No resident or property owner shall be denied the right to be heard by the City Council, but such right shall be subject to such reasonable rules and regulations as may be authorized or adopted by ordinance. (City Charter §510.)



Who's Covered – Legislative Bodies and . . . ?

- A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. (Gov. Code, § 54952(b).)
- Standing committees. A committee is a “standing committee” if it has “continuing subject matter jurisdiction” or a meeting schedule that has been fixed by formal action. (§54952(b).)



Who's Covered – Legislative Bodies and . . . ?

- Private corporations and LLC's that are created by the City to exercise delegated authority.
- Private corporations and LLC's that are funded by the City and have a voting member from the City's legislative body. (§54952(c).)
- Councilmembers-elect. (§54952.1.)



Who's Covered – Legislative Bodies and . . . ?

- *Ad hoc* committees of less-than-a-quorum are exempt. (§54952(b).)
 - Short duration
 - Specific task



“Action Taken” Defined

“Action taken” means:

- a collective decision made by a majority
- a collective commitment or promise by a majority to make a positive or a negative decision; or
- an actual vote by a majority when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.
(§54952.6.)



Secret Ballots are Unlawful

- No legislative body shall take action by secret ballot, whether preliminary or final
- The legislative body shall publicly report any action taken and the vote or abstention on that action of each member present for the action (§54953(c).)

**TOP
SECRET**



“Serial” Meetings are Unlawful

A majority of the members of a legislative body shall not, outside a meeting . . . , use a ***series of communications*** of any kind, directly or through intermediaries, ***to discuss, deliberate, or take action*** on any item of business that is within the subject matter jurisdiction of the legislative body. (§54952.2(b)(1).)



Types of Unlawful Serial Meetings

What do a ***chain*** and a ***wagon wheel*** have in common?



Examples of Unlawful Serial Meetings

Chain: A to B, B to C, C to D

Violation can occur with no knowledge by A, B, C or D!!



Wagon Wheel: A to B, A to C, A to D

Violation can occur with no knowledge by B, C or D!!



Technology and Serial Meetings

Email



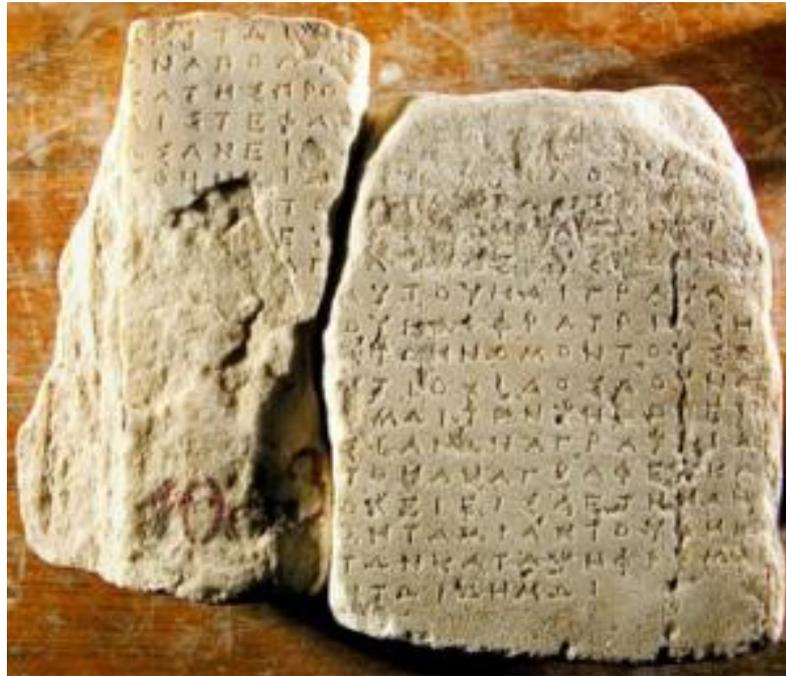
Texting



Notes



Stone Tablets!



Meeting Exceptions: Unilateral Briefings

- Staff may have separate conversations or communications with members, outside of a meeting, in order to answer questions or provide information.
- Staff may not communicate the comments or position of any other member of the legislative body.
(§54952.2(b)(2).)



Meeting Exceptions: Lobbying

- Individual contacts or conversations between a member of a legislative body and any other person. (§54952.2(c)(1).)
- Person may not act as an intermediary between members of the legislative body.



Meeting Exceptions: Conferences or Seminars

- Majority attendance at a conference or similar public gathering that involves a discussion of issues of general interest to the public or to the City.
- A majority may not discuss City business among themselves, other than as part of the scheduled program.



Meeting Exceptions: Community Meetings

- Majority attendance at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency.
- No sidebar discussions.



Meeting Exceptions: Other Legislative Bodies

- Majority attendance at an open and noticed meeting of another local agency legislative body.
- No sidebar discussions.



Meeting Exceptions: Social and Ceremonial Occasions

- Majority attendance at a purely social or ceremonial occasion.
- No sidebar discussions.



Meeting Exceptions: Standing Committee Attendance

Majority attendance at an open and noticed meeting of a standing committee that the members of the legislative body who are not members of the standing committee attend ***only as observers.***



Teleconferenced Meetings

- Teleconference means audio, video or both.
- City must post agendas at all teleconference locations.
- Each teleconference location shall be identified and accessible to the public.
- A quorum shall participate from locations within the City. (§54953.)



Notices and Agendas Overview

- Agendas Required
- Discussion is Generally Limited to Agenda Items
- Matters May Be Added to the Agenda Only in Rare, Urgent Situations
- Meetings Must Be Held in the City Except in Limited Circumstances
- Meeting Halls Must Be Non-Discriminatory and Free of Charge
- Special Meeting Rules



Agendas Required

- At least 72 hours before a regular meeting, the City shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.
- Agenda description generally need not exceed 20 words.
- The agenda shall specify the time and location of the regular meeting and shall be posted in a publicly accessible location and on the City's website.
(§54954.2(a)(1).)



Discussion is Generally Limited to Agenda Items

- No action or discussion shall be undertaken on any item not appearing on the posted agenda. (§54954.2(a)(2).)
- But . . . five exceptions



Certain Matters Need Not Be on the Agenda

1. Members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights.
2. A member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.
(§54954.2(a)(2).)



Certain Matters Need Not Be on the Agenda

- A member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may:
 3. provide a reference to staff or other resources for factual information
 4. request staff to report back to the body at a subsequent meeting concerning any matter, or
 5. take action to direct staff to place a matter of business on a future agenda. (§54954.2(a)(2).)



Matters May Be Added to the Agenda Only in Rare, Urgent Situations

- Matters may be added upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that:
 - there is a ***need to take immediate action*** and
 - that the need for action ***came to the attention of the local agency after the agenda was posted.*** (§54952.2(b)(2).)



Meetings Must Be Held in the City Except in Limited Circumstances

- Regular and special meetings must be held within the City, except to:
 - Appear in court or at an administrative agency
 - Inspect real or personal property
 - Participate in meetings of multiagency significance.
 - Meet with elected or appointed officials
 - Meet in or nearby a facility owned by the agency
 - Visit the office of the local agency's legal counsel for a litigation closed session when to do so would reduce legal fees or costs.
(§54954(b).)



Meeting Halls Must Be Non-Discriminatory, Accessible and Free of Charge

No legislative body of a local agency shall conduct any meeting in any facility that:



- prohibits the admittance of any person on the basis of ancestry or any protected characteristic, or
- which is inaccessible to disabled persons, or
- where members of the public may not be present without making a payment or purchase. (§54961.)



Special Meetings

- A special meeting may be called at any time on 24 hours notice by the presiding officer, or by a majority of the members of the legislative body
- City must deliver written notice to members and each local newspaper and radio or television station and post a notice on the City's Website.
- The notice must specify time, location and business to be transacted or discussed.
- No other business shall be considered by the legislative body. (§54956.)

**WHY ARE WE
SO SPECIAL?**



“City of Bell Rule” for Special Meetings

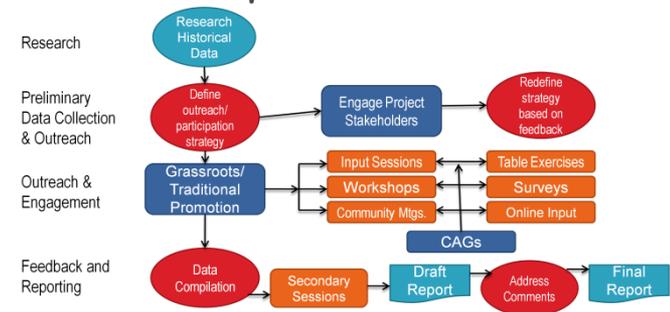
- Notwithstanding any other law, a legislative body shall not call a special meeting regarding the **salaries, salary schedules, or compensation paid** in the form of fringe benefits, of a local agency executive. (§54956(b).)



Public Participation Rights Overview

- Attendance Conditions
- Access to Meeting Documents
- Right to Record Meetings
- Public Participation
- Meeting Disruption

Public Participation Flow Chart



Attendance Conditions are Prohibited

- A member of the public shall not be required, as a condition to attendance, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.
- Attendance lists or speaker cards must state that the ***signing or registering is voluntary***, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document. (§54953.3.)

WHAT PART OF

NO

DON'T YOU UNDERSTAND?



Access to Meeting Documents



- Agendas and any other writings are public records at the time they are delivered to the legislative body.
- If any materials are distributed less than 72 hours before a meeting, they must be made available for public inspection. Post-packet items must be made available for public inspection at a public location listed on the agenda.
- Writings distributed by the City at a meeting must be immediately available, or after the meeting if prepared by someone else (§54957.5(b)(1)&(2).)



Right to Record Meetings

- Any person shall have the right to record a public meeting with an audio or video recorder or a still or motion picture camera
 - Legislative body may make a reasonable finding that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.
- Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the City is a public record.
- Any inspection of an audio or video recording shall be provided without charge on equipment made available by the City. (§54953.5(a)&(b).)



Public Participation: Regular vs. Special Meetings

- Every agenda for regular meetings must allow the public to directly address the legislative body on any item of interest, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body.
 - No action shall be taken on any item not appearing on the agenda
- Every special meeting notice must allow the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item (§54953.3(a).)



Rules for Public Participation

RULES!

1. You SHALL!
2. You WILL!
3. You MUST!

- The legislative body may adopt reasonable regulations to ensure that the intent of public participation is carried out, such as regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.
- The legislative body ***shall not prohibit public criticism*** of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.
(§54953.3(b)&(c).)



Meeting Disruption

- If a meeting is willfully interrupted by a group so as to render orderly conduct of the meeting “unfeasible,” and order cannot be restored by removal of the individuals who are interrupting, the legislative body may order the meeting room cleared and continue in session.
- Only matters appearing on the agenda may be considered in such a session.
- Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session. (§54957.9.)

*NO
DISRUPTORS
ALLOWED!
THIS MEANS YOU!*



Closed Sessions Overview

- Allowed Only When Specifically Authorized
- Litigation
- Personnel
- Real Estate Negotiations



Closed Sessions are Allowed Only When Specifically Authorized

- For purposes of the Brown Act, all expressions of the lawyer-client privilege other than those provided in this section are abrogated. Pending litigation closed sessions are the “exclusive expression” of the lawyer-client privilege for purposes of conducting closed session meetings. (§54956.9(b).)



Pending and Anticipated Litigation

- Closed sessions may be held on the advice of legal counsel to discuss pending or anticipated litigation.
- Note agenda and reporting out requirements. (§54954.5, 54956.9 & 54957.1.)



Personnel Matters

- Labor Negotiations (§54957.6.)
- Appointment, Employment, Performance Evaluations & Discipline of Specific Employees or Potential Employees (§54957(b)(1).)



Real Estate Negotiations

A legislative body may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease. (§54956.8.)



Penalties & Remedies Overview

- Criminal Penalties
- Civil Remedies



Criminal Penalties

Each member of a legislative body who attends a meeting of that legislative body ***where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information*** to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor. (§54959.)



Civil Remedies

The district attorney or any interested person may sue to:

- stop or prevent violations or threatened violations
- to determine the applicability of the Brown Act to past, ongoing actions or threatened future actions (§54960.)



Civil Remedies

Lawsuits to:

- to 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 or invalid under the laws of this state or of the United States
- to compel the legislative body to audio record its closed sessions as hereinafter provided. (§54960.)



Questions?

- Open!
- Transparent!
- Sunshine!

