California Special Districts Association
Districts Stronger Together

Brown Act Compliance Manual

for Special Districts

The Ralph M. Brown Act ("Brown Act") was enacted in 1953 in response to 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 publically. The purpose behind the Brown Act, as originally 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 agendas, and where all persons are permitted to attend and participate.

This manual provides special districts with guidelines and tips for complying with the various meeting agenda, notice, public participation, and public reporting requirements of the Brown Act. Districts are permitted to and should consider adopting local policies that exceed the minimum requirements of the Brown Act in terms of providing greater public access and openness to district business.

"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 betaken openly and that their deliberations be conducted openly.[3]

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Overview of the Brown Act

The Ralph M. Brown Act ("Brown Act")[1] was enacted in 1953 in response to 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 publically. The purpose behind the Brown Act, as originally 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 agendas, and where all persons are permitted to attend and participate. Courts construe the Brown Act liberally, in favor of openness and narrowly construe its limited exemptions.

The Brown Act and 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 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. Certain intentional violations can result in criminal prosecution. And regardless of the nature of the violation, the mere fact that the public perceives that an agency is improperly conducting business behind closed doors can indelibly damage the public's trust in local government.

This manual provides special districts[2] with guidelines and tips for complying with the various meeting agenda, notice, public participation, and public reporting requirements of the Brown Act. Districts are permitted to and should consider adopting local policies that exceed the minimum requirements of the Brown Act in terms of providing greater public access and openness to district business.

The purpose behind the Brown Act, as originally 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 agendas, and where all persons are permitted to attend and participate.

This manual is not intended, however, to provide legal advice on any specific issue. Also, because the statutory and case law summarized in this manual is subject to change, district staff and 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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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***.[3]

Similarly, the Brown Act's basic and unchanged 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."* [4]

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."[5] 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.

District Bodies and Groups Covered and Not Covered by the Brown Act

The Brown Act only applies to a district "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 district body or group.

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

1. **The Governing body** of a district (i.e., the board of directors) is considered a "legislative body" subject to the Brown Act.[6]

Note: The Brown Act also applies to persons elected to serve on a legislative body covered by the Brown Act but who have not yet assumed the duties of office.[7]

2. **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 formal action of a legislative body are subject to the Brown Act.[8]

3. **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.[9] 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.[10]

4. **Joint Powers Authority** legislative bodies of a legally separate entity established by districts under the Joint Exercise of Powers Act must comply with the Brown Act.[11]

5. **Private organizations.** The board or other governing body of a private organization, such as a nonprofit corporation, is subject to the Brown Act, if: (a) a district 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 district and (ii) a member has been appointed as a full voting member of such board by the district's legislative body.[12, 13]

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

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

2. **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.[14]

3. **A group appointed by district staff** (e.g., a committee to assist with a district social or community event) is not subject to the Brown Act.

Compliance Tip

Forming a true ad hoc advisory committee that is composed solely of less than a quorum of the legislative body and that is not subject to the Brown Act requires careful consideration of these restrictions.

The Brown Act only applies to "meetings" of district legislative bodies.

Meetings Covered and Exempted

The Brown Act only applies to "meetings" of district legislative bodies. Thus, it is critical to understand what meetings are covered and what gatherings are not considered a meeting.

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, discuss, deliberate, or take action on any item that is within the legislative body's subject matter jurisdiction.*[15] 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 district 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.[16]

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 communication 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.[17]

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 general 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 e-mail can easily result in a serial meeting along with a paper trail establishing a potential violation of the Brown Act.[18] District legislative body members must be extremely careful with the use of e-mail, except to pass along general information. For example, members should refrain in e-mails from stating or taking a position on matters that may come before the district. Members should also refrain from giving instructions or directions to staff members unless they have clear authority to do so. One never knows where or in how many "in" boxes an e-mail may end up. This tip is equally applicable to members posting comments on social media and other technological platforms.

Meetings Covered and Exempted (continued)

Technological Conferencing.
Meetings may be conducted by teleconferencing (i.e., any electronic audio or video connection) under the following conditions:[19]

(1) the agenda specifies all teleconference locations and is posted at each teleconference location;
(2) public access is provided at each teleconference location;
(3) public opportunity to speak is provided at each teleconference location; and
(4) all votes are taken by roll call.

At least a quorum of the members of the legislative body must participate in the teleconference within the boundaries of the district.

Note: The use of teleconferencing is a meeting option available to the legislative body and the statute appears to require a concurrence of the majority of the body for its use ["If the legislative body elects to use teleconferencing…].[20] The Brown Act does not create a right for the public to participate in meetings via teleconferencing unless members of the legislative body are present at such location, though the legislative body may in its discretion provide the public with additional locations.[21]

Compliance Tip
Districts should consider adopting a policy on the use of teleconferencing that addresses the circumstances under which it may be appropriate to use this technology, how much advance notice must be given, and the permissible additional costs, if any, that may be incurred.

What is not a meeting?
The Brown Act lists seven circumstances that are not considered a regulated "meeting." The first, individual contacts, is rather obvious, while the others are express exceptions to the general quorum meeting rule.

1. **Individual Contacts.** Individual district legislative body members may engage in separate conversations or communications with staff, the public, and even another member of a 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."* [22] 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.

Quorum Exceptions.
Attendance by a quorum of members of a legislative body is permitted in the following circumstances, provided that a majority of the members do not discuss district business amongst themselves (other than as part of the scheduled meeting, occasion or program):[23]

2. **Standing Committee Meetings.** Members may attend an open and noticed meeting of a standing committee of the legislative body (provided that the members of the body who are not members of the committee attend only as observers).

3. **Meetings of another district legislative body** that are open and publicized.

4. **Meetings of a legislative body of another local agency** that are open and publicized (e.g., county board of supervisors, city council, or the board of directors of another district).

5. **Community meetings** organized to address topics of local community concern by a person or organization other than the district, provide the meeting is open and publicized.

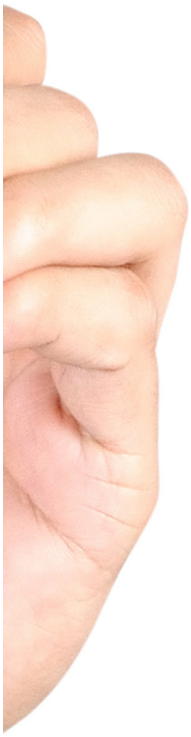
> *Note:* The Brown Act does not define what "publicized" means for the purposes of the community meeting exemption, but notice in a newspaper, a mass mailing, physical posting in multiple locations around a community, or posting on Internet Web sites should be sufficient to satisfy the Brown Act's openness requirements.

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 the district.

7. **Social or ceremonial events** such as parties, weddings, funerals, retirement celebrations or charitable fundraisers.

Practice 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 that you cannot discuss the views of other officials and stopping any such discussion by a member of the public as soon as possible.



Categories of Meetings, and Applicable Notice, Location, Agenda and Proceduaral Requirements

Categories of meetings subject to the Brown Act.

1. **Regular meetings** are meetings held at the dates, times and location set by ordinance, resolution, bylaws or other formal action of a legislative body.[24]

2. **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 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.[25]

3. **Adjourned meetings** are regular or special meetings that have been adjourned to a time and place specified in the order of adjournment.[26]

4. **Emergency meetings** are meetings that 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. The special meeting provisions apply to emergency meetings, except the 24-hour notice is not required. News media must be notified by telephone at least one hour in advance of an emergency meeting (except for "dire" emergencies), and all telephone numbers provided must be tried. If telephones are not working, the notice requirements are deemed waived, but the news media must be notified as soon as possible of the meeting and any action taken. Closed sessions are permitted during an emergency meeting under Section 54957 if agreed to by 2/3 vote of the members present (or all of the members if less than 2/3 present). The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll call vote, and any action taken at the meeting must be posted in a public place for a minimum of ten days as soon after the emergency meeting as possible.[27]

Categories of Meetings (continued)

Permitted locations for meetings.

1. **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 district 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.[28]

Note: Retreats and workshops for agencies other than statewide JPAs must be held within the territory of the agency.

2. **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.[29]

3. **Emergency meetings** are subject to the same locational rules as regular and special meetings except that the presiding officer may move them to another location if it is unsafe to meet in the regular designated meeting location.[30]

Closed sessions are permitted during an emergency meeting under Section 54957 if agreed to by 2/3 vote of the members present (or all of the members if less than 2/3 present). The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll call vote, and any action taken at the meeting must be posted in a public place for a minimum of ten days as soon after the emergency meeting as possible.

Categories of Meetings (continued)

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.[31]
- If the agency has an Internet Web site, agendas must be posted at least 72 hours before a regular meeting and at least 24 hours before a special meeting on the agency's Web site. The special meeting Internet posting requirement only applies to an agenda of either (a) the governing body, or (b) the participating members are compensated, and one or more members attending are also members of the governing body.[32]

Compliance Tip

Drafting an agenda description that is brief but discloses enough information for the public to understand a proposed action is not as easy task. Including information such as the location of a project, the purpose of a project (as opposed to just an agency or applicant given name), the parties involved, and the costs associated with the action will help deflect claims of lack of proper notice.

Notes: Agendas at physical locations must be posted in areas that are freely accessible to the public at all times. Posting on a bulletin board inside the district's office that is locked after business hours is not in compliance. The Internet Web site posting requirement may be excused if there are technical difficulties, provided that the district continues to comply with all other notice requirements.[33] The Internet Web site posting requirement has also been amended so that effective January 1, 2019, the agenda must be posted as a direct link on the homepage of the agency's Web site and in an open format that permits the public to retrieve, download, index, and search for the agenda through the Internet, in a manner that is "platform independent and machine readable".[34]

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:[35]

- 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.[36]

Statutory exceptions to action on non-agenda items.
A legislative body may take action on items of business not appearing on the agenda under the following conditions:

- **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 district 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.[37]

Special agenda disclosure for concurrent meetings.
A legislative body that convenes a meeting and whose membership constitutes a quorum of another legislative body may convene a meeting of the other legislative body, either simultaneously or in serial order, only if a clerk or member of the body verbally announces, prior to convening any simultaneous or serial meeting, the amount of "compensation" or "stipend" that each member will receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body. No agenda announcement is required if:

(1) The amount of compensation is prescribed by statute; and
(2) No additional compensation for the simultaneous or subsequent meeting has been authorized by the district.

The terms "compensation" and "stipend" do not include reimbursement for actual and necessary expenses incurred by a member in the performance of official duties, including travel, meals, and lodging.[38]

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"[39] 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.[40]
- No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to the disabled.[41]
- No meeting may be held where the public must pay or make a purchase to attend (this includes remote locations where teleconferencing is used).[42]
- And if teleconferencing is used, members of the public must be given notice of the teleconference location and be able to address the legislative body from such location.[43]

Public accommodation (Americans With Disabilities Act).
All open meetings under the Brown Act must also comply with Section 202 of the Americans with Disabilities Act ("ADA") and its implementing rules and regulations.[44] The ADA prohibits a governmental entity from discriminating against individuals with disabilities in the programs, services, and activities it offers.[45] Programs and activities are required to be readily accessible to and usable by disabled individuals.[46] Therefore, public entities must make accommodations for disabled individuals to participate in the meetings unless doing so would be an undue burden or cause a fundamental alteration in the program or activity.[47] This is accomplished in the following two ways.

1. **Physical facilities:** In addition to the meeting room being accessible, the telephones and bathrooms must also be made accessible if phones and bathrooms are provided for non-disabled individuals.[48] Meeting rooms must also have wheelchair seating and assistive listening systems.[49]

2. **Agenda and written materials:** Agendas must include information regarding how, to whom and when a request for disability-related modification or accommodation may be made in order for a person with a disability to participate in the meeting. When requested by a person with a disability, the agenda and documents in the agenda packet must be made available in "appropriate alternative formats," and 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.[50]

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). A fee or deposit may be charged for a copy of these public records.[51]

Compliance Tip

The agenda must designate the address where such documents may be inspected by the public.[52]

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 district or a member of a legislative body, or after the meeting if prepared by some other person.[53]

If requested in writing in advance, a member of the public may be mailed copies of the agenda or agenda packet at the time it is distributed to a majority of the legislative body. Such a request is valid for the calendar year filed. A public agency may establish a mailing fee not to exceed the cost of providing this service.[54,55]

Any audio or video tape record of a public meeting made by or at the direction of the district is subject to inspection under the Public Records Act and such inspection must be provided without charge on equipment made available by the district. If copies of the audio or video tape are desired, the agency may impose its ordinary charge for copies. Audio and video tapes may, however, be erased or destroyed 30 days after the taping or recording.[56]

Compliance Tip

With the advent of digital files, most agencies maintain copies of meeting recordings on their Web site, either permanently or for an extended period of time, to ensure continued public access and as an aid for reminding officials and staff precisely what transpired in such meetings.

> The legislative body may remove any person from a meeting who willfully interrupts the proceedings.

Rights of the Public at Meetings (continued)

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.[57]

The public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[58]

Compliance Tip

If a closed session is held before the start of the regular open session agenda, the public must be provided an opportunity to address the legislative body on any closed session item before the legislative body adjourns to closed session.

The legislative body may adopt reasonable regulations, including time limits, on public comments (e.g., 3-5 minutes/speaker).[59] The public is allowed to use audio or video tape recorders or still or motion picture cameras at 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.[60]

Public conduct.

Disturbances. The legislative body may remove any person from a meeting who willfully interrupts the proceedings. Removal is only justified, however, when an audience member actually disrupts the meeting.[61] If order still cannot be restored, the meeting room may be cleared.[62] 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.[63]

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.[64] Expressions of opposition to actions of the district (provided they are not overly disruptive) constitute protected speech.[65]

Closed Sessions

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 litigation, security threats and certain personnel matters. 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 the 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.

Matters appropriate for closed session and applicable agenda description.[67]

1. Public employment. A closed session may be held to appoint, employ, evaluate the performance of, discipline, or dismiss a public employee.[68] A closed session may also be used to hear specific complaints or charges brought against a public employee unless the employee requests a public session upon 24 hours' advance written notice.[69] The applicable safe harbor agenda descriptions for these matters are:

PUBLIC EMPLOYMENT
Government Code section 54957
Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Government Code section 54957
Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
Government Code section 54957
(No description is required.)

Note: The public employment exception only applies to "public employees." This includes independent contractors that function as an officer or employee such as a contract general counsel or human resources officer. Discussions or action taken on persons other than employees (e.g., elected officials, appointed members of a committee, and independent contractors that do not function as an officer or employee) must be taken in open session unless there is another applicable exception such as potential litigation.[70]

Compliance Tip
Interviews for appointments to district legislative or advisory bodies must be conducted in open session. While candidates for such positions cannot be compelled to stay outside the room where the interview is held while other candidates are being interviewed, most will comply with a request to do so.

As noted below, a legislative body may address compensation of an unrepresented employee, such as a general manager, under the labor negotiation exception.

Closed Sessions (continued)

Note: The personnel exception does not authorize action on proposed compensation in closed session, except for a reduction in pay as a result of proposed disciplinary action. Reviewing an employee's job performance and making threshold decisions about whether any salary increase should be granted is permissible for closed session, but any action concerning the amount of any salary increase must be held in an open session.[71] As noted below, a legislative body may address compensation of an unrepresented employee, such as a general manager, under the labor negotiation exception.

2. **Labor negotiations.** A closed session is appropriate to discuss, with the agency's bargaining representative, salaries, salary schedules, fringe benefits, funding priorities and other matters within the statutory scope of employee representation for both represented (e.g., union or other recognized employee organization) and unrepresented employees (e.g., management). Final action must be taken in open session.[72] The applicable safe harbor agenda description is:

CONFERENCE WITH LABOR NEGOTIATORS
Government Code section 54957.6
Agency designated representatives: (Specify names of designated representatives attending the closed session)
Employee organization: (Specify name of organization representing employee or employees in question)
or
Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

Note: The Brown Act was recently amended to require an oral report in open session at the meeting where final action is to be taken that summarizes the recommendation for final action on the salary, salary schedule, or compensation paid in the form of fringe benefits of a "local agency executive" as that term is defined in Government Code section 3511.1 (e.g., management and department heads, including persons serving under an employment contract).[73] The intent appears to be to preclude placing such items on a consent calendar or similar action item that may involve no discussion of the matter.

3. **Litigation.** A closed session is appropriate to discuss (1) threatened litigation against the district; (2) potential exposure to litigation; (3) potential initiation of litigation; and (4) existing litigation.

Potential litigation against or to be initiated by the district. A closed session may be held in situations where there is anticipated litigation against the district or when the district is contemplating bringing a legal action. Where the agency seeks to discuss with its legal counsel threatened or anticipated litigation, there must be "existing facts and circumstances" to support the closed session. Existing facts and circumstances include:

- facts and circumstances that the agency believes are not known to a potential plaintiff;
- the receipt by the agency of a claim pursuant to the Government Claims Act or some other written communication threatening litigation;
- a statement made by a person in a public meeting threatening litigation on a specific matter within the responsibility of the legislative body; or
- a statement made outside a public meeting so long as the official or employee of the agency receiving knowledge of the threat makes a record of the statement prior to the meeting, and the statement is available for public inspection.

Closed Sessions (continued)

A legislative body may also meet in closed session to decide if the above facts and circumstances are present and thus whether the closed session is authorized.[74] The applicable safe harbor agenda descriptions are:

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) or (3) [as applicable]: (Specify number of potential cases)[75]
or
Initiation of litigation pursuant to Government Code section 54956.9(d)(4): (Specify number of potential cases)

Existing litigation. Where a legal action has already been initiated by or against the district, a closed session may be held to provide updates to the board and discuss strategy. The applicable safe harbor agenda description is:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Government Code section 54956.9(d)(1)
Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)
or
Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

Notes: The ability to meet in closed session for existing litigation only applies to litigation to which the district is a party. It is general understood, consistent with the safe harbor description, that the agency's attorney must be a participant in all litigation-related closed sessions.[76]

The real estate exemption is very limited.

4. **Real estate negotiations.** A closed session is permitted for the legislative body to discuss with its real property negotiator the purchase, sale, exchange or lease of real property by or for the district. As part of the discussion, the legislative body may discuss the price and terms of the transaction. According to the Attorney General, this includes only the following:

- The amount of consideration that the district is willing to pay or accept in exchange for the real property rights to be acquired or transferred in the particular transaction;
- The form, manner, and timing of how that consideration will be paid; and
- Items that are essential to arriving at the authorized price and payment terms, such that their public disclosure would be tantamount to revealing the information that the exception permits to be kept confidential.[77]

The real estate exemption is very limited. Discussions regarding related policy matters such as design work for the project, traffic, and EIR considerations, etc., are beyond the scope of the exemption.[78] The applicable safe harbor agenda description is:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Government Code section 54956.8
Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)
Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)
Negotiating parties: (Specify name of party (not agent))
Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

Closed Sessions (continued)

5. **License applications.** A closed session is appropriate if the legislative body finds it necessary to discuss the license application of an applicant with a criminal record, and whether that applicant is sufficiently rehabilitated to obtain the license.[79] The applicable safe harbor description is:

LICENSE/PERMIT DETERMINATION
Government Code section 54956.7
Applicant(s): (Specify number of applicants)

6. **Security of public facilities and services.** A closed session is appropriate for the legislative body to discuss matters posing a threat to the security of public buildings and facilities as well as essential public services, and threats to the public's right of access to public services or facilities.[80] The applicable safe harbor description is:

THREAT TO PUBLIC SERVICES OR FACILITIES
Government Code section 54957
Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

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.[81]

Who may be present in closed session?
Closed sessions should only include those members of the legislative body and support staff necessary to conduct business regarding the specific item (e.g., legal counsel, consultants, real estate or labor negotiators, etc.).[82]

Compliance Tip
For convenience, many districts schedule closed sessions prior to commencement of the regular agenda and often hold such closed sessions in separate locations. Under § 54957, the public has the right to be present at such location and also has the right to address the legislative body regarding any agendized closed session items under § 54954.3 prior to the legislative body adjourning into closed session.

> The Brown Act only applies to "meetings" of district legislative bodies.

Reporting after closed sessions.
The legislative body must reconvene in open session to report any "action taken" in closed session. 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 a resignation, etc.). Thus, for example, the dismissal or nonrenewal of an employment contract is not reported until the first public meeting following exhaustion of administrative remedies, if any. Once final approval occurs, the agency must disclose the action taken "upon inquiry by any person."[83] 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 retyping, when complete.[84,85]

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).[86]

Note: 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 district legislative body in a closed session as well as to legal counsel of a member district.[87]

Compliance Tip
Although § 54957.1(a)(1) indicates that real estate agreements may be approved in closed session, as a practical and political matter, it is prudent to take final action on such agreements in open session so that the public may more fully participate in the deliberations.

Adjournments and Continuances

Adjournments.
The legislative body may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may adjourn such meetings and if all members are absent, the clerk or secretary of the legislative body may declare the meeting adjourned. Written notice of the adjournment must be provided in the same manner as notice for special meetings.

A copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours of the adjournment. When a regular or adjourned regular meeting is adjourned, the resulting adjourned meeting is a regular meeting for all purposes. If the order of adjournment fails to state a specific hour for the next meeting, the meeting must be held at the hour designated for regular meetings.[88]

Continuances.
A duly noticed hearing may also be continued in the same manner as adjourned meetings. However, if the hearing is continued to a meeting that will occur in less than 24 hours, a copy of a notice of continuance must be posted immediately following the meeting at which the continuance was adopted.[89]

Less than a quorum may adjourn such meetings and if all members are absent, the clerk or secretary of the legislative body may declare the meeting adjourned. Written notice of the adjournment must be provided in the same manner as notice for special meetings.

Remedies and Penalties 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.[90]

> *Note:* If the challenged meeting involves only deliberation and no action is taken, there can be no misdemeanor penalty. Moreover, as with most criminal statutes, it is often difficult to prove criminal intent. As a result, 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.[91]
- Determine the applicability of the Brown Act to ongoing actions or threatened future action of the legislative body.[92]
- 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.[93]
- Compel the legislative body to tape record its closed sessions.[94]
- Determine that an action of a Legislative Body violated the Brown Act and the action is null and void.[95]

Opportunity for the legislative body to cure and correct alleged violations.[96]
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 § 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.

Remedies and Penalties for Violations (continued)

Opportunity for the legislative body to commit to cease & desist alleged past actions or practices.[97]

Prior to commencing an action to determine if past actions of a legislative body are a violation of the Brown Act under § 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 open session at a regular or special meeting as a separate item of business, and not on its consent agenda, and providing such commitment to the complaining party. The commitment must state that:

- The legislative body has received the cease and desist letter; and
- The legislative body unconditionally commits to cease and desist from the challenged action; and

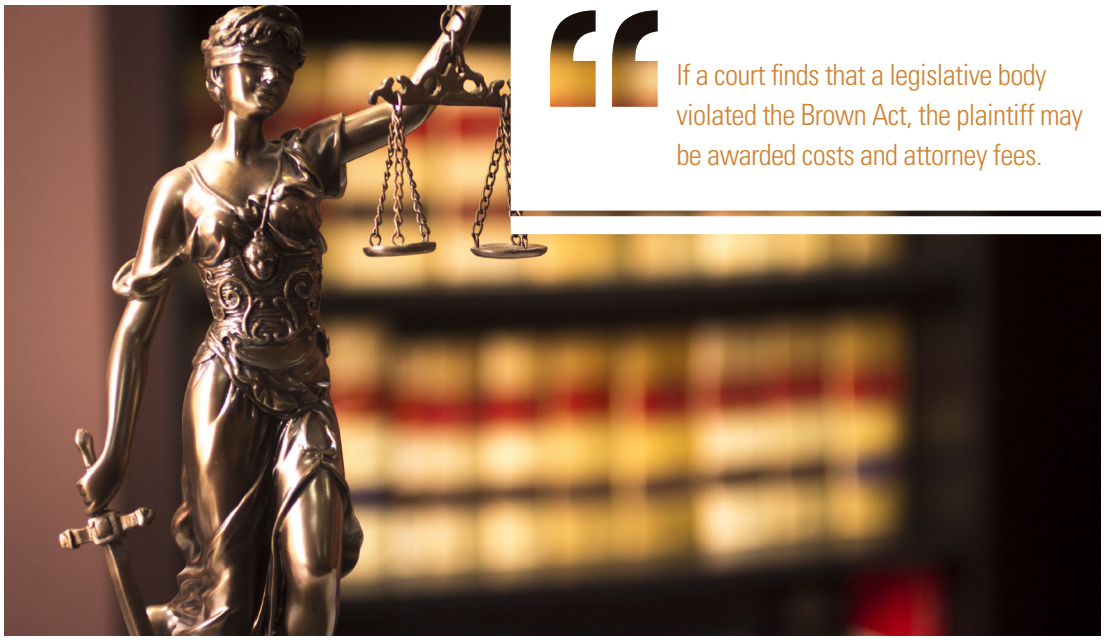
If the legislative body chooses to send an unconditional commitment agreeing to cease and desist from the challenged conduct within 30 days of receipt of the cease and desist letter, then no legal action can be commenced. Any party sending a cease and desist letter can commence a legal action challenging past conduct of a legislative body on whichever is earlier: (a) 60 days of receiving a response other than an unconditional commitment to cease and desist; or (b) within 60 days of the expiration of the legislative body's 30-day time period to respond to the cease and desist letter.

Compliance Tip

The cure & correct and cease & desist options allow a legislative body to avoid litigation over alleged Brown Act violations unless it is abundantly clear that no violation occurred and a district 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.[98]



> If a court finds that a legislative body violated the Brown Act, the plaintiff may be awarded costs and attorney fees.

Invalidation of certain types actions.

Only actions taken in violation of the Brown Act under the following circumstances may be invalidated:[99]

- the basic open meeting provision;[100]
- notice and agenda requirements for regular meetings and closed sessions;[101]
- tax hearings;[102]
- special meetings;[103] and
- emergency situations.[104]
- Certain actions taken in violation of the Brown Action will not be invalidated if they involve:[105]
- substantial compliance;
- sale or issuance of notes, bonds or other indebtedness, or related contracts or agreements;
- 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.[106] The costs and fees are the liability of the district and not its officers or employees. A district 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."[107]

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Endnotes

1. 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.
2. Please note that school districts and community college districts have a number of unique Brown Act provisions applicable only to such districts that are outside the scope this manual.
3. § 54950.
4. § 54953(a).
5. *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862, 867.
6. § 54952(a).
7. § 54952.1.
8. § 54952(b).
9. § 54952(b).
10. 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.
11. See *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (2005)* 134 Cal.App.4th 354.
12. § 54952(c).
13. See also Op.Cal.Atty.Gen No. 01-401 (2002), available at https://oag.ca.gov/system/files/opinions/pdfs/01-401.pdf; and I*nternational Longshoreman's & Warehouseman's Union v. L.A. Export Terminal, Inc. (1999)* 69 Cal.App.4th 287.
14. See 56 Ops. Cal Atty Gen 14 (1973).
15. § 54952.2(a).
16. § 54952.6.
17. § 54952.2(b)(1).
18. See Op.Cal.Atty.Gen. No. 00-906 (2001), available at https://oag.ca.gov/system/files/opinions/pdfs/00-906.pdf?.
19. § 54953(b).
20. § 54953(b)(3).
21. § 54953(b)(4).
22. §§ 54952.2(b)(2), 54952.2(c)(1).
23. § 54952.2(c)(2)-(6).
24. § 54954(a).
25. § 54956.
26. § 54955.
27. § 54956.5.
28. § 54954(b)
29. § 54954(d)
30. § 54954(e)
31. § 54954.2; Compare San Diegans for Open Government v. City of Oceanside (2016) 4 Cal.App.5th 637 [agenda description provided fair notice of what would be considered] with Hernandez v. Town of Apple Valley (2017) 7 Cal.App.5th 194 [omission of significant items of business from agenda violated Brown Act and led to invalidation of action]; and San Joaquin Raptor Rescue v. County of Merced (2013) 216 Cal.App.4th 1167 [Brown Act violated where agenda description for project approval did not include proposed approval of CEQA action (mitigated negative declaration)].
32. §§ 54954.2 and 54956.
33. See Op.Cal.Atty.Gen. No. 14-1203 (2016), available at https://oag.ca.gov/system/files/opinions/pdfs/14-1203.pdf?.

Endnotes (continued)

34. See Assembly Bill 2257, available at https://leginfo.legislature.ca.gov/faces/billTextClient xhtml?bill_id=201520160AB2257.
35. § 54954.2(a).
36. See *Cruz v. City of Culver City (2016)* 205 Cal. App.5th 239.
37. § 54954.2(b).
38. § 54952.3.
39. § 54953.
40. § 54953.3.
41. § 54961(a).
42. § 54961(a).
43. § 54953(b)(3).
44. § 54953.2.
45. 42 U.S.C. § 12101 et seq.
46. 42 U.S.C. § 12132; 28 C.F.R. § 35.149.
47. 28 C.F.R. §§ 35.149, 35.150.
48. Department of Justice Technical Assistance Manual (Title II), Section II-5.1000. The Manual is available at: https://www.ada.gov/taman2.html.
49. 28 C.F.R. §§ 35.150, 35.151.
50. §§ 54954.2(a), 54954.1, 54957.5(b).
51. § 54957.5.
52. § 54957.5(b)(2).
53. § 54957.5(c).
54. § 54954.1.
55. § 54957.5 (c).
56. § 54953.5(b); see also § 6253(b).
57. § 54954.3.
58. § 54954.3(a).
59. § 54954.3; See *Chaffee v. San Francisco Public Library Commission (2005)* 134 Cal.App.4th 109.
60. §§ 54957.5 and 54953.5.
61. *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 ["insolent" remarks did not constitute actual disruption]; *Norse v. City of Santa Cruz* ((9th Cir. 2010) 629 F.3d 966 [silent Nazi salute directed at mayor is not a disruption].
62. § 54957.9.
63. § 54957.9.
64. § 54954.3(c).
65. *White v. City of Norwalk* (9th Cir. 1990) 900 F.2d 1421.
66. The Brown Act provides a 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.This manual provides adapted versions of such safe harbor descriptions.
67. For a complete list of all permissible closed session matters see § 54954.5.
68. § 54957(b)(1).
69. § 54957(b)(2); see also *Fischer. v. Los Angeles Unified School District (1999)* 70 Cal.App.4th 87 [decision by school board not to reemploy probationary employees based on the evaluation of performance, but not specific complaints or charges, does not require 24 hours' advance written notice]; and *San Diego Civil Service Com. v. Bollinger (1999)* 71 Cal.App.4th 568 [if charges have already been heard and sustained at a public evidentiary hearing, employee notice of closed session is not required].

70. § 54957(b)(4).
71. *San Diego Union v. City Council (1983)* 146 Cal.App.3d 947 [two-step process contemplated: (1) closed session for evaluation of performance or appointment; (2) open session for setting employee's salary].
72. § 54957.6.
73. § 54953(c)(3).
74. § 54956.9
75. In addition, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to Section 54956.9(e)(2) to (5).
76. See for example, "The Brown Act," California Attorney General (2003), p.40.
77. See Op.Cal.Atty.Gen. No. 10-206 (2011), available at https://oag.ca.gov/system/files/opinions/pdfs/10-206.pdf?.
78. See *Shapiro v. San Diego City Council* (2002) 96 Cal.App. 4th 904.
79. § 54956.7.
80. § 54957(a).
81. § 54957.7.
82. See Op.Cal.Atty.Gen. No. 03-604 (2003), available at https://oag.ca.gov/system/files/opinions/pdfs/03-604.pdf?.
83. See §§ 54957.1 and 54957.7.
84. § 54957.1.
85. See §§ 54957.1 and 54957.7.
86. § 54963.
87. § 54956.96.
88. § 54955.
89. § 54955.1.
90. § 54959.
91. § 54960(a).
92. § 54960 (a).
93. § 54960 (a).
94. § 54960 (b).
95. § 54960.1(a).
96. § 54960.1.
97. § 54960.2.
98. § 54960.1(e) and (f).
99. § 54960.1(a).
100. § 54953.
101. §§ 54954.2 and 54954.5.
102. § 54954.6.
103. § 54956.
104. § 54956.5; see also § 54960.1.
105. § 54960.1(d).
106. See *Los Angeles Times Communications v. Los Angeles County Board of Supervisors (2003)* 112 Cal. App.4th 1313 ["fees are 'presumptively appropriate' and a successful plaintiff 'should ordinarily recover attorney's fees unless special circumstances would render such an award unjust'"].
107. § 54960.5.