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THE BROWN ACT

AND RECENT DEVELOPMENTS

WHAT IS THE BROWN ACT

- Authored by Ralph Milton Brown (1908–1966) a Central Valley assemblyman, the Brown Act was passed in 1953, to safeguard the public's right to access and participate in government meetings within the State.
- The Brown Act is found at California Government Code Sections 54950-54963

INTENT OF THE BROWN ACT

- “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.”
- “All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided by this Chapter.”

INTENT CONTINUED


- To ensure that deliberations and actions of legislative bodies of local government agencies are open and public.
- To ensure meaningful public access to local government decisions.
- The business conducted on behalf of the public is most certainly the public's business.



WHO IS SUBJECT TO THE BROWN ACT
ALL GOVERNING BOARD OF LOCAL GOVERNMENT
AGENCIES

THE ADVISORY AND STANDING SUB-COMMITTEES
CREATED BY SUCH GOVERNING BOARDS

ALL BOARDS, COMMITTEES, AND BODIES CREATED BY
FEDERAL OR STATE LAW



WHAT IS A MEETING?

- A MEETING IS A MAJORITY OF THE MEMBERS OF A LEGISLATIVE BODY PRESENT AT THE SAME TIME AND PLACE TO HEAR, DISCUSS, OR DELIBERATE GOVERNMENT BUSINESS.
- A CONGREGATION OF A MAJORITY OF THE MEMBERS WHICH INVOLVES ANY ASPECT OF THAT DECISION-MAKING PROCESS TRIGGERS BROWN ACT REQUIREMENTS

WHAT IS NOT A MEETING?

- CONFERENCES, TRAININGS, SEMINARS
- COMMUNITY FORUMS AND THE MEETINGS OF OTHER GOVERNMENT BODIES
- SOCIAL OCCASIONS

WHAT TO AVOID

- A MAJORITY OF MEMBERS MAY NOT USE A TELEPHONE, E-MAIL, FAX, INTERNET–BASED SOCIAL MEDIA PLATFORM OR OTHER ELECTRONIC MEANS OR DEVICES, OR AN INTERMEDIARY TO DISCUSS, DEVELOP A CONSENSUS, AGREEMENT, OR DECISION.

WHAT TO AVOID - 2

- AVOID THE POSSIBILITY OF A SERIAL MEETING.
- A SERIAL MEETING MAY OCCUR THROUGH A SERIES OF COMMUNICATIONS, EACH OF WHICH INVOLVES LESS THAN A QUORUM OF A LEGISLATIVE BODY BUT WHICH CULMINATE IN COMMUNICATIONS INVOLVING A MAJORITY OF THE BODY.
- A HUB AND SPOKES COMMUNICATION – A TO B, A TO C, AND A TO D – CAN LEAD TO A COLLECTIVE CONCURRENCE OF A MAJORITY OF THE BODY. CHAIN COMMUNICATIONS – A TO B, B TO C – CAN ALSO LEAD TO A COLLECTIVE CONCURRENCE

WHAT TO AVOID - 3

- POLLING OF THE MEMBERS OF A LEGISLATIVE BODY BY ANOTHER MEMBER, EITHER PERSONALLY OR THROUGH STAFF OR TECHNOLOGY IS PROHIBITED.
- HOWEVER, STAFF CAN MEET INDIVIDUALLY WITH A MAJORITY OF THE MEMBERS IF STAFF DOES NOT PROVIDE INFORMATION REGARDING ANY OTHER MEMBER'S VIEWS.

NOTICE REQUIREMENTS

- **FOR A REGULAR MEETING:** NOTICE MUST BE POSTED 72 HOURS IN ADVANCE AND SENT TO PERSONS WHO REQUEST NOTICE.
- **FOR A SPECIAL MEETING:** NOTICE MUST BE POSTED 24 HOURS NOTICE MUST BE PROVIDED TO REQUESTING NEWSMEDIA.
- **FOR AN EMERGENCY MEETING:** NOTICE MUST BE POSTED 1 HOUR IN ADVANCE AND NEWSMEDIA THAT HAVE REQUESTED IT MUST BE NOTIFIED BY TELEPHONE 1 HOUR IN ADVANCE.
- NOTICE MUST BE POSTED IN AN ACCESSIBLE LOCATION AND ON THE LOCAL ENTITY'S WEBSITE IF IT HAS ONE

AGENDA REQUIREMENTS - 1

- IN ADDITION TO THE NOTICE REQUIREMENTS, EACH AGENDA MUST:
 - CONTAIN A BRIEF DESCRIPTION OF EVERY ITEM TO BE DISCUSSED, INCLUDING CLOSED SESSION;
 - THOSE DESCRIPTIONS MUST BE CLEAR ENOUGH TO BE UNDERSTOOD BY MEMBERS OF THE PUBLIC;
 - EACH AGENDA FOR A REGULAR MEETING MUST INCLUDE TIME FOR PUBLIC COMMENT.

AGENDA REQUIREMENTS - 2

- THE AGENDA IS A PROMISE MADE TO THE PUBLIC BY THE LEGISLATIVE BODY – THIS IS WHAT WILL BE DISCUSSED/ACTED UPON. KEEPING WITHIN THE BOUNDARIES OF AN AGENDA ITEM DESCRIPTION IS THE WAY THE LEGISLATIVE BODY KEEPS THAT PROMISE.
- THE DESCRIPTION OF AN AGENDA ITEM IS GENERALLY PROVIDED IN 20 WORDS OR LESS BUT IT MUST BE SUFFICIENT TO ALLOW THE PUBLIC TO DETERMINE WHETHER THEY WISH TO PARTICIPATE.

AGENDA REQUIREMENTS -3

- NO ACTION/DISCUSSION SHALL BE TAKEN ON ANY ITEM NOT APPEARING ON THE AGENDA, **EXCEPT** MEMBERS OF THE LEGISLATIVE BODY MAY BRIEFLY:
 - RESPOND TO PUBLIC INPUT AND/OR ASK A QUESTION FOR CLARIFICATION;
 - MAKE REPORTS OF ACTIVITIES OR ANNOUNCEMENTS;
 - ASK STAFF TO REPORT BACK ON A MATTER AT A SUBSEQUENT MEETING OR THE BODY ITSELF MAY DIRECT STAFF TO PLACE A MATTER OF BUSINESS ON A FUTURE AGENDA.

AGENDA REQUIREMENTS -4

- ADDITIONALLY, THE LEGISLATIVE BODY MAY TAKE ACTION ON AN ITEM NOT APPEARING ON THE POSTED AGENDA IF THERE IS AN EMERGENCY OR A NEED TO TAKE IMMEDIATE ACTION WHICH CAME TO THE ATTENTION OF THE LEGISLATIVE BODY AFTER THE AGENDA WAS POSTED.
- A DETERMINATION THERE IS A NEED TO TAKE IMMEDIATE ACTION REQUIRES A $\frac{2}{3}$ VOTE OF THE MEMBERS OF THE LEGISLATIVE BODY PRESENT, OR IF LESS THAN $\frac{2}{3}$ ARE PRESENT, A UNANIMOUS VOTE.

LOCATION OF MEETINGS

- PUBLIC MEETINGS MUST BE HELD WITHIN THE BOUNDARIES OR JURISDICTION OF THE GOVERNMENT ENTITY.
- EXCEPTIONS:
 - TO INSPECT REAL/PERSONAL PROPERTY
 - TO MEET WITH FEDERAL/STATE OFFICIALS TO DISCUSS LEGISLATION/REGULATORY ISSUES
 - TO HOLD A CLOSED SESSION WITH LEGAL COUNSEL

RIGHTS OF THE PUBLIC -1

- TO ADDRESS THE LEGISLATIVE BODY ON BOTH AGENDA (PUBLIC COMMENT) AND NON-AGENDA ITEMS (PUBLIC INPUT)
- PUBLIC INPUT - ANY MEMBER OF THE PUBLIC MAY ADDRESS THE LEGISLATIVE BODY AT REGULAR MEETINGS ON MATTERS NOT APPEARING ON THE AGENDA IF THE MATTER IS WITHIN THE JURISDICTION OF THAT BODY.
- PUBLIC COMMENT - ANY MEMBER OF THE PUBLIC HAS A RIGHT TO ADDRESS THE LEGISLATIVE BODY AT ANY REGULAR OR SPECIAL MEETING ON ANY ITEM ON THE AGENDA.

RIGHTS OF THE PUBLIC -2

- UNLESS SUBJECT TO A CLOSED SESSION EXCEPTION, TO HAVE MEETINGS OF THE LEGISLATIVE BODY OPEN AND PUBLIC;
- TO BE ACCOMODATED IF DISABLED TO ENSURE ACCESS AND PARTICIPATION;
- TO OBTAIN COPIES OF ALL WRITTEN MATERIALS WHICH ARE DISTRIBUTED TO THE BOARD, EXCEPT FOR PRIVILEGED MATERIALS;
- TO BE ABLE TO AUDIO AND VIDEO RECORD AND TAKE PHOTOS OF THE PROCEEDINGS OR BROADCAST THEM, UNLESS DOING SO CREATES A DISTURBANCE

CLOSED SESSION – GENERAL INFORMATION

- CLOSED SESSION EXEMPTIONS MUST BE NARROWLY CONSTRUED
- THE AGENDA MUST CONTAIN A BRIEF DESCRIPTION OF EACH CLOSED SESSION ITEM
- EACH SUCH ITEM REQUIRES A PRE-CLOSED SESSION ANNOUNCEMENT BY THE BOARD AND A POST-CLOSED SESSION REPORT OF CERTAIN ACTION TAKEN
- EXCEPT FOR THOSE REPORTING OUT REQUIREMENTS, STRICT CONFIDENTIALITY OF CLOSED SESSION MUST BE PRESERVED.

CLOSED SESSION – PERMISSIBLE ITEMS -1

- **PERSONNEL MATTERS**

- THE APPOINTMENT, EMPLOYMENT, EVALUATION, DISCIPLINE, OR DISMISSAL OF AN EMPLOYEE WHO IS APPOINTED BY THE LEGISLATIVE BODY. THIS EXCEPTION CANNOT BE USED TO DISCUSS POLICY, GENERAL EMPLOYEE ISSUES, JOB DESCRIPTIONS, ETC.

- **LABOR NEGOTIATIONS**

- MEETING WITH THE LOCAL AGENCY'S BARGAINING REPRESENTATIVES TO DISCUSS NEGOTIATION MATTERS AND INSTRUCT THE REPRESENTATIVES AS TO REPRESENTED AND UNREPRESENTED EMPLOYEES.

CLOSED SESSION – PERMISSIBLE ITEMS - 2

- **PENDING LITIGATION**

- TO CONFER WITH LEGAL COUNSEL WHEN OPEN DISCUSSION WOULD PREJUDICE THE POSITION OF THE LOCAL AGENCY IN LITIGATION. LITIGATION MAY BE EXISTING OR THREATENED BASED UPON STATUTORILY ACCEPTABLE FACTS AND CIRCUMSTANCES. THIS EXCEPTION ALSO APPLIES TO THE CONSIDERATION OF WHETHER TO INITIATE LITIGATION.

- **REAL PROPERTY**

- AFTER A NEGOTIATING TEAM IS ESTABLISHED BY THE LOCAL AGENCY IN OPEN SESSION, THAT TEAM MAY MEET WITH THE LEGISLATIVE BODY TO DISCUSS AND RECEIVE INSTRUCTIONS AS TO PRICE AND TERMS PRIOR TO THE PURCHASE, SALE, LEASE, OR EXCHANGE OF IDENTIFIED REAL PROPERTY.

CLOSED SESSION – PERMISSIBLE ITEMS -3

- SECURITY OF PUBLIC FACILITIES/SERVICES
- THIS EXCEPTION ALLOWS A LEGISLATIVE BODY TO MEET IN CLOSED SESSION WITH THE ATTORNEY GENERAL, DISTRICT ATTORNEY, LOCAL AGENCY COUNSEL, SHERIFF OR CHIEF OF POLICE AND THEIR RESPECTIVE DEPUTIES, A SECURITY CONSULTANT OR SECURITY OPERATIONS MANAGER ON MATTERS POSING A THREAT TO SECURITY OF PUBLIC BUILDINGS, THE SECURITY OF ESSENTIAL PUBLIC SERVICES, AND/OR A THREAT TO THE PUBLIC'S RIGHT OF ACCESS TO PUBLIC SERVICES OR PUBLIC FACILITIES.

VIOLATIONS OF THE BROWN ACT

- VIOLATIONS OF THE BROWN ACT CAN LEAD TO INVALIDATION OF AN AGENCY'S ACTION, PAYMENT OF A CHALLENGER'S ATTORNEY FEES, CIVIL LIABILITY AND CRIMINAL LIABILITY (MISDEMEANOR).

TELECONFERENCING UNDER THE BROWN ACT

- **TRADITIONAL TELECONFERENCING**
- TRADITIONAL TELECONFERENCING MAY BE USED BY A LEGISLATIVE BODY IF THE REQUIREMENTS OF GOVERNMENT CODE SECTION 54953 ARE MET. THOSE REQUIREMENTS INCLUDE, BUT ARE NOT LIMITED TO:
 - AGENDAS MUST BE POSTED AT ALL TELECONFERENCE LOCATIONS
 - EACH TELECONFERENCE LOCATION MUST BE IDENTIFIED IN THE NOTICE AND AGENDA OF THE MEETING AND EACH SUCH LOCATION MUST BE ACCESSIBLE TO THE PUBLIC.

TELECONFERENCING UNDER AB 361 - 1

- Until January 1, 2024, Assembly Bill 361 authorizes a legislative body to use teleconferencing without complying with the Brown Act's teleconferencing quorum, meeting notice, and agenda requirements set forth in Government Code Section 54953(b)(3), in very specific circumstances:

TELECONFERENCING UNDER AB 361 -2

- a) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- b) The legislative body holds a meeting during a proclaimed state of emergency for purposes of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.
- c) The legislative body holds a meeting during a proclaimed state of emergency and has determined by majority vote pursuant to b) above that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

ASSEMBLY BILL 2449 - 1

- AB 2449 allows, until January 1, 2026, members of a legislative body of a local agency to use teleconferencing without noticing their teleconference locations and making them publicly accessible if specified requirements are met.
- At least a quorum of the members of the body must participate in person at a singular physical location which is open to the public and within the boundaries of the local agency's jurisdiction.

ASSEMBLY BILL 2449 - 2

- THE LEGISLATIVE BODY MUST:

1. Provide a two-way audio-visual platform or a two-way telephonic service and a live webcasting of the meeting by which the public may remotely hear and visually observe the meeting and also remotely address the legislative body;
2. Give notice of the means for the public to access the meeting and offer public comment in each instance the legislative body notices the meeting or posts the agenda;

ASSEMBLY BILL 2449 - 3

- THE LEGISLATIVE BODY MUST:

3. Identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in or internet-based service option, and at the in-person location of the meeting; and
4. Provide an opportunity for the public to address the legislative body and offer comment in real time.

ASSEMBLY BILL 2449 - 4

- AB 2449 authorizes a member of a legislative body to participate in a meeting remotely using these provisions only if one of the following circumstances applies:
- The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. These provisions cannot be used by any member of the legislative body for more than two meetings per calendar year; or

ASSEMBLY BILL 2449 -5

- (b) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request, as follows:
 - i) The legislative body is required to request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and does not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law.

ASSEMBLY 2449 - 6

- ii) The legislative body may decide to allow the member to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting as specified.
- The above provisions cannot serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

ASSEMBLY BILL 2449 - 7

JUST CAUSE IS DEFINED AS ANY OF THE FOLLOWING:

- a) Childcare or caregiving need that requires them to participate remotely;
- b) A contagious illness that prevents a member from attending in person;
- c) A need related to a physical or mental disability not otherwise accommodated; and
- d) Travel while on official business of the legislative body or another state or local agency.

ASSEMBLY BILL 2449 - 8

- EMERGENCY CIRCUMSTANCES ARE DEFINED AS:
- A physical or family medical emergency that prevents a member from attending in person.

SENATE BILL 1100

- The presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.
- Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior.

SENATE BILL 1100 -2

- **DISRUPTING** means
 - Engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes:
 - A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Government Code section 54954.3 [public comment] or any other law; or
 - Engaging in behavior that constitutes use of force or a true threat of force.
 - A true threat of force is one that a reasonable observer would perceive as an actual threat to use force by the one making that threat.

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THE END – AND NOT A MOMENT TOO SOON