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**THE RALPH M.
BROWN ACT**
GOVERNMENT CODE § 54950 *ET*
SEQ.

Mono County Counsel's Office

2016

2 DECLARATION OF PUBLIC POLICY

- Government Code § 54950
 - 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 DECLARATION OF PUBLIC POLICY

- Government Code § 54950 (cont.)
 - 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.

4 PURPOSE



- To facilitate public participation in local government decisions
- To curb misuse of the democratic process by public bodies through secret legislation

5 SCOPE



Governs meetings conducted by local legislative bodies

6 OPEN MEETINGS

- All of the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information, must be open and available for public scrutiny (limited exceptions are discussed below).



7 PUBLIC PARTICIPATION

- Members of the public can attend, and testify, without giving their names.
- Information given to the legislative body in connection with an open meeting must be equally available to members of the public.
- Unless it's disruptive, any person may record (video or audio) or broadcast an open meeting.

8 VOTING



- No secret ballots
- The legislative body must publicly report any action taken and the vote or abstention on that action of each member present for the action
 - **New requirement as of Jan. 1, 2014**

9 OPPORTUNITY TO SPEAK

- Every regular meeting agenda must provide opportunity for the public to speak:
 - On items of interest to the public
 - Before/during consideration of each item
 - On items not on the agenda (but within the jurisdiction of the legislative body)

10 REASONABLE REGULATIONS

- The legislative body may:
 - Adopt regulations limiting the total amount of time for public testimony for certain issues & for each speaker
 - May order the room to be cleared of persons interrupting orderly conduct of the meeting (except nonparticipating media personnel)



11 REASONABLE REGULATIONS



- The legislative body may not:
 - Prohibit a speaker from criticizing the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body.

12 PUBLIC ACCESS

- Agendas or any other writings, unless exempt from disclosure by the Public Records Act, distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public upon request

13 APPLICATION

- The Brown Act applies to:
 - Local agencies
 - Legislative bodies
 - Persons elected to legislative bodies, even prior to assuming office
 - Boards and commissions created by statute or ordinance

14 APPLICATION

- The Brown Act does not apply to:
 - Individual decision makers who are not elected or appointed members of legislative bodies such as agency or department heads when they meet with advisors, staff, colleagues or anyone else.
 - Multi-member bodies which are created by an individual decision maker
 - A single individual acting on behalf of an agency

15 LEGISLATIVE BODIES

- Includes:
 - Governing bodies
 - Board of Supervisors
 - City Council
 - District Board
 - Subsidiary bodies
 - Private or nonprofit corporations and other entities

16 SUBSIDIARY BODIES

- Any board, commission, committee or other body created by formal action of the legislative body
 - Doesn't matter if body is permanent, temporary, advisory or decision making
- Standing committee
 - A committee which has continuing jurisdiction over a particular subject matter (budget, finance, etc.); or
 - The committee's meeting schedule is fixed by formal action of the legislative body that created it.
- Exception: An advisory committee of less than a quorum of the governing body
 - Without continuing subject matter jurisdiction (i.e., ad hoc)

17 SUBSIDIARY BODIES – EXAMPLES

- Commission comprised of Board members, executive officers and interested citizens
 - **Subject to Brown Act (no exemption)**
- Advisory committee comprised of two Board members for the purpose of reviewing all issues related to parks and recreation on an ongoing basis
 - **Subject to Brown Act (standing committee)**
- Advisory committee comprised of two Board members for the purpose of producing a report in six months on use of volunteer forces
 - **Exempt from Brown Act as limited term ad hoc advisory committee**
- Advisory committee comprised of two Board members to meet on the second Monday of each month pursuant to Board resolution
 - **Subject to Brown Act (standing committee)**

18 MEETING

- Gathering of a majority of the body
 - The body need not take any action in order for the gathering to be defined as a meeting.



19 SERIAL MEETINGS PROHIBITED

- Serial meetings – a series of communications, each of which involves less than a quorum of the legislative body, but when taken as a whole, involves a majority of the body's members
 - Conducted through direct communications, personal intermediaries or technological devices to discuss, deliberate or take action on any item of business that is within the SMJ of the legislative body

20 EXAMPLES OF SERIAL MEETINGS

- Chain (A-B-C)



- Hub (A-B,A-C)

21 E-MAIL DELIBERATIONS PROHIBITED

Board members may not e-mail each other to develop a collective concurrence as to action to be taken by the Board without violating the Brown Act



22 “MEETING” DOES NOT INCLUDE:

- Contacts with the public
- Attendance at a standing committee meeting (observation only)
- Purely social or ceremonial occasions

23 “MEETING” DOES NOT INCLUDE:

- Attendance at open & noticed meetings of other local agencies
- Attendance at conferences open to the public on issues of general interest to the public or public agencies
- Town meetings or similar gatherings which are open, noticed and organized by a person or organization other than the local agency

Don't talk shop outside of the program!

24 LOCATION OF MEETINGS

- Regular meetings
 - Time and place specified by ordinance, resolution or bylaws
- Special meetings
 - A meeting at a time or place other than the time or place specified from regular meetings

25 LOCATION OF MEETINGS

GOVERNMENT CODE § 54954

- Must be located within local agency's jurisdiction
- Exceptions include:
 - Inspecting real property located outside the jurisdiction or personal property which would be inconvenient to bring inside the jurisdiction
 - Meeting with state or federal officials on a legislative or regulatory issue over which such officials have jurisdiction
 - Visit office of legal counsel for closed session (pending litigation) to reduce legal fees or costs

26 TELECONFERENCING

GOVERNMENT CODE § 54953(B)

- At least a quorum must participate from locations that are within the local agency's jurisdiction
- All votes taken during a teleconference meeting must be conducted by roll call
- Each teleconference location must be fully accessible to members of the public
- Agendas must be posted at (and list) each teleconference location



27 AGENDAS – POSTING & NOTICE REQUIREMENTS

- Agendas must be posted in a location freely accessible to the public 24 hours a day and on the Agency's website
- Regular meeting - 72 hours prior
- Special meeting - 24 hours prior
 - Called by presiding officer or a majority of the body

28 EMERGENCY MEETING



- Defined: crippling activity, work stoppage or other activity which severely impairs public health, safety or both
- “Normal” emergency – 1 hour notice to media, etc.
- “Dire” emergency – notice to media when meeting is called
- Special closed session opportunity (2/3rds vote)

29 EXCEPTIONS

- Adjourned meetings
 - If a meeting is adjourned for less than 5 calendar days, a new agenda is not required to be posted
 - Can't add new items of business
 - Post the order of adjournment at or near the door of the meeting place within 24 hours
- Continued hearings – 24 Hour Rule
 - If a hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.

30 AGENDA CONTENTS

- Time and place of meeting
- Public comment period
- Brief general description (20 words or less) of every item of business to be discussed or transacted, including closed session items

31 AGENDA LANGUAGE EXAMPLES

- Budget
- Budget modifications
- Consideration of increasing budget line item 0001-13943 by \$3,112,671.32
- Consideration of establishing a separate cost center related to the State-County Assessor's Partnership Agreement Program with a Fiscal Year 2014-15 budget of \$123,800 and two new Grant Funded Appraiser II positions

32 AGENDA CONTENTS (CONT.)

- Address of office or location where agenda packet materials are available for public inspection
- Instructions on how to get ADA assistance
- Agenda must be available in alternative ADA formats

33 AGENDA PACKETS

- Agenda packets should be made available to the public at the time the agenda is posted or when the materials are distributed to all or a majority of the legislative body, whichever is first
- May post on the Agency's website
- Materials distributed during a meeting:
 - If prepared by the local agency, must be made available for public inspection at the meeting
 - If prepared by some other person, must be made available for public inspection after the meeting

34 AGENDAS – MAILING REQUESTS

- Any person may request that a copy of the agenda and/or agenda packet be mailed to them.
 - Any request is valid for one calendar year and must be renewed following January 1st of each year.
- Mailing should occur at the same time as the agenda is posted or the packets are distributed to members of the legislative body, whichever is first.
- The legislative body may establish a fee, which cannot exceed the cost of providing the service.

35 AGENDAS

No action or discussion is allowed for any item not listed on an agenda.



36 AGENDA EXCEPTIONS

- Urgency items
 - Requires 2/3 vote (or unanimous if less than 2/3 is present)
 - Finding: Need for immediate action that came to the attention of the agency after the agenda is posted
- Adding items by majority vote for emergency situations

37 AGENDA EXCEPTIONS

- Questions to staff for clarification of a matter based on public comment
- Brief response to statement or question from the public
- Ask staff to report back at a future meeting on any matter

38 AGENDA EXCEPTIONS

- Brief announcement or report on member's or staff's own activities
- Provide reference or information to staff
- Item continued to another meeting within 5 calendar days

39 CLOSED SESSIONS

- The Act contains specific exceptions to the open meeting requirement where the local government has a demonstrated need for confidentiality.
- If a specific statutory exception authorizing a closed session cannot be found, the matter must be conducted in public regardless of its sensitivity.

40 CLOSED SESSION PROCEDURES

- Each item to be transacted or discussed in a closed session must be briefly described on the agenda for the meeting.
- Once the closed session is complete, the body must reconvene in open session, where it may be required to report votes and actions taken in closed session.

41 SEMI-CLOSED MEETINGS

- Meetings cannot be semi-closed.
 - Certain interested members of the public may not be admitted to a closed session while the remainder of the public is excluded
- As a general rule, closed sessions may involve only the membership of the body plus any additional support staff which may be required.
- Persons without an official role in the meeting should not be present.



42 CLOSED SESSION CONFIDENTIALITY



- No person may disclose confidential information that has been acquired by attending a proper closed session to a person not entitled to receive it, unless the disclosure is authorized by the legislative body.
- “Confidential information” – a communication made in a closed session that is specifically related to the basis for the legislative body to meet lawfully in closed session

43 CLOSED SESSION CONFIDENTIALITY

- Enforcement
 - Injunctive relief
 - Disciplinary action
 - Referral to grand jury
- Exceptions
 - Confidential inquiry or complaint to DA or grand jury concerning a perceived violation of law
 - Expressing an opinion concerning the propriety or legality of actions taken by a legislative body in closed session
 - Disclosing information acquired by being present in a closed session that is not confidential information
 - Disclosing information under the whistle blower statutes

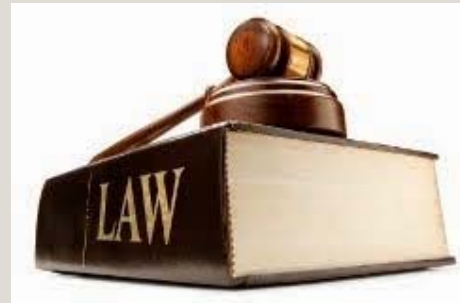
44 CLOSED SESSIONS – REAL PROPERTY TRANSACTIONS

- To give instructions regarding price and terms of payment to the Agency's negotiator for the purchase, sale, exchange or lease of real property
- Report out if legislative body's approval rendered agreement final



45 CLOSED SESSIONS - LITIGATION

- Legal counsel must participate to use the litigation closed session.
- Three types
 - Initiation of litigation
 - Anticipated litigation
 - Existing litigation
- Report out approval given to legal counsel to defend, seek or refrain from appellate review or relief, or to enter as an amicus curiae; final settlement agreement



46 CLOSED SESSIONS – PERSONNEL ISSUES

- 24-hours advanced written notice to employee if:
 - Specific charges or complaints against the employee brought by a third person or other employee will be heard
 - Employee may request a public hearing
- Salary determinations and other terms of compensation must occur in open session
- Report out action taken to appoint, employ, dismiss, accept resignation of or otherwise affect the employment status of a public employee

47 CLOSED SESSIONS – LABOR NEGOTIATIONS



- To give direction on bargaining issues to the Agency's negotiator(s)
- Report out final agreement concluding labor negotiations

48 OTHER CLOSED SESSIONS

- Threat To Public Services Or Facilities
- License/Permit Determination
 - Applicant with criminal background
- Liability Claims
 - Claim for the payment of tort liability losses, public liability losses or workers' compensation liability incurred by a JPA or a local agency member
- Case Review/Planning
 - Multijurisdictional law enforcement agency

49 OTHER CLOSED SESSIONS

- Report Involving Trade Secret
 - Hospital trade secrets
- Hearings
 - Hospital medical audit or quality assurance committee reports; Staff privileges
- Charge or Complaint Involving Information Protected by Federal Law
 - Medi-Cal beneficiaries
- Conference Involving a JPA
- Audit by California State Auditor's Office
 - Review and respond to a confidential final draft audit report

50 PENALTIES & REMEDIES

- A member who violates the Brown Act is guilty of a misdemeanor if action is taken and the member intended to deprive the public of information to which the member knows of or has reason to know the public is entitled.



51 PENALTIES & REMEDIES

- Opportunity to Cure
- Cease and Desist/Unconditional Commitment
- Injunction
- Court Costs & Attorneys' Fees
- Misdemeanor

52 OPPORTUNITY TO CORRECT GOVERNMENT CODE § 54960.1



This time we will get it right.

- Written demand to cure or correct the alleged violation
 - 90 days from the date action was taken
 - 30 days if action was taken in open session
- Failure to correct may lead to judicial determination that action taken is null and void.

53 UNCONDITIONAL COMMITMENT GOVERNMENT CODE § 54960.2

- Submittal of a cease and desist letter
 - Clearly describing the past action of the legislative body and nature of the alleged violation
 - Submitted within 9 months of the alleged violation
- Agency has 30 days to respond
 - Denial
 - Submitter may file a legal action
 - Unconditional commitment

54 UNCONDITIONAL COMMITMENT

To :The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, [the name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as “Rescission of Brown Act Commitment.” You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

[Chairperson or acting chairperson of the legislative body]

55 IMPLICATIONS OF AN UNCONDITIONAL COMMITMENT

- Any judicial action filed will be dismissed with prejudice
 - May be liable for court costs and reasonable attorney's fees if done after the 30-day response window
- The provision of an unconditional commitment cannot be construed as evidence of a Brown Act violation
- If the legislative body engages in the challenged action again, legal action can be brought to enforce the unconditional commitment
 - Even if the challenged action is later determined to not violate the Brown Act!!!

56 RESCISSION OF AN UNCONDITIONAL COMMITMENT

- Must be listed on a regular agenda as “Rescission of Brown Act Commitment”
 - Can’t be on consent
- 30 days’ advance written notice of intent to original submitter and the DA
- Upon rescission, DA or any interested party may commence legal action

57 THE END

Thank you for participating.
Your public service and
interest is greatly
appreciated.

