

THE BROWN ACT

MEASURE MB CITIZENS' OVERSIGHT COMMITTEE

The information below is a summary of frequently asked questions regarding the Brown Act and Parcel Tax Oversight Committees. It should not be relied upon as an exhaustive source or reference for compliance with the Brown Act.

WHAT IS THE BROWN ACT?

The Ralph M. Brown Act ("Brown Act") is found in California Government Code Section 54950 *et seq.* It requires that 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 the Brown Act. If a given entity fits within any definition of a legislative body, then it is subject to the various requirements of the Brown Act.

At the November 2, 2004 election, the voters of California adopted Proposition 59, which adds Subdivision (b) to Section 3 of Article I of the California Constitution. Proposition 59 does the following:

- (a) Adds to the state Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to the public.
- (b) Provides that statutes and rules furthering public access be broadly construed, or narrowly construed, if they limit public access.
- (c) Requires that new statutes and rules limiting access contain findings justifying the necessity of the limitation.
- (d) Preserves the constitutional rights of privacy, due process, and equal protection; and expressly preserves existing constitutional and statutory limitations restricting access to certain meetings and records of government bodies.

WHAT IS THE INTENT OF BROWN ACT?

Government Code Section 54950 clearly states the legislative intent underlying the Brown Act:

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 their deliberations be conducted openly.

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.

Essentially, the purpose of the Brown Act is to facilitate public participation in local government and to curb misuse of democratic process by secret legislation by public bodies. [Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109, 1116.]

DOES THE BROWN ACT APPLY TO CITIZENS' OVERSIGHT COMMITTEES?

Yes, Government Code Section 54952 defines a "legislative body" to include the following:

Commissions, committees, boards, or other bodies of a local agency, whether permanent or temporary, decision-making or advisory, created by resolution or some other formal action of a legislative body. [Government Code Section 54952(b).]

WHAT IS A MEETING?

Under the Brown Act, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

Correspondingly, the prohibitions in Section 54952.2(b) have been significantly amended to read as follows:

(b)(1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. (Emphasis added.)

The amendments added a Section 54952.2(b)(2) which reads as follows:

Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body. (Emphasis added.)

WHAT IS NOT A MEETING?

(a) Individual contacts or conversations between a member of a legislative body and any other person *that do not violate subdivision (b) of Section 54952.2.* [Government Code Section 54952.2(c)(1).]

(b) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general concern to the public or agencies of the type represented by the legislative body, provided a majority of the

members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the local agency. This paragraph is not intended to allow members of the public free admission to a gathering where the organizers have required the other participants to pay a fee as a condition of attendance. [Government Code Section 54952.2(c)(2).]

(c) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body. [Government Code Section 54952.2(c)(3).]

(d) The attendance of a majority of the members at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body. [Government Code Section 54952.2(c)(4).]

(e) The attendance of a majority of the members at a purely social or ceremonial occasion provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. [Government Code Section 54952.2(c)(5).]

(f) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers. [Government Code Section 54952.2(c)(6).] Members of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body "as observers." [81 Ops.Atty.Gen. 156 (1998).] Members of the legislative body of a local public agency may not sit in special chairs on the dais while attending a meeting of a standing committee of the legislative body "as observers." Id.

WHAT ARE THE REQUIREMENTS FOR THE AGENDA?

(a) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(b) An agenda must be conspicuously posted at least 72 hours prior to the time of regular meetings and on the district's web site.

(c) The location where the agenda is posted must be publicly accessible at all times during the required 72-hour period.

(d) An agenda may not be changed within the 72-hour period preceding a regular meeting unless an exception applies.

(e) The agenda must reasonably apprise the public of the matters to be considered in sufficient detail to allow the public to determine whether to participate at the meeting.

(f) Agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act, Government Code Section 6250 *et seq.*, and shall be made available upon request without delay.

WHAT HAPPENS AT A MEETING?

(a) Every regular meeting agenda shall provide an opportunity for members of the public to address the legislative body on any item of interest to the public, within the subject matter jurisdiction of the board. In response to public comments, board members and staff may only:

- (i) Briefly respond to statements made or questions posed by persons making public comments;
- (ii) Ask questions for clarification or make a brief announcement;
- (iii) Provide a reference to staff or other resources for factual information;
- (iv) Request staff to report back to the body at a later meeting; or
- (v) Direct staff to place the matter on a future agenda.

(b) The committee may adopt reasonable rules and regulations in order to ensure the proper functioning of the meeting.

(c) "The legislative body . . . shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law." [Government Code Section 54954.3(c).]