

## Open Government Laws: Sailing the Seas of Transparency



City Clerk's Association of California

Nuts and Bolts  
Northern Division  
March 2, 2012



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## A Policy of Open Government

"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

California Constitution Art. I, Sec. 3(b)(1)

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## All Hands Muster – Public Meetings and The Ralph M. Brown Act



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## Ralph M. Brown Act



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## "Open and Public"

"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 in this chapter."

Government Code Section 54953(a)

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## Marketplace of Ideas



- Public agencies may not prohibit public criticism of the agency or the legislative body
- Civil Code Section 47 makes statements at a public meeting generally privileged

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## Brown Act Topics

- To whom does the Act apply?
- What is a meetings?
- What rules apply to meetings?
- What are the remedies for a violation?




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## The Brown Act Applies to "Legislative Bodies"

- What is a "legislative body?"
  - Governing body of the agency;
  - Subordinate boards & commissions created by formal action of the governing body;
  - Standing committees with regular meeting schedule; or
  - Standing committees with continuing subject matter jurisdiction

Government Code Section 54952

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## The Brown Act Applies to "Legislative Bodies"

- What is not a "legislative body?"
  - Advisory committees (ad hoc), composed solely of the members of the legislative body that are less than a quorum of the legislative body




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## Meetings



A meeting is:

- Congregation of a majority
- Same time and place (including teleconference location)
- To hear, discuss, deliberate or take action on
- Any item within subject matter jurisdiction

Government Code Section 54952.2

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## Serial Meetings Are Illegal



■ What is an illegal serial meeting?

- Series of communications
- Direct or indirect (intermediaries/technology)
- Employed by a majority
- To discuss, deliberate, or take action on any item of business or potential business

Government Code Section 54952.2

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## Serial Meetings Are Illegal



■ Types of serial meetings

- Hub and spoke
- Telephone or email chain

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## Serial Meetings Are Illegal, But --

- Individual briefings are permitted
  - "Unidirectional"
  - Don't describe views of any other members
  - Don't ask member's views




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## Meeting Exceptions



- When is a meeting not a "meeting?"
  - Individual contacts
  - Conferences and seminars
  - Another body of the agency when it is an open and noticed meeting of that body

Government Code Section 54952.2

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## Meeting Exceptions (cont'd)



- When is a meeting not a "meeting?"
  - Social or ceremonial events
  - Ad hoc committees
  - Non-member attendance at standing committee meetings (as observer only)
  - Community meetings publicized and open to public

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### Rules Governing Meeting Agendas

- Effective notice
- Adequately describes items considered



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### Types of Meetings

- Regular
- Special
- Adjourned
- Emergency



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## Regular Meeting



- Agenda must be posted 72 hours in advance
- Brief description of items of business
- Posted agenda must be freely accessible to public
  - Ordinance governing location
  - Ordinance governing where to post

Government Code Section 54954.2

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## Regular Meeting (continued)



- NEW LAW – Agenda must be posted on City's website – two situations:
  - For the governing body and
  - For any other legislative body
    - That has a member of the governing body as a member and
    - The members are compensated for their appearance
  - But only if City has a website

Government Code Section 54954.2

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## Regular Meeting (continued)

- Public must have opportunity to address legislative body on:
  - Any item on agenda (including closed session items)
  - Any non-agendized item within legislative body's subject matter jurisdiction ("public comment period")




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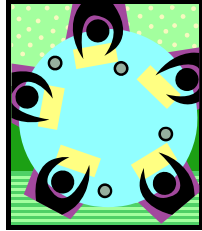
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## Special Meeting

- Called by presiding officer or majority of legislative body
- Notice must be posted 24 hours in advance
- Notice must be received by each member of the body unless waived



Government Code Section 54956

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## Special Meeting (continued)



- Notice must be sent to media and newspapers if requested in writing
- Notice must state time/place of meeting and all business to be transacted
- Public comments limited to what is on agenda

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## Special Meeting (continued)

- NEW LAW – Agenda must be posted on City's website – two situations:
  - For the governing body and
  - For any other legislative body
    - That has a member of the governing body as a member and
    - The members are compensated for their appearance
  - But only if City has a website

Government Code Section 54956

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## Special Meeting (continued)

- Prohibited from calling special meeting to discuss:
  - Salaries
  - Salary schedules
  - Fringe benefits
- Of local agency executives
  - CEO (City Manager, City Administrator) and
  - Department heads




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## Adjourned Meeting

- Regular or special meeting may be adjourned to specific time and place
- If no time stated, then meeting continued to the hour for regular meetings
- Less than a quorum may adjourn
- Secretary/Clerk may adjourn to stated time and place and provide written notice in same manner as special meeting

Government Codes Section 54956

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## Adjourned Meeting (continued)

- Notice of Adjournment must be posted on or near door of place where meeting was held within 24 hours
- Regular meeting so adjourned is a regular meeting
- Adjourned to date not more than 5 calendar days from adjourned meeting?
  - Don't have to re-notice prior posted items



Gov't Code Section 54954.2(b)(3)

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## Emergency Meetings



Disaster Photos by Robert A. Eplett, Cal EMA (unless otherwise credited)

Government Code Section 54956.5

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## Emergency Meeting

- Grounds for calling – two types:

- **Emergency:** work stoppage, crippling activity or other activity that severely impairs public health and/or safety

- **Dire Emergency:** crippling disaster or terrorist act poses peril immediate and significant



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## Emergency Meeting (continued)



- Emergency determined by legislative body
- May meet in closed session
  - But requires two-thirds vote of body

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### Emergency Meeting – Notice Requirements



- Do not have to comply with 24 hour posting or notice requirements
  - Must comply with all other special meeting requirements
  - Must notify newspapers & media at least one hour prior to meeting by phone (unless dire emergency)
  - If no phone service, notify news media of purpose of meeting and action taken as soon after as possible

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### Emergency Meeting – Minutes

- Minutes of meeting must be posted ASAP
- Minutes remain posted for minimum of ten days




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### Agendas & Agenda Packets

- Agendas & packets must be publicly accessible
- Writings distributed to majority of legislative body = public records
  - PRA exemptions limited
  - Section 6255 (balancing test) not applicable



Government Code Section 54957.5(a)

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## Agendas & Agenda Packets



- Agenda & agenda packet copies must be mailed to:
  - Those who request in writing
  - At same time distributed to majority of legislative body members
  - Fee can be adopted by legislative body, not to exceed cost of providing service

Government Code Section 54954.1

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## Documents Distributed Less than 72 hours



- If "writing" distributed to majority of legislative body within 72 hours of meeting
- Must make available for public inspection at same time
  - At an office/location designated for this purpose
  - Agenda must contain location information
  - May also post on internet Gov't Code §54957.5(b)

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## Documents Distributed at Meeting



- If document distributed at meeting by staff or member of body
  - Must make copy available to public at meeting
- If distributed by someone else
  - Must make available at meeting or after meeting

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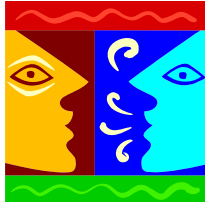
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## Item Not on Posted Agenda?

- No discussion or decision on items not on the posted agenda

- Absolute rule for special meetings
- Exceptions for regular meetings



Government Code Sections 54954.2, 54956

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## Item Not on Posted Agenda? Exceptions

- Items added to the agenda

- Came to the agency's attention after the agenda was posted;
- Need to take action before the next meeting; and
- Two-thirds vote required



Government Code Section 54954.2(b)

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## Item Not on Posted Agenda? Exceptions (continued)

- Brief response to comments/questions from public
- Clarification/reference to staff
- Brief announcements/report on activities
- Requests for future report
- Placement of items on future agenda

Government Code Section 54954.2(a)(2)

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## Item Not on Posted Agenda? Exceptions (continued)

- Emergency situation exists (as defined in Gov't Code § 54956.5)
- Determination requires majority vote




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## Simultaneous or Sequential Meetings



- NEW LAW – Applies if:
  - One legislative body has convened a meeting
  - Member(s) are member(s) of a second legislative body
  - Compensation announcement must be made
  - Before convening simultaneous or sequential meeting of second body

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## Simultaneous or Sequential Meetings – Announcement



- City Clerk (or legislative body member) must announce
  - Amount of compensation or stipend, if any
  - A statement that the compensation or stipend is a result of convening the meeting

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## Simultaneous or Sequential Meetings – Exception

- If the amount of compensation
  - Is prescribed by state law and
  - No additional compensation authorized
- The announcement of the amount of compensation may be omitted
- BUT – Still must announce member(s) will receive compensation or stipend as result of convening the meeting

Government Code Section 54952.3




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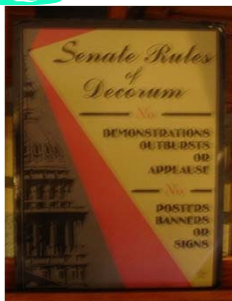
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## Public Participation



- Not required to "register"
- Speaker cards not a prerequisite
- Rules of decorum permitted
- Time limits okay
- Recording permitted

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## Public Participation

- Public right to speak on any item of interest within subject matter jurisdiction of city at regular meetings (public comment period)
- Public right to speak on a specific item of business before or during the body's consideration
- Cannot prohibit public criticism of policies, procedures, programs of city or acts of city council

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## Teleconferencing

- Quorum must participate from regular location
- Teleconference location must be identified on agenda
- Agenda posted at teleconference location




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## Teleconferencing



- Teleconference location must be accessible to public
- Agenda must provide for public participation
- Roll call vote only

Government Code 54953(b)

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## Regular & Special Meeting Location



- Must be within the local jurisdiction
  - Includes retreats and workshops
- Participate in multi-agency meetings held in boundaries of one of the agencies
  - All agencies must give notice
- Exceptions for attending legal proceedings, inspect real property, regular meeting place unsafe, etc.

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## Closed Sessions

- Personnel matters or labor negotiations
- Real property negotiations
- Pending, threatened or contemplated litigation




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## Rules Governing Closed Sessions

- Matters must be disclosed on the posted agenda
  - Safe harbor agenda language
  - Government Code Section 54954.5
- Closed session may be held at a different location
- Pre- and post-session announcements by chair or counsel

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## Rules Governing Closed Sessions

- Who participates?
- Confidential Minute Book (if required)
  - Not a public record
  - Disclose to legislative body and court if violations are alleged
- Disclosure of documents?

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## Enforcement & Consequences

- Civil action
  - District attorney or any interested person
  - Notice and opportunity to cure
  - Civil action for invalidation of actions
  - Attorneys fees and costs if prevail



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## Enforcement & Consequences

- Criminal prosecution (misdemeanor)
  - Action taken at a meeting
  - In violation of the act
  - Intent to deprive public of information



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