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**OUTLINE OF
THE BROWN ACT**

as amended through December 31, 2006

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THE BROWN ACT

(Adapted and updated from *The Brown Act: Open Meetings for Local Legislative Bodies*, California Attorney General's Office, 2003¹)

I. INTRODUCTION

A. The Ralph M. Brown Act

Government Code section 54950 et seq.²

B. Purpose and Scope

To require multi-member local legislative bodies to conduct all aspects of the decision-making process, including discussion, debate, and the acquisition of information, in public.

II. BODIES SUBJECT TO THE BROWN ACT (§ 54952)

The Act applies to all "legislative bodies" of "local agencies."

A. Local Agencies

The term "local agency" means "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency." (§ 54951.)

B. Legislative Bodies

1. The governing body of a local agency.
2. Subsidiary bodies of the agency created by the governing body.

Exception: An ad hoc committee composed solely of less than a quorum of the board.

3. The governing body of a private entity, if the entity either (a) was created by a legislative body to exercise properly delegated authority, or (b) receives funds from the local agency, and its governing body includes a member of the legislative body of the

¹ Available on line at www.ag.ca.gov/publications/2003_Intro_BrownAct.pdf.

² All subsequent statutory references are to the Government Code, unless otherwise specified.

local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

4. Certain hospital lessees.

III. MEETINGS

A. Meeting Defined (§ 54952.2)

1. Face to Face Meetings

Any congregation of majority of members at same time and place to hear, discuss, or deliberate on any item within subject matter jurisdiction of legislative body or local agency.

Expressly prohibited: use of telephone, etc. by majority of board members to develop concurrence on action to be taken.

Exception: teleconferencing appearance and voting at meeting is expressly allowed, if certain restrictions are met, such as all teleconferencing locations being public and listed on agenda. (§ 54953.)

2. Exceptions

- a. Individual board member discussions with constituents, etc.
- b. Conference attendance.
- c. Attendance at public meeting of some other entity (e.g., Neighborhood Watch).
- d. Attendance at public meeting of another legislative body of same agency, or of a legislative body of another agency.
- e. Attendance at social or ceremonial occasion.
- f. Attendance at public meeting of standing committee of body, provided extra board members attend only as observers.

Note: no huddling at exempt occasion to do agency business!

B. Location of Meetings (§ 54954)

1. Generally must meet within boundaries of territory over which local agency exercises jurisdiction.

2. Exceptions to:
 - a. Comply with state or federal law or court order.
 - b. Inspect real or personal property.
 - c. Participate in multi-agency meeting.
 - d. Meet in closest facility where no meeting facility within boundaries of territory over which local agency exercises jurisdiction, or at principal office of local agency if outside territory.
 - e. Meet with federal or state officials to discuss legislative or regulatory issue.
 - f. Meet in or near facility owned by agency, provided discussion limited to that facility.
 - g. Visit office of legal counsel, if it would reduce legal fees or costs.
3. Special exceptions for school district governing boards and JPAs.
4. Presiding officer may change location if unsafe to meet in designated location, by providing notice to media as for special meeting.

C. Adjournments and Continuances

1. Adjournments governed by § 54955.
2. Continuances governed by § 54955.1.

D. Special Procedures for Meeting on Tax or Assessment (§ 54954.6)

Special procedures apply to meetings regarding any new or increased general tax or any new or increased assessment.

E. Voting Requirements (§ 54953)

No secret ballots allowed.

IV. NOTICE AND AGENDA REQUIREMENTS

A. Regular Meetings (§ 54954.2)

Each legislative body (except advisory and standing committees) must set formal rule, in ordinance, resolution, bylaw, or other formal document, for time and place of holding regular meetings.

1. Agenda requirement

- a. Post at least 72 hours before meeting, in location visible to public when office is closed.
- b. Must include brief general description of each item of business to be transacted or discussed.
- c. Must describe procedures and deadline for disabled person to request disability-related modification or accommodation, including auxiliary aids or services, in order to participate in meeting (see Public's Rights, below, for discussion of fees).
- d. No action on items not on posted agenda.

"Action" does not include questions for clarification, brief announcements, brief reports of individual activities, or requests for future agenda items.

- e. Agenda must be made available in appropriate alternative format for disabled person upon request (see Public's Rights, below, for discussion of fees).

2. Exceptions to agenda requirement

a. Emergency situation

- (1) Defined as work stoppage, crippling activity, or other activity which severely impairs public health, safety, or both, or crippling disaster, mass destruction, terrorist act, or threatened terrorist activity.
- (2) Determination of existence of emergency situation requires majority vote.

b. Need to take action that came to attention of agency after agenda posted

Adding item to agenda requires approval by two-thirds vote of members present at meeting, or unanimous vote if less than two-thirds present.

c. Continued item

Item previously posted in connection with meeting which occurred no more than five calendar days prior to date of action, and at prior meeting item was continued to meeting at which action being taken.

B. Special Meetings (§ 54956)

1. May be called at any time by president or a majority.
2. Require written notice to each member of board and to all media requesting notice.
3. Notice must be received (and also posted) at least 24 hours before meeting.
4. Notice must state business to be transacted at meeting.
5. No other business may be considered at meeting.
6. Notice required even if meeting in closed session or if no action to be taken.
7. Member of board may waive failure to receive notice by filing written waiver or by being present at meeting.

C. Emergency Meetings (§ 54956.5)

1. General rules

- a. Authorized only when prompt action necessary due to disruption or threatened disruption of public facilities.
- b. All special meeting requirements apply except 24-hour notice and posting requirement.
- c. Most closed sessions prohibited. May meet in closed session only pursuant to section 54957 (with Attorney General, district attorney, agency counsel, sheriff, or chief of

police, or their deputies, or security consultant or security operations manager, on matters posing threat to security of public buildings, to security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or to public's right of access to public services or public facilities).

d. Decision to meet in closed session requires two-thirds vote of members present, or, if less than two-thirds of members are present, unanimous vote of members present.

e. Special rules for reports of meeting and minutes.

2. "Ordinary" emergency

a. Defined as work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both.

b. Emergency must be determined by majority of members of board.

c. Must notify media at least one hour before meeting, unless telephone service is not functioning.

3. "Dire" emergency

a. Defined as crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring the board to provide one-hour notice before holding emergency meeting may endanger public health, safety, or both.

b. Existence of dire emergency must be determined by majority of members of board.

c. Need not give one-hour notice, but must notify media at or near time that presiding officer or designee notifies members of board of emergency meeting, unless telephone service is not functioning.

V. PUBLIC'S RIGHTS

A. Registration (§ 54953.3)

1. Cannot require registration as condition of attendance.

2. If registration document posted or circulated, it must contain statement that completion of document is voluntary.

B. Recording (§ 54953.5)

Audio or video taping of open session may not be prohibited absent reasonable finding that recording cannot continue without noise, etc., that disrupts proceedings.

C. Attendance (§ 54957.9)

1. Board may order individuals removed who are willfully disrupting meeting.
2. If meeting cannot be rendered orderly by removing small group, board may order all members of public removed except nondisruptive news media.

D. Documents

1. Open session agendas and board packets are public documents as soon as provided to board. (Excludes closed session items.) (§ 54957.5.)
2. May charge fee for copy.
3. Members of public also have right to be placed on mailing list for entire agenda packet (open session items). Agency may charge fee for calendar year subscription. (§ 54954.1.)
4. Documents for disabled: Americans with Disabilities Act prohibits charging greater fee to disabled for extra costs of making documents available in appropriate format. Agency's only option is to increase fee for all persons to cover extra costs.
5. No statutory requirements regarding Internet. Any posting of agendas and supporting documents on web site is completely voluntary.

E. Participation

1. Public comment (§ 54954.3)

a. When not on agenda

- (1) Agenda for regular meeting must provide opportunity for members of public to address board on items of

interest within subject matter jurisdiction of board; no action may be taken unless exceptions to agenda requirement apply.

- (2) Public comment time need not be provided at special meeting.

b. Agenda items

Must allow opportunity for public comment on agenda items before or during board's consideration of item, at both regular and special meetings.

2. Regulations (§ 54954.3)

Board may adopt reasonable regulations to insure all members of public have opportunity to speak, such as limiting total time allocated to particular issue and limiting time allocated to individual speakers.

3. ADA requirements (§ 54953.2)

All open sessions must comply with Title II of the Americans with Disabilities Act (42 U.S.C. § 12132) – i.e., public agency must ensure that disabled persons not only may attend but also may participate. No special fee to disabled allowed.

4. Location requirements (§ 54961)

Meetings cannot be held in facility that prohibits admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of public may not be present without making a payment or purchase.

VI. CLOSED SESSION

A. Narrow Construction

1. No closed session unless expressly authorized by statute (§ 54962).
2. No "semi-closed" meetings; cannot admit certain members of public while excluding remainder.

B. General Procedures for Closed Session (§ 54957.7)

1. Agenda must list specific reason or reasons for closed session (§ 54954.5).
2. May only consider in closed session those matters included in agenda.
3. Must make public reports of certain actions taken.
4. All participants must maintain confidentiality of closed session. Confidentiality may be enforced by injunctive relief, disciplinary action (for employees), or referral to grand jury for investigation of misconduct in office (for board members). (§ 54963.)

Exception: may not take action against person making confidential inquiry or complaint to DA or grand jury if person believes closed session was unauthorized or improper, or for expressing an opinion concerning propriety or legality of actions taken in closed session. (§ 54963.)

C. Authorized Exceptions

1. Personnel (§ 54957, subd. (b))

- a. "[T]o consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public hearing."
- b. Must be individual employee where concern is for privacy of employee or freedom of employer to discuss employee; cannot discuss generic personnel issues (e.g., layoffs) in closed session.
- c. Definition of "employee" does not include elected official, member of legislative body, or most independent contractors.
- d. May not discuss proposed compensation under this exception (but see below regarding labor negotiations with unrepresented employees).

2. Labor negotiations (§ 54957.6)

- a. Authorized only to review board's position and instruct board's representative in negotiations with represented and unrepresented employees.
- b. Subjects discussed may include salaries, salary schedules, fringe benefits, and collective bargaining items.

3. Pending litigation (§ 54956.9)

- a. Authorized only "when discussion in open session ... would prejudice the position of the local agency in the litigation."
- b. Must be to confer with or receive advice from legal counsel.
- c. Three categories:
 - (1) Formal adjudicatory proceeding to which agency is party has been initiated.
 - (2)(a) Based on existing facts and circumstances, there is significant exposure to litigation against local agency.
 - (b) Board is determining whether closed session authorized pursuant to paragraph (a).
 - (3) Based on existing facts and circumstances, board is deciding whether to initiate litigation or has decided to initiate litigation.

4. Real property negotiations (§ 54956.8)

- a. May meet with board's negotiator prior to purchase, sale, exchange, or lease of real property to instruct negotiator regarding price and terms of payment.
- b. Negotiator may be member of board.
- c. Eminent domain may be discussed under pending litigation exception.

5. Public security (§ 54957, subd. (a))

May meet with Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or security consultant or security operations manager, on matters posing threat

to security of public buildings, to security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or to public's right of access to public services or public facilities.

6. Other

a. License applications (§ 54956.7)

To discuss and determine whether applicant for license or license renewal, who has criminal record, is sufficiently rehabilitated to obtain license.

b. Response to final draft audit report (§ 54956.75)

To consider response to confidential final draft audit report from Bureau of State Audits.

c. Retirement board investment (§ 54956.81)

To consider the purchase or sale of particular, specific pension fund investments.

d. Member of county Medi-Cal plan (§ 54956.86)

To hear charge or complaint from member of plan.

e. County-run health insurance provider (§ 54956.87)

To discuss health plan trade secrets.

f. JPA claims (§ 54956.95)

To discuss claim against joint powers agency for payment of tort liability losses, public liability losses or workers' compensation liability incurred by a JPA or local agency member.

g. JPA bylaw permitting closed sessions by participating agencies (§ 54956.96)

To allow participating agencies to discuss financial or liability implications for member agency.

h. Multijurisdictional law enforcement agency (§ 54957.8)

To discuss case records or hear testimony regarding an ongoing criminal investigation, and to discuss courses of action in particular cases.

i. Request by employee for hardship withdrawal from deferred compensation account (§ 54957.10)

To consider application based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event.

j. Public hospital (§ 54962)

As authorized by Health and Safety Code or Government Code.

k. School districts and community college districts (§ 54962)

As authorized by Education Code.

D. Minute Book (§ 54957.2.)

Optional closed session record may include record of topics discussed and decisions made.

VII. PENALTIES AND REMEDIES FOR VIOLATION

A. Criminal Penalties

Each member of board who attends meeting where action taken in violation of Act, where member intends to deprive public of information to which member knows or should know public is entitled, is guilty of misdemeanor (§ 54959).

B. Civil Remedies

1. Injunctive relief against future actions (§ 54960)

a. DA or any interested person may sue to stop or prevent violation or threatened violation of Act.

- b. Injunction (if granted) may include requirements to audiotape future closed sessions, if court concludes legislative body violated certain closed session requirements.

2. Voidability of past actions (§ 54960.1)

- a. DA or any interested person may sue to obtain determination that action taken in violation of rules for public attendance (§ 54953), regular meetings (§ 54954.2), closed session listings (§ 54954.5), notices for taxes and assessments (§ 54954.6), special meetings (§ 54956), or emergency meetings (§ 54956.5) is null and void.
- b. Must demand that board cure or correct allegedly improper action.
- c. Demand must be made within certain number of days of action and person must then wait 30 days for board to act.
- d. If board does not act or interested person unhappy with action taken, must begin suit within 15 days thereafter.
- e. Board may cure or correct even after suit filed.
- f. Substantial compliance sufficient to avoid liability.

C. Potential Costs (§ 54960.5)

- 1. Potential costs and attorney's fees to plaintiff if challenge successful.
- 2. Potential costs and attorney's fees to agency if agency prevails and court finds suit "clearly frivolous and totally lacking in merit."

Revised: March 14, 2007