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# **Citizens' Bond Oversight Committee: Introduction to the Brown Act**

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# **PART I**

## **RALPH M. BROWN ACT OVERVIEW**

I. **BROWN ACT OVERVIEW**

- A. The Ralph M. Brown Act, commonly known as the "Brown Act," is codified at Government Code Sections 54950-54963.
- B. The purpose of the Brown Act is to ensure an open and transparent decision-making process and meaningful public access through public meetings of legislative bodies of local agencies.
- C. Open decision making means more than a public vote. The Brown Act requires that all of the "deliberative" processes, including discussion, debate and the acquisition of information, be open and available for public scrutiny, subject only to specific statutory exceptions.

D. **Who is subject to the Brown Act?**

1. Legislative Bodies.

- (a) This includes school boards and their members.
- (b) Newly Elected Members – Any person who has been elected to serve as a member of a legislative body, even though he/she has not yet assumed office, must conform his/her conduct to the requirements of the Brown Act.

2. Committees.

The Brown Act also defines "legislative body" to include any commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, that has been created by charter, ordinance, resolution, or formal action of a legislative body.

- (a) Education Code section 15280 provides that Citizens' Oversight Committee proceedings "shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board of the district."

E. **When Does the Brown Act Apply?**

- 1. The Brown Act applies to "*meetings*" of the legislative body.
- 2. See, Part II.

F. **Who Monitors Compliance with the Brown Act?**

- 1. The District Attorney, Grand Jury, and the public regulate Brown Act compliance.

**G. Penalties for Violation of the Brown Act**

1. Criminal.

- (a) The Brown Act makes it a misdemeanor to conduct a meeting and take action with the intent to deprive the public of information to which it is entitled under the Brown Act.
- (b) Misdemeanors are punishable by fines up to \$1,000 and jail terms up to six months.

2. Civil Action to Render Action Taken be Null and Void.

- (a) A lawsuit may be initiated by the District Attorney or "any interested person" to render any action taken in violation of the law null and void. The individual who initiates the action is not required to show that the violation was intentional.
- (b) If the legislative body loses such a lawsuit, it may be ordered to pay the attorney fees and costs of the person who brought the lawsuit.
- (c) Most violations may be cured or corrected.

# **PART II**

## **WHAT IS A MEETING?**

## II. **WHAT IS A MEETING?**

- A. The fundamental tenant of the Brown Act is that all meetings of a legislative body are public and that the discussion of official business must be transacted at a public meeting (except expressly authorized closed sessions).
- B. A meeting occurs whenever a majority of members gather at the same time and place to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the legislative body.
- C. **Types of Meetings:**
  - 1. Regular, Special, and Emergency meetings.
- D. **Is this Meeting Subject to the Brown Act?**
  - 1. Threshold Question: Is the Committee meeting to discuss Committee business?
    - (a) Do you have a majority/quorum of the members,
    - (b) present in person or electronically (phone or videoconference),
    - (c) at the same time,
    - (d) who are hearing, discussing or deliberating upon,
    - (e) issues that fall within the scope of the Committee's jurisdiction?
  - 2. If yes, then the meeting is subject to the Brown Act!
- E. **What Is Not A Meeting?\***
  - 1. Individual contact or conversations.
  - 2. Public conferences.
  - 3. Other local agency meetings.
  - 4. Community meetings.
  - 5. Social gatherings.

*\*These gatherings are all okay under the Brown Act, so long as there is no discussion of Committee business.*

**F. Serial Meetings, Intermediaries, and Technological Devices**

1. Serial Meetings: Communications outside formal meetings, each of which involve less than a quorum, but collectively encompass a majority.
2. Communications of any kind whether direct or through personal intermediaries and/or technological devices cannot be used by a majority of members to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the Committee. (Gov. Code, § 54952.2.)
  - (a) For instance, in a seven-member committee, a chain of communications involving contact from member A to member B to member C to member D who then communicates with member E would be a serial meeting.
3. Exception: An employee or school official may engage in separate conversations or communications outside a meeting with individual members "in order to answer questions or provide information" regarding an item of business, if that school official does not communicate "the comments or position of any other member or members of the legislative body." (Gov. Code, § 54952.2(b)(2).)
4. The Virtual World: Be aware and cautious of technology and Brown Act implications, including, communications *via* email, posting and/or commenting on websites and/or blogs, texting fellow members, and communications on social media (i.e. Twitter, Facebook, Instagram, Snapchat, etc.)

**G. Where Do Meetings Need To Be Held?**

1. General Rule.
  - (a) They must be held within the District's boundaries.
2. Exceptions.
  - (a) To comply with federal and state law or court order.
  - (b) To attend a judicial or administrative proceeding to which the agency is a party.
  - (c) To inspect real or personal property so long as the property cannot be brought conveniently to the Committee, and the meeting is related to only the real or personal property question.
  - (d) To participate in a multi-agency meeting held within the jurisdiction of one of the agencies, so long as that agency holds an

open meeting and all participating agencies post notice in compliance with the Brown Act (e.g., Training at a COE).

- (e) To meet within the closest meeting facility if none is available within the District's boundaries.
- (f) To meet with elected or appointed state or federal officials to discuss legislative or regulatory issues affecting the agency, when a local meeting would be impractical.
  - (i) The Committee must report the substance and outcome of the meeting at its next regular or special meeting.
- (g) To meet at a District facility when the meeting is limited to items directly related to that facility.
- (h) To meet in closed session at the office of legal counsel on pending litigation, if to do so:
  - (i) Reduces legal costs, and
  - (ii) The meeting is noticed as a special meeting.
- (i) Attend a conference on non-adversarial collective bargaining techniques.
- (j) To conduct an emergency meeting when it is unsafe for the Committee to meet at its regular location.
  - (i) The Committee must notify local media of the location by the most rapid means available (probably phone or email is sufficient).

**H. Committee Member Attendance By Teleconference May Be Permitted**

1. A member may attend a meeting either by phone or videoconference.
2. At least a majority of the members must participate in locations within District boundaries.
3. Each location must be accessible to the public and identified on the agenda.
4. An agenda must be posted at each location.
5. Members of the public must be allowed to speak at each location.
6. Roll call votes only.



# **PART III**

## **AGENDA REQUIREMENTS**

### III. **AGENDA REQUIREMENTS**

- A. When a meeting is held, the Brown Act provides specific requirements for creating and posting an agenda in order to facilitate public awareness and access to the Committee's business.
- B. **Regular Meetings**
  - 1. Regular meeting schedule dates are typically established at the beginning of the year.
  - 2. Agenda must be posted 72 hours in advance of the meeting time.
  - 3. Agenda must include:
    - (a) The time and place of the meeting.
    - (b) Identify the business being discussed or transacted with general agenda descriptors for each item of business (generally, not to exceed 20 words).
      - (i) No business, other than that specified in the agenda, may be transacted or discussed at the meeting.
  - 4. Agenda must be posted in a location accessible to the public and on the Committee's website (if the Committee has a website).
    - (a) The agenda must be posted even if no action is to be taken by the legislative body at the meeting, or if the only business to be discussed is in closed session.
  - 5. Agenda must give members of the public the opportunity to discuss an item either **before or during** consideration and/or a vote on the item. Agenda must also provide the public the opportunity to discuss any matter within the Committee's jurisdiction even if the matter is not listed on the agenda.
  - 6. The address of the office or location where public records pertaining to the meeting are available for inspection.
  - 7. Information regarding how a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires modification or assistance to participate in the public meeting.
  - 8. If the meeting is to be held by teleconference, that must be identified on the agenda.

**C. Special Meetings**

1. A "special" meeting is any meeting (except for an "emergency" meeting) that is held outside of the regular meeting schedule.
2. Typically involve matters that require timely action that the regular meeting schedule will not facilitate.
3. May be called at any time by the presiding officer or a majority of the members.
4. Agenda must be posted 24 hours in advance of the meeting time.
  - (a) Includes the same information provided in the agenda for a regular meeting.
  - (b) Each member must receive notice 24 hours in advance, either delivered personally or through other means.
  - (c) Special meeting agenda must be provided to the local media who have requested such notice in writing.
  - (d) Members of the public (and the Committee) are only entitled to discuss items on the special meeting agenda.

**D. Emergency Meetings (Exception To The 24-hour Posting Requirement)**

1. May be called when a matter requires prompt action due to a work stoppage, crippling activity, or other activity that severely impairs public health or safety, **and** involves the disruption or threatened disruption of public services or facilities, as determined by a majority of the Committee.
2. Must attempt to contact media **one hour** before the meeting by phone, unless the phones are not working or the Committee is facing one of the following "dire emergencies:"
  - (a) Crippling disaster.
  - (b) Mass destruction.
  - (c) Terrorist act.
  - (d) Threatened terrorist act that poses peril so immediate and significant that requiring one hour notice may endanger the public health or safety, as determined by a majority of the Committee.
3. Closed sessions can be held during emergency meetings if:
  - (a) Agreed to by a vote of 2/3 of the members present, or

- (b) By unanimous vote if less than 2/3 of the members are present.
- 4. Following an emergency meeting, the following must be posted for 10 days in a public place:
  - (a) The minutes from the emergency meeting.
  - (b) A list of persons notified or attempted to be notified.
  - (c) The actions taken.

**E. Agenda Descriptors**

- 1. A description of each item on the agenda, generally not exceeding 20 words.
- 2. Use of clear, unambiguous language of what the Committee is considering.
- 3. Items to be discussed in closed session, can be described using the "safe harbor" information of the Brown Act. If the Committee uses the "safe harbor" descriptors, it cannot be held in violation of the agenda requirements.
- 4. Cannot act on or discuss any item not on the agenda, unless:
  - (a) Emergency: The Committee determines through a majority vote that an "emergency situation" exists and prompt action is necessary.
  - (b) Need to Act: The Committee determines by a vote of 2/3 of the members present or by unanimous vote if less than 2/3 are present, but a quorum still exists, that there is (1) a need for immediate action, and (2) the item came to the Committee's attention after the agenda was posted.
  - (c) Continued Meeting: The item appeared on a properly posted agenda at a previous meeting that was not more than 5 days prior to the meeting in which the item is now being considered and was continued from the previous to the current meeting.

**NOTE:** These three exceptions do not apply to "special meetings." No business other than that specified on the agenda may be considered at a special meeting.

**F. Consent Agenda**

1. The Committee may bundle a number of items and act upon them together by a single vote through the use of a consent agenda.
2. Often involves non-controversial and/or routine matters for which discussion is not anticipated.
3. May **not** include an item concerning borrowing in the amount of one hundred thousand dollars (\$100,000).

**G. Agenda Distribution (in addition to posting requirements)**

1. The media and public are entitled to receive meeting agendas and the accompanying packet of documents, if any, when the agenda is posted or when it is delivered to all, or a majority, of members, whichever is first.
2. Persons with disabilities are entitled to obtain the agenda in an alternative form.
3. An individual or entity may make a continuing request for the Committee's agenda. A continuing request for the agenda must be in writing, and:
  - (a) It is good for a year;
  - (b) After January 1, it must be renewed;
  - (c) The Committee can establish a fee for mailing the packet, which cannot exceed the costs of the service;
  - (d) The failure of a requesting party to receive a packet will not invalidate a Committee action.

**H. Notice of Adjournment**

1. A majority vote by the Committee may adjourn/continue any meeting to a later time and place that shall be specified in the order of adjournment.
2. May be adjourned/continued by less than a quorum if a quorum is not present, or by the secretary or the clerk if no members are present.
  - (a) The notice of adjournment must be posted on or near the door of the meeting within 24 hours after the adjournment and state the time and place the meeting will resume.

# **PART IV**

## **CLOSED SESSION**

#### IV. **CLOSED SESSION REQUIREMENTS**

A. The general rule and philosophy of the Brown Act is that the public's business be conducted openly. However, not all business must be conducted in public. There are a number of statutory exceptions, that permit meetings in closed session, found in the Education Code and the Brown Act. A meeting may only be closed if there is a specific statutory exception.

#### B. **Purposes**

1. Closed session may only be conducted for limited purposes.
  - (a) Personnel Matters
  - (b) Conference with Labor Negotiators
  - (c) Existing Litigation
  - (d) Pending Litigation
  - (e) Student Matters
  - (f) Liability Claims
  - (g) Threat to Public Services or Facilities
  - (h) Case Review/Planning (e.g., criminal investigations)
  - (i) Report Involving Trade Secret
  - (j) Hearings
  - (k) Charge or Complaint Involving Information Protected by Federal Law (e.g., charge/complaint of a member enrolled in a health plan)
  - (l) License/Permit Determinations
  - (m) Conference Involving a Joint Powers Agency
  - (n) Audit by California State Auditor's Office
  - (o) Pension Fund Investments
  - (p) Health Plan Negotiations
  - (q) Real Estate Negotiations

#### C. **Agenda**

1. Regular and special meeting agendas must include a description of all items to be discussed in closed session. The Government Code identifies "safe harbor" language for describing closed session items.

#### D. **Announcement**

1. Before holding closed session, the Committee must announce in an open session the item(s) to be discussed in the closed session. The Committee may only consider those items covered in announcement.

#### E. **Reporting Out**

1. After a closed session, the legislative body must report out in open session the actions taken, and the vote of each member, for all closed session items.

- (a) Reports may be made orally or in writing.
- (b) On rare occasions, the legislative body may not be required to report out at the same meeting in which the action was taken. If, for example, approval is contingent upon a future event or third-party action, the obligation to report publicly may be deferred (e.g. settlement agreement).

**F. Confidentiality**

1. A person may not disclose confidential information obtained in closed session.
  - (a) Confidential information is defined as "a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session."
2. Applies to both current and former members of the Committee, and anyone that attends closed session.
3. Exceptions.
  - (a) The Committee—as a whole—may authorize a member to disclose confidential information acquired in closed session.
  - (b) A member may disclose closed session facts to a district attorney or grand jury when such facts are necessary to establish illegal conduct on the part of the legislative body and were the subject of deliberation at a closed session meeting.
  - (c) A member may express an **opinion** concerning the propriety or legality of actions taken in closed session.
  - (d) A member may disclose information acquired by being present in a closed session that is not confidential information, e.g., non-Committee-related side bar during closed session or information that will be fully disclosed in open session or that is already public information.
4. Potential Liability for Breach of Confidentiality.
  - (a) *Civil Remedies:*
    - (i) Injunctive relief.
    - (ii) Civil lawsuit: A current or former member may be civilly liable for unlawfully disclosing confidential closed session



information. For example, individuals who feel defamed or otherwise personally injured by a member's comments or actions may sue the member in his or her individual capacity.

(b) *Criminal Remedies:*

- (i) Referring a member of a legislative body who has willfully disclosed confidential information to the grand jury.
- (ii) Government Code section 1222 provides that every willful omission to perform any duty enjoined by law upon a public officer is a misdemeanor. This section could be applied to a willful violation of closed session confidentiality.

(c) *Censure:*

- (i) If the Committee believes a current member's conduct is inappropriate or unlawful, the Committee can verbally censure the member, or adopt a written resolution to the same effect.

# **PART V**

## **PUBLIC PARTICIPATION**

V. **PUBLIC PARTICIPATION AND ACCESS**

A. **Public Comment**

1. **Regular Meetings.**

- (a) At regular meetings, subject to reasonable regulations, the public must be allowed to speak on any subject on the agenda (open or closed session) or within the subject matter jurisdiction of the legislative body. It is up to the body to decide what is within its jurisdiction.

2. **Special Meetings.**

- (a) At special meetings the public does not have the right to speak on any subject within the subject matter jurisdiction of the Committee, but, subject to reasonable regulations, must be allowed to speak on any item that has been described in the notice for the meeting.

3. **Reasonable Regulations.**

- (a) To ensure business is conducted in an orderly and efficient manner, the Committee may adopt reasonable time, place and manner regulations that permit members of the public to directly address the Committee on matters within its jurisdiction and items on the agenda, before or during the Committee's consideration of the item.
- (b) *View-Point Neutrality:* Regulations must be administered in a neutral and evenhanded manner without regard to the viewpoint of the speaker.
- (c) *Time limits:* The Committee may set reasonable time limits on public comment. Commonly, the per-speaker limit is three (3) minutes. The Committee may also limit the time on a per-topic basis, such as, twenty minutes per topic.
  - (i) The Attorney General has concluded that "a single item or several items may not reasonably be permitted to monopolize the time necessary to consider all agenda items. If the legislative body is to complete its agenda, it must control the time allocated to particular matters." (75 Ops. Cal. Atty. Gen. 89.)
  - (ii) The time limitations must be content and view-point neutral.

- (iii) May have one or more public comment sessions. But must allow time to speak on any item on the agenda before or during the body's consideration of an item.
  - (d) *Public criticism:* The legislative body cannot prohibit a speaker from criticizing the "policies, procedures, programs or services of the agency, or the acts or omissions of the legislative body." This includes criticism of public employees.
- 4. Response to Public Comment.
  - (a) *General Rule:* The Committee may not discuss or take action on any item not appearing on the agenda.
  - (b) *Exception:* Without taking action, Committee members may briefly respond to statements made or questions posed by the public about items not appearing on the agenda. In response, Committee members may:
    - (i) Refer the matter to staff for handling.
    - (ii) Ask staff to place the matter on a future meeting agenda and/or report back at a subsequent meeting.
    - (iii) Ask a question for clarification.
    - (iv) Make a brief announcement.
    - (v) Make a brief report of his/her own activities.

**B. Recording of the Meeting**

- 1. The Public.
  - (a) The public may record the meeting unless the Committee makes a reasonable finding that the recording cannot continue without noise, illumination or obstruction of view and that constitutes a persistent disruption of the proceedings.
- 2. The Committee.
  - (a) The Committee may choose to record its meetings through audio or visual means, but it is not required to do so. A Committee initiated recording is a public record and must be maintained for 30 days.

3. Minutes.

- (a) The Committee must keep written minutes of each meeting and must create a written record of all action items. They are public documents.

*NOTE:* Minutes of closed session discussions are not required, but are permissible.

C. **Public May Attend Anonymously**

1. The Committee cannot require a member of the public to register his/her name, provide other information, complete a questionnaire, or otherwise fulfill any condition in order to attend a meeting.
2. Attendance lists, questionnaires and/or registers may be circulated at the meeting, but must clearly state that signing is purely voluntary.

D. **It is a Business Meeting – Maintaining Order/Stopping Disruptions**

1. Persons that disrupt the meeting to the extent that an orderly meeting cannot be conducted may be removed.
2. If order cannot be restored, the meeting room can be cleared and the Committee can continue in session. Press/news media may attend after the room is cleared unless they were a part of the disturbance.
3. The Committee may establish a procedure for readmitting persons who were not responsible for the disturbance.

# **PART VI**

## **ROBERT'S RULES OF ORDER**

## VI. **ROBERT'S RULES OF ORDER**

- A. Henry Martyn Robert was a 19<sup>th</sup> century engineer who wanted local legislative bodies to use congressional procedures. Thus, Robert's Rules of Order is designed to provide structure and order to legislative bodies' public meetings.

### B. **Quorum**

1. In order for a legislative body to make a decision, a quorum of the members is required. A quorum is the number of members that must be present to legally transact business.
2. In the absence of a Committee's determination of what number is a quorum, it typically represents a majority of members (e.g., 5 members present on a 7 member committee are able to make a decision).
3. The purpose of a quorum is to prevent a small unrepresentative group from making decisions for the entire Committee.

### C. **Voting**

1. Every legislative body member is afforded one (1) vote and the general rule is that all voting members should cast a vote in favor or against the measure before the body for action.
2. Exceptions: Robert's Rules of Order does provide for specific circumstances when abstention and/or recusal are appropriate.
  - (a) When a member has a personal economic or non-economic/common law conflict of interest.
  - (b) When a member believes there was insufficient information for making a decision.
3. If an exception does not apply, each member should cast a vote on all issues put before him or her. A failure to do so may be deemed a breach of fiduciary duty.
4. When voting takes place, the Committee chair should announce the minority votes, i.e., "hearing one 'nay' and no others ... "
5. Be aware a tie vote is a lost vote because no majority was obtained.
6. The Brown Act requires that all votes be recorded.
7. The Committee should consider using a resolution when the issue requires more formality, attention, and matters of policy are being adopted.

D. **Rights of the Minority**

1. The minority has the right to be heard, including voicing his or her dissent.
2. The minority has the right to have his or her dissent noted in the record.
3. However, once the dissent is given and a vote is taken, it is the decision of the collective body, even for those who dissented/objected.

E. **Right to Make a Motion**

1. Each Committee member has the right to make a motion on any issue or question under consideration. The motion must be "in order." To be "in order," the motion must be **directly related** to the question under consideration.
2. Frivolous, vague, incoherent, and duplicative motions are "out of order."
3. Every motion requires a second vote.
4. After the second vote, the Committee chair should inquire if there is any discussion on the motion.
5. The member who made the motion has the first right to speak and amend the motion if he or she desires.
6. After the Committee discusses the motion, or if no discussion occurs, the members will then vote on the motion.
7. Motion to Amend: To amend a motion, the amendment must be germane to the main question. The amendment may include adding words or phrases, striking out words or phrases, and/or substituting words or phrases.
  - (a) The amendment to the motion must be offered before the vote on the motion. Remember, the motion to amend and main motion are always two separate votes.
  - (b) A vote is first taken on the motion to amend then on the original motion. And, the motion to amend requires a second too.
  - (c) There should be no more than two motions (amending and original) pending at any given time.