

SUMMARY OF THE BROWN ACT*



FIRM OVERVIEW

Practice Areas

Administrative Hearings
Charter School
Community College
Facilities & Business
Governance
Investigations
Labor & Employment
Litigation
Municipal
Public Finance
Public Safety
Special Education
Student
Technology & Innovation
Title IX

Statewide

Sacramento
Walnut Creek
Fresno
Monterey
Bakersfield
San Luis Obispo
Los Angeles
San Diego

The Brown Act is the most important open-meetings law for local governments in California. Compliance with the Brown Act is a critical role for the governing body. *Note: This is only a summary of key provisions of the Act, rather than a detailed overview of all its requirements.

APPLICATION

The Brown Act applies to all “legislative bodies.”

“Legislative body” means:

- > **Governing Bodies:** The governing body of a local agency or any other local body created by state or federal statute.
- > **Subcommittees and Commissions:** All subcommittees and commissions created by formal action of the legislative body, whether temporary, decision making, or advisory. There is one exception for ad hoc advisory committees consisting solely of less than a quorum of the legislative body.

MEETINGS

Definition

A meeting is any congregation of a majority of the legislative body that meets at the same time and place to hear, discuss, or deliberate upon any item within the body’s subject matter jurisdiction. A “meeting” includes any use of direct communication, intermediaries, or technological devices such as e-mail.

Types of Meetings

A regular meeting is the fixed formal meeting of the legislative body. Agendas must be posted at least 72 hours in advance of the meeting.

A special meeting may be called at any time either by the presiding officer or a majority of the legislative body by delivering a written notice to each member and to each local newspaper of general circulation and radio or television station requesting such notice. The notice must be delivered and the agenda posted at least 24 hours before the meeting.

AGENDAS

Agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting. All agendas must be posted in a location at the agency offices that is freely accessible to the public, and also on the agency’s website.

School districts must allow members of the public to place matters directly related to school district business on the agenda. The school district can reasonably control when and how the item is placed on the agenda.

Action

A legislative body may not take action on an item not appearing on the agenda, except:

- > To respond to statements made or questions posed by the public during the public comment section;
- > To ask questions of staff or the public for clarification;



- > To ask staff to report back on an item not appearing on the agenda at a subsequent meeting; or
- > To make a brief announcement.

Public Comment

Each *regular meeting* agenda must provide an opportunity for public comment on any agenda item and on any item of interest to the public within the subject matter jurisdiction of the legislative body. For *special meetings*, the agenda must provide an opportunity for members of the public directly to address the legislative body concerning any item on the agenda; comments on items not on the agenda need not be allowed.

Inspection

Writings distributed to all or to a majority of the legislative body by any person for consideration at a public meeting are public records. Documents distributed to all or a majority of the legislative body less than 72 hours before a regular meeting must be made publicly available without delay. Writings given to the legislative body at the meeting by staff must be available at the meeting, and writings distributed at the meeting by others must be available after the meeting. The terms “writing” and “document” include electronic records such as e-mail.

In addition, every agenda must state the location of an office at the agency where members of the public may inspect these documents. The agency may also post the documents on the agency’s Internet Web site in a position and manner that makes it clear that the documents relate to an agenda item for an upcoming meeting.

CLOSED SESSIONS

Closed sessions are meetings conducted in private without the attendance of the public. They are permitted for specific purposes; courts construe the statutory basis for closed sessions narrowly. Generally, to preserve the confidentiality of closed sessions, only essential staff should attend a closed session.

Primary Types of Closed Sessions

- > To instruct negotiators on real property transactions
- > To instruct labor negotiators
- > To discuss “pending litigation” with agency attorneys
- > To consider the appointment, employment, evaluation, discipline, or dismissal of a public employee
- > Employee Complaints or Charges

Before holding a closed session to hear complaints or charges brought against an employee, the employee must be delivered written notice of his or her right to have the complaints or charges heard in open session at least 24 hours before the meeting.

- > Meetings regarding threats to security of public buildings or essential public services
- > Meetings among Joint Powers Agencies formed for insurance pooling and local agency Self-Insurance Authorities to consider liability issues
- > Student matters such as discipline or records challenges

Announcements from Closed Session

- > After each closed session, the legislative body must report in open session certain actions taken in closed session, and the vote of each member, including:
 - > Approval of an agreement concluding real estate negotiations
 - > Approval for legal counsel to defend, initiate, or settle litigation
 - > Disposition of claims
 - > Action to appoint, employ, dismiss, release, accept resignation of, or affect the status of any employee
 - > Approval of labor negotiation agreements

Reporting out may be deferred under certain circumstances, usually because it is contingent upon approval by another party.

Closed Session Confidentiality

No person may disclose confidential information that has been acquired by being present in an authorized closed session to unauthorized persons, unless the legislative body formally authorizes disclosure of confidential information. “Confidential information” means a communication made in a closed session that is specifically related to the basis for the closed session.

Penalties and Enforcement

A member who attends a meeting where action is taken in violation of the Brown Act, and where the member intends to deprive the public of information which the member knows or has reason to know the public is entitled, is *guilty of a misdemeanor*.

For legal advice on a particular Brown Act issue, or for any questions, please contact us at clientservices@lozanosmith.com or 559.431.5600.