

Lehrer, Gary

Public Comment

Cease and Desist Letter to the City of Paso Robles Regarding Vote on Parking Fees on November 21, 2023

Abstract.

The only possible outcome of this Agenda Item would be on a vote to give Direction to City Staff. For example to develop changes to the parking plan so that would be up for a vote, eliminate the parking plan altogether or address the specific items brought up as requested. But no actual changes to the parking program could have been made to the parking program as it was not on the agenda.

In the body of this letter I have concluded information that shows required information from the Brown was missing:

Specification of action item that was actually voted on,

A brief general description,

Enough of a description to make an informed decision to whether a person wanted to attend the meeting,

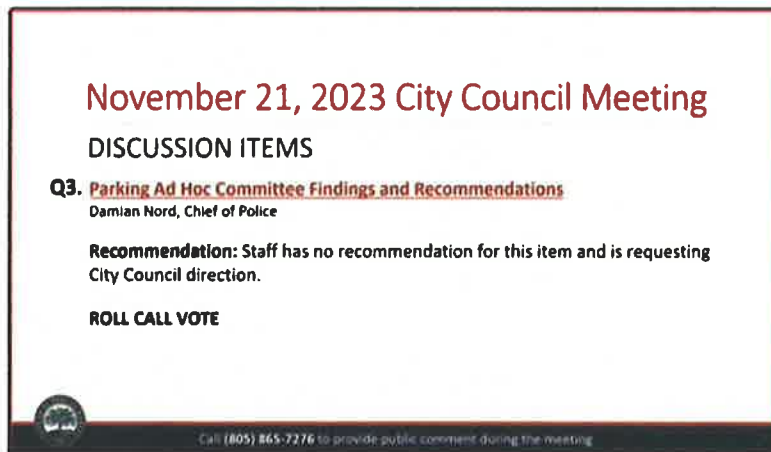
Did not meet the avoid ambiguity requirement,

The agenda did not specifically list the recommendations of the Ad Hoc Advisory Committee on Parking, although this is not required as it is not specifically covered as some other items are by the Brown Act, this would have been a reasonable expectation.

SECTION 1 – THE ACTUAL AGENDA ITEM and DISCUSSION

On November 21, 2023 the Paso Robles City County voted 3-2 to require parking fees to start from the first hour and to be \$1.00/hour. The Brown Act requires action items to be on the Agenda and the Agenda published 72 hours in advance.

Below is the Agenda:



November 21, 2023 City Council Meeting

DISCUSSION ITEMS

Q3. Parking Ad Hoc Committee Findings and Recommendations
Damian Nord, Chief of Police

Recommendation: Staff has no recommendation for this item and is requesting City Council direction.

ROLL CALL VOTE

Call (805) 865-7276 to provide public comment during the meeting

Notice that there are no motions, action items, programs, plans or any indication of what specific items would be voted on. The recommendation of the Ad Hoc Committee were given orally. Not one of those items were specified on the Agenda and none of them listed what was actually voted on. The decision to

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change the parking fees and to enact them starting at the first hour of parking was not listed on the Agenda nor listed as a staff recommendation. No one reading that Agenda could honestly say that Action Item was actually on the Agenda. Therefore the vote was in violation of the Brown Act and therefore subject to civil litigation and or criminal investigation. In order to avoid that the City must cease and desist.

At the meeting the items from the report were discussed, the public was invited to comment and add additional items and then a motion made and a vote taken. Those who understood the Brown Act expected the vote to come back since action items require notice to be posted. Normally a motion is made to add the item to the next regularly scheduled meeting. This was discussed I believe next day on the Karen Velie Show on KPRL and frankly this is the training I received when I became active in speaking out at public meetings. This is what should have occurred and what many people believed would happen. I pointed this out in public comment at another City Council and not one person said I was incorrect.

Section 2 Brown Act requirements of Agenda Items

This section contains Brown Act Regulations, Interpretations and Cited Legal Cases

What Is Required on the Agenda? From https://www.calcities.org/docs/default-source/city-attorneys/essential-hour-your-first-public-meeting---brown-act-basics-paper-.pdf?sfvrsn=82a6ab89_3

1. Agenda Descriptions

The agenda must specify the time and location of the meeting and provide a “brief general description” of each item of business to be transacted or discussed.³⁷ It must also provide an opportunity for the public to address the legislative body on any item of interest to the public within the subject matter jurisdiction of the legislative body, before or during the time the legislative body considers the item.³⁸ The agenda must designate and provide the address of a location where

members of the public may inspect the agenda and any associated writings, such as staff reports, and where documents delivered after the posting of the agenda may be obtained.³⁹ The agenda must also contain information on how a person may request a disability accommodation to participate in a meeting.⁴⁰

Agenda item descriptions “generally” need not exceed 20 words in length.⁴¹ **However, agenda descriptions should give enough information to permit a person to make an informed decision about whether they want to attend or participate in a discussion on an issue (my bold).**

³⁶ Govt C §54953(b).

³⁷ Govt C §54954.2(a)(1).

³⁸ Govt C §54954.3(a).

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Agenda item descriptions “generally” need not exceed 20 words in length.⁴¹ However, agenda descriptions should give enough information to permit a person to make an informed decision about whether they want to attend or participate in a discussion on an issue.⁴²

2. Items Not on the Agenda

Subject to certain exceptions, no action or discussion may occur on any item not appearing on the posted agenda.⁴³ Limited questions, requests, and responses on matters not appearing on the posted agenda are allowed as follows:

- Brief responses by members of the legislative body and staff to statements or questions posed by the public;
- Questions for clarification;
- References to staff or other resources for factual information;
- Requests to staff to report back on an issue at a subsequent meeting;
- Requests or actions to agendize a matter of business for some future meeting; and
- Brief announcements by members of the body or staff and brief reports on their activities.⁴⁴

3. Closed Session Items

The Brown Act permits legislative bodies to meet privately for very limited purposes such as litigation, labor negotiations, real property negotiations and performance evaluations of direct hires. These “closed sessions” must be agendized in the same manner as regular and special meetings.

After any closed session, the legislative body must reconvene in open session and make a public report of specified actions and the vote or abstention of every member present.⁴⁵

Disclosure of confidential information acquired at a closed session is prohibited, unless the legislative body authorizes disclosure.⁴⁶

³⁹ Govt C §54957.5.

⁴⁰ Govt C §54954.2(a)(1).

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From https://www.calcities.org/docs/default-source/city-attorneys/essential-hour-your-first-public-meeting---brown-act-basics-paper-.pdf?sfvrsn=82a6ab89_3

Notice and Agenda Requirements

WHY DO WE NEED TO NOTICE

Under the California Gov't Code1 §§ 54950-54963 (Ralph M. Brown Act), meetings of public bodies must be open and public, decisions must be made in a public forum, and action taken in violation of open meeting laws may be voided. In addition, each meeting of a public body must be properly noticed and each agenda must contain sufficient information to inform the public of what actions will be taken by that legislative body. The legislative intent in adoption of the Brown Act was well expressed in § 54950:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other 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 that 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. Consequently, as a general rule, no action can be taken by the governing body on an item or subject matter that is not properly noticed on a timely posted agenda

Also from https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual_Koczanowicz_Have-You-Noticed_Notici.aspx

CONTENT REQUIREMENTS OF AGENDA

The Agenda must include the time date and location of the meeting. In addition, the following apply:

- The agenda should contain a brief (20 words or less) **general description** of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. (§54954.2) The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor, attend or participate in the meeting of the body.
- Agenda description must not be misleading. The brief description of an item that the Council will consider or deliberate, **cannot be ambiguous** or misstate the item under discussion. An item on the agenda describing consideration of contract for Interim Finance Director, was not sufficient notice of actually considering the termination of the sitting Finance Director (Moreno v. City of King (2005) 127 Cal App 4th 17, 25 Cal Rptr

3d 29.)

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- **Agendas must have enough information to enable members of the public to determine the general nature of subject matter** of each agenda item to be discussed. A description of each item generally need not exceed 20 words, although the description must be sufficient to provide interested persons with an understanding of the subject matter which will be considered. (Carlson v. Paradise Unified School Dist. (1971) 18 Cal.App.3d 196, 200).
- **Agenda and any published notice must also include any recommendations forwarded** from Planning Commission (or potentially other advisory bodies) to the City Council as it related to approval of development agreements and land use requirements. (Rialto Citizens for Responsible Growth vs. City of Rialto (4 th Dist. 2012) 208 Cal App 4th 899)
- In any situation where an environmental determination will be considered and acted on, as part of the action taken by the Council or Planning Commission, that actual action needs to be specifically and separately identified on the agenda. So for example an agenda item which states: "Consideration and approval of Conditional Use Permit for Sports Arena and Football stadium and related approvals" would not be in compliance with noticing requirements if "the related approvals" included an action on an environmental determination or document. The agenda should also state: "and consideration of a Mitigated Negative Declaration related to the project". (See also SanJoaquin Raptor Rescue Center v. County of Merced, et al. (5th Dist. 2013) 216 Cal.App.4th 1167)

SECTION 3 TEXT FROM NOTES OF MEETING TAKEN BY CITY CLERK

This is the verbiage from the approved 11/21/2023 Minutes related to the motion that was passed 3-2 for Item Q-3 - Parking Ad Hoc Committee Findings and Recommendations:

Motioned by Councilmember Gregory, seconded by Councilmember Roden, and passed 3-2 (Bausch and Strong opposed) to charge \$1 per hour from minute one of the parking session; to allow unlimited senior parking permits for residents over 65 years old within the City limits for one vehicle per household; to continue all other existing parking regulations; to direct staff to improve the signage and kiosks; and to direct staff to bring back any other required future formal action items related to parking.

AYES: Gregory, Roden, Hamon

NOES: Bausch, Strong

Roll Call Vote Passed

After the vote was taken, City Manager Ty Lewis, requested clarification and direction from Council on the timing of signage updates and implementation of the new rate structure. Council directed that staff should return to Council with an update when signage and other parking related updates based on this action are ready to go.

Notice that nothing even resembling that Action Item was listed on the agenda. I am not impugning the motives of the Council and there was clearly no criminal intent but under Civil Law this was not permitted for the reasons cited above about being in conformity with the Brown Act.

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SECTION 4 Remedy

Conclusion

The remedy called for is Police and City Council to cease and desist from making any changes in the Parking Program. City Council and Staff should draw up a detailed plan, put it on the agenda as required and allow for public comment. This would comply with the spirit and letter of the Bown Act. The end result would hopefully be a well thought out, cohesive plan that has been properly vetted and works to the greatest benefit possible to city residents. Even though the 30 day period has lapsed I still respectfully request that the Council reconsider it's position on parking or at least not make any changes until it is properly agendized.

Sincerely,

Gary Lehrer



LEAGUE OF
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Essential Hour: Your First Public Meeting - Brown Act Basics

Friday, November 5, 2021

Noel Doran, Assistant City Attorney, Thousand Oaks
Thomas Jex, Burke Williams and Sorensen, LLP
Tracy Noonan, City Attorney, Thousand Oaks
Cara Silver, Jorgenson, Siegel, McClure & Flegel

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teleconference location. Teleconference meetings must also comply with all of the following requirements:

- The meeting must comply in all other respects with the Brown Act and is in all respects the same as a meeting where the members are all physically present in one location;
- All votes taken during a teleconferenced meeting must be by roll call;
- At least a quorum of the members of the legislative body must participate from within the territory over which the local agency exercises jurisdiction; and
- Each teleconference location must be accessible to the public and the public (including the disabled) must have the same rights to address the body as if physically present.³⁶

5. AB 361 Remote Meeting Emergency Authorization

AB 361 is an urgency bill effective October 1, 2021 and expiring on January 1, 2024. The bill extends the teleconference procedures previously authorized by Executive Order N-29-20 to address the current COVID-19 pandemic and allows future teleconference procedures under limited circumstances defined in the bill. AB 361 applies to meetings during a proclaimed state of emergency and when state or local officials have imposed or recommended measures to promote social distancing. ("State of emergency" is defined as a state of emergency declared by the Governor under Government Code Section 8625.) It also applies to other states of emergency proclaimed by the Governor where holding in person meetings would "present imminent risks to the health or safety of attendees." The legislative body must make an initial finding that meeting in person would "present an imminent risk to the health or safety of attendees".

AB 361 requires several procedural safeguards, such as giving the public the ability to address the legislative body directly, providing information on how to address the body, providing either a call-in or internet-based service option, and requiring the agency to stop the meeting if call-in or internet-based option fails. Public members must be given a reasonable time to register to provide public comment, comments may not be required to be submitted in advance, pre-registrations (except as required by call-in or internet platform) are prohibited and agencies that provide a timed public comment period shall not close the public comment period until that timed period has expired. If the legislative body desires to continue using the teleconference exception, it must confirm the circumstances of the state of emergency 30 days after the first teleconference meeting and every 30 days thereafter.

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³⁶ Govt C §54953(b).

³⁷ Govt C §54954.2(a)(1).

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³⁹ Govt C §54957.5.

⁴⁰ Govt C §54954.2(a)(1).

⁴¹ Govt C §54954.2(a)(1).

⁴² See *San Diegans for Open Gov't v City of Oceanside* (2016) 4 CA5th 637, 643.

⁴³ Govt C §54954.2(a)(3).

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Does the Public Have a Right to Comment?

Members of the public have a right to address the city council or other legislative body at regular and special meetings.⁴⁷ Agendas for regular meetings must provide an opportunity for the public to address the council on any item of interest to the public within the subject matter jurisdiction of the council, before or during the time the council considers the item.⁴⁸ Special meeting agendas must provide the public an opportunity to address the council concerning only those items addressed in the notice of special meeting before or during consideration of such item.⁴⁹

A legislative body may limit public comment to matters that serve the purpose for which the council holds meetings.⁵⁰

Members of the public cannot be required to provide their name, address, or other information as a condition to participating in a meeting.⁵¹

Any person may record a meeting by audio or videotape, or by still or motion picture camera, unless the legislative body makes a reasonable finding the recording cannot continue because noise, illumination, or disruption of a view constitutes or would constitute persistent disruption of the proceedings.⁵²

What Are the Remedies for Violating the Brown Act?

1. Criminal Prosecution of Member of the Legislative Body

A member who attends a meeting of their legislative body when a violation of the Brown Act occurs is guilty of a misdemeanor if the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act.⁵³

2. Civil Actions

Most actions taken in violation of the Brown Act are voidable. The district attorney or any interested person may commence an action by mandamus or injunction to obtain a judicial determination that an action taken in violation of specified sections is null and void.⁵⁴ The party who alleges a violation must make a written demand to the legislative body to cure or correct the violation within 90 days from the date the action was taken, unless the action was taken in an open session but in violation of §54954.2 (regular meeting agenda posting requirement), in which case the written demand must be made within 30 days from the date the action was taken.⁵⁵ The legislative body may still cure or correct the defect and have the action dismissed with prejudice.⁵⁶ One common approach to cure and correct a challenged action, is for a city council to consider the challenged action in a subsequent, duly agendized open-session meeting.

⁴⁷ Govt C §54954.3(a).

⁴⁸ Govt C §54954.3(a).

⁴⁹ Govt C §54954.3(a).

⁵⁰ 78 Ops Cal Atty Gen 224, 226 (1995).

⁵¹ Govt C §54953.3.

⁵² Govt C §54953.5.

⁵³ Govt C §54959.

⁵⁴ Govt C §54960.1.

⁵⁵ Govt C §54960.1(b), (c)(1).

⁵⁶ Govt C §54960.1(e).

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The district attorney or any interested person may also bring a civil action to ascertain the applicability of the Brown Act to past, ongoing, or threatened actions of a legislative body and to obtain injunctive relief to enjoin future violations.⁵⁷

3. Costs and Attorney Fees Awarded Unless Unjust

A court may award a plaintiff court costs and reasonable attorney fees in an action brought under Govt C §54960, §54960.1, or §54960.2 when it finds a violation of the Brown Act.⁵⁸ The court has discretion to deny fees only if the defendant shows special circumstances exist that would make such an award unjust.

⁵⁷ Govt C §§54960, 54960.2.

⁵⁸ See Govt C §54960.5.

California Code, Vehicle Code - VEH § 22508

Current as of January 01, 2023 | Updated by [FindLaw Staff](#)

(a) A local authority shall not establish parking meter zones or fix the rate of fees for those zones except by ordinance. The rate of fees may be variable, based upon criteria identified by the local authority in the ordinance. An ordinance establishing a parking meter zone shall describe the area that would be included within the zone.

(b) A local authority may by ordinance cause streets and highways to be marked with white lines designating parking spaces and require vehicles to park within the parking spaces.

(c) An ordinance adopted by a local authority pursuant to this section with respect to any state highway shall not become effective until the proposed ordinance has been submitted to and approved in writing by the Department of Transportation. The proposed ordinance shall be submitted to the department only by action of the local legislative body and the proposed ordinance shall be submitted in complete draft form.

(d) An ordinance adopted pursuant to this section establishing a parking meter zone or fixing rates of fees for that zone shall be subject to local referendum processes in the same manner as if the ordinance dealt with a matter of purely local concern.

(e) A local authority may accept but shall not require payment of parking meter fees by a mobile device.



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Summary of the Ralph M. Brown Act

October 10, 2021¹

Introduction

The Ralph M. Brown Act (Brown Act) (codified at Govt C §54950 *et seq.*) requires meetings of “legislative bodies” of local agencies to be open and public.² The Brown Act also has a constitutional component. In 2004, the California Constitution was amended to recognize “[t]he 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.”³ In 2014, the California Constitution was again amended to require all local agencies to comply with the Brown Act.⁴

What Is a Legislative Body?

The term “legislative body” under the Act includes the following:

- The governing body of a local agency (including those of charter and general law cities) or any other local body created by state or federal statute.
- Any permanent or temporary advisory or decision-making commission, committee, board, or other body created by charter, ordinance, resolution, or formal action of a legislative body.
- Standing committees, regardless of their composition, that have either
 - Continuing subject matter jurisdiction; or
 - A meeting schedule fixed by charter, ordinance, resolution, or other formal action of the legislative body.⁵

What is not a Legislative Body?

The term “legislative body” excludes less-than-a-quorum advisory committees composed solely of members of the legislative body, provided they are not standing committees that have continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.⁶ These types of committees are commonly referred to as “ad hoc” committees. To be an ad hoc committee exempt from the Brown Act, the body should have a defined task and be of limited duration.⁷

¹ This paper is a condensed version of Chapter II (Open Meeting Laws) of the California Municipal Law Handbook, 2021 Edition.

² Govt C §54953(a).

³ Cal Const art I, §3(b)(1).

⁴ Cal Const art I, §3(b)(7).

⁵ Govt C §54952(a), (b).

⁶ Govt C §54952(b).

⁷ 79 Ops Cal Atty Gen 69 (1996).

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What Constitutes a Covered Meeting?

A meeting is any congregation of a majority of the members of a legislative body at the same time and location (including permitted teleconference locations) to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the legislative body.⁸

Even though that definition has a physical focus—a congregation of a majority at the same time and place—the Brown Act also prohibits a majority of the members of a legislative body, outside an open and noticed meeting, from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take any action on any item of business within the subject matter jurisdiction of the legislative body.⁹

Are there Exemptions to the Brown Act?

1. “Individual Contacts”

Individual contacts or conversations between a member of a legislative body and any other person are permitted, as long as the communications do not result in a serial meeting.¹⁰ Thus, it is clear that a citizen may lobby, one by one, a majority of the members of a legislative body. Further, substantive staff briefings are permitted to answer questions and provide information to individual members of a legislative body if staff does not serve as an intermediary and communicate to members of the body the comments or positions of other members.¹¹

PRACTICE TIP The due-process-based restrictions on ex parte contacts during consideration of quasi-judicial matters exist independently of the Brown Act and may restrict individual contacts on such matters.¹² Many cities have policies or practices that require members of legislative bodies to either avoid ex parte contacts entirely or disclose ex parte contacts with applicants or members of the public before participating in quasi-judicial matters.

2. Conferences and Seminars

Attendance of a majority of the members of a legislative body at a conference or similar gathering is not a meeting subject to the Brown Act if the gathering

- Is open to the public;
- Involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body; and
- 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.¹³

3. Open Community Meetings

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

⁸ Govt C §54952.2(a).

⁹ Govt C §54952.2(b)(1).

¹⁰ Govt C §54952.2(c)(1).

¹¹ Govt C §54952.2(b).

¹² See *Petrovich Dev. Co. v. City of Sacramento* (2020) 48 CA5th 963 (review denied).

¹³ Govt C §54952.2(c)(2).

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other than the local agency is not a meeting governed by the Brown Act. The exemption applies as long as 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.¹⁴

4. Meetings of Other Legislative Bodies

The attendance of a majority of the members of a legislative body at an open and noticed meeting of another legislative body of the local agency, or of another local agency, does not become a meeting of the first legislative body. This exemption allows, for example, a majority of a city council to attend a meeting of that city's (or another city's) planning commission. The exemption applies as long as a majority of members of the first legislative body do not discuss among themselves business of a specific nature that is within their subject matter jurisdiction, other than as part of the scheduled meeting of the second legislative body.¹⁵

5. Social or Ceremonial Gatherings

The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion (such as a wedding, holiday party, or swearing-in ceremony) is not a meeting governed by the Brown Act. The exemption applies as long as 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.¹⁶

6. Meetings of Standing Committees

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 is not a meeting of the legislative body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.¹⁷ The phrase "only as observers" means the attending members may be physically present at the committee meeting but may not ask questions, make statements, or sit in their usual places on the dais.¹⁸

Are "Serial" or "Seriatim" Meetings Covered by the Brown Act?

A congregation of a majority of the members of a legislative body outside a properly noticed and duly convened meeting during which they discuss, deliberate, or take action on a matter within their subject matter jurisdiction is prohibited.¹⁹

The Brown Act also prohibits use of a series of communications, of any kind, among a majority of members of a legislative body, 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. These are commonly referred to as serial or seriatim meetings.²⁰ Unlawful seriatim meetings can occur through

¹⁴ Govt C §54952.2(c)(3).

¹⁵ See Govt C §54952.2(c)(4).

¹⁶ See Govt C §54952.2(c)(5).

¹⁷ Govt C §54952.2(c)(6).

¹⁸ 81 Ops Cal Atty Gen 156 (1998).

¹⁹ Govt C §54952.2; *Frazer v Dixon Unified Sch. Dist.* (1993) 18 CA4th 781, 795.

²⁰ Govt C §54952.2(b)(1); *Stockton Newspapers, Inc. v Redevelopment Agency* (1985) 171 CA3d 95.

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- In-person contacts among a majority of members of a legislative body;
- Technological contacts (such as fax, email, text message, telephone, or social media) among a majority; or
- Contacts with a majority through staff members or others acting on behalf of the body or one of its members.²¹

However, the ban on seriatim meetings does not prevent a staff member from engaging in separate conversations or communications, outside of a meeting, with members of a legislative body to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if the staff member does not communicate to members of the legislative body the comments or position of any other member of the legislative body.²²

How Does the Brown Act Apply to Social Media?

Members of a legislative body may use certain internet-based social media platforms to answer questions from the public, provide information to the public, or solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction.²³ The platform must be "open and accessible to the public," which means that "members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules."²⁴

However, a majority of the members of the legislative body may not use any social media platform to "discuss among themselves" official business.²⁵ In the context of social media, "discuss among themselves" means "communications made, posted, or shared on an internet-based platform between members of a legislative body, including comments or use of digital icons [*i.e.*, emojis] that express reactions to communications made by other members of the legislative body."²⁶

A single contact between two public officials (less than a quorum) normally would not constitute a prohibited serial meeting. However, on social media, a member of a legislative body may not "respond directly" to any communication relating to a matter within the subject matter jurisdiction of that agency that is made, posted, or shared by any other member of the legislative body.²⁷

PRACTICE TIP Members of the same legislative body should be advised not to comment on each other's posts.

What Are the Noticing Requirements for Meetings?

²¹ See *Stockton Newspapers*, 171 CA3d at 102; 84 Ops Cal Atty Gen 30 (1998).

²² Govt C §54952.2(b)(2).

²³ Govt C §54952.2(b)(3)(A).

²⁴ Govt C §54952.2(b)(3)(B)(iii).

²⁵ Govt C §54952.2(b)(3)(A).

²⁶ Govt C §54952.2(b)(3)(B)(i).

²⁷ Govt C §54952.2(b)(3)(A).

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1. Regular Meetings

Each legislative body except advisory committees and standing committees must take formal action to establish a time and place for holding regular meetings. Meetings of advisory committees or standing committees for which an agenda is posted 72 hours in advance of the meeting are considered to be regular meetings for all purposes under the Brown Act, even if the committee does not have a regular meeting schedule.²⁸

Regular meeting agendas must be posted at least 72 hours before the meeting in a location that is freely accessible to the public. Agendas must also be posted on the local agency's website, if it has one, 72 hours before the meeting.²⁹

2. Special Meetings

A special meeting may be called by the presiding officer of the legislative body (in the case of a city council, the mayor or mayor pro tem) or by a majority of the members of the legislative body, by proper delivery of required written notice and, in certain circumstances, posting on the local agency's website.³⁰

At least 24 hours before a special meeting, a notice that contains the time and place for the meeting, with a statement of the business to be transacted and an opportunity for the public to address the legislative body on that item, must be posted in a location freely accessible to the public.³¹ The notice must be delivered personally or by any other means to all members of the legislative body (unless waived in writing before the meeting) and to any newspaper, radio, or television station that has requested notice in writing, and received at least 24 hours before the time of the meeting. In addition, the special meeting notice must be posted on the local agency's website, if one exists, at least 24 hours before the meeting.³²

3. Emergency Meetings

Emergency meetings may be called in "emergency situations." An "emergency situation" exists when a majority of the members of the legislative body determines a "work stoppage, crippling activity, or other activity" severely impairs the public health or safety, or a "crippling disaster, mass destruction, terrorist act, or threatened terrorist activity" poses imminent and significant peril, endangering the public health or safety.³³ Notice of an emergency meeting is required, but may be waived in certain instances.³⁴

4. Teleconference Meetings (Traditional)

Teleconferencing may be used in connection with meetings, but special agenda requirements apply. "Teleconference" is defined as "a meeting of the legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."³⁵ The agenda must specify each teleconferencing location and must be posted at each

²⁸ Govt C §54954(a).

²⁹ Govt C §54954.2(a)(1).

³⁰ Govt C §54956(a), (c).

³¹ Govt C §§54954.3(a); 54956(a).

³² Govt C §54956(a).

³³ Govt C §54956.5(a).

³⁴ Govt C §54956.5(b).

³⁵ Govt C §54953(b)(4).

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teleconference location. Teleconference meetings must also comply with all of the following requirements:

- The meeting must comply in all other respects with the Brown Act and is in all respects the same as a meeting where the members are all physically present in one location;
- All votes taken during a teleconferenced meeting must be by roll call;
- At least a quorum of the members of the legislative body must participate from within the territory over which the local agency exercises jurisdiction; and
- Each teleconference location must be accessible to the public and the public (including the disabled) must have the same rights to address the body as if physically present.³⁶

5. AB 361 Remote Meeting Emergency Authorization

AB 361 is an urgency bill effective October 1, 2021 and expiring on January 1, 2024. The bill extends the teleconference procedures previously authorized by Executive Order N-29-20 to address the current COVID-19 pandemic and allows future teleconference procedures under limited circumstances defined in the bill. AB 361 applies to meetings during a proclaimed state of emergency and when state or local officials have imposed or recommended measures to promote social distancing. ("State of emergency" is defined as a state of emergency declared by the Governor under Government Code Section 8625.) It also applies to other states of emergency proclaimed by the Governor where holding in person meetings would "present imminent risks to the health or safety of attendees." The legislative body must make an initial finding that meeting in person would "present an imminent risk to the health or safety of attendees".

AB 361 requires several procedural safeguards, such as giving the public the ability to address the legislative body directly, providing information on how to address the body, providing either a call-in or internet-based service option, and requiring the agency to stop the meeting if call-in or internet-based option fails. Public members must be given a reasonable time to register to provide public comment, comments may not be required to be submitted in advance, pre-registrations (except as required by call-in or internet platform) are prohibited and agencies that provide a timed public comment period shall not close the public comment period until that timed period has expired. If the legislative body desires to continue using the teleconference exception, it must confirm the circumstances of the state of emergency 30 days after the first teleconference meeting and every 30 days thereafter.

What Is Required on the Agenda?



1. Agenda Descriptions

The agenda must specify the time and location of the meeting and provide a "brief general description" of each item of business to be transacted or discussed.³⁷ It must also provide an opportunity for the public to address the legislative body on any item of interest to the public within the subject matter jurisdiction of the legislative body, before or during the time the legislative body considers the item.³⁸ The agenda must designate and provide the address of a location where

³⁶ Govt C §54953(b).

³⁷ Govt C §54954.2(a)(1).

³⁸ Govt C §54954.3(a).

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members of the public may inspect the agenda and any associated writings, such as staff reports, and where documents delivered after the posting of the agenda may be obtained.³⁹ The agenda must also contain information on how a person may request a disability accommodation to participate in a meeting.⁴⁰

Agenda item descriptions “generally” need not exceed 20 words in length.⁴¹ However, agenda descriptions should give enough information to permit a person to make an informed decision about whether they want to attend or participate in a discussion on an issue.⁴²



2. Items Not on the Agenda

Subject to certain exceptions, no action or discussion may occur on any item not appearing on the posted agenda.⁴³ Limited questions, requests, and responses on matters not appearing on the posted agenda are allowed as follows:

- Brief responses by members of the legislative body and staff to statements or questions posed by the public;
- Questions for clarification;
- References to staff or other resources for factual information;
- Requests to staff to report back on an issue at a subsequent meeting;
- Requests or actions to agendize a matter of business for some future meeting; and
- Brief announcements by members of the body or staff and brief reports on their activities.⁴⁴



3. Closed Session Items

The Brown Act permits legislative bodies to meet privately for very limited purposes such as litigation, labor negotiations, real property negotiations and performance evaluations of direct hires. These “closed sessions” must be agendized in the same manner as regular and special meetings.

After any closed session, the legislative body must reconvene in open session and make a public report of specified actions and the vote or abstention of every member present.⁴⁵

Disclosure of confidential information acquired at a closed session is prohibited, unless the legislative body authorizes disclosure.⁴⁶

³⁹ Govt C §54957.5.

⁴⁰ Govt C §54954.2(a)(1).

⁴¹ Govt C §54954.2(a)(1).

⁴² See *San Diegans for Open Gov't v City of Oceanside* (2016) 4 CA5th 637, 643.

⁴³ Govt C §54954.2(a)(3).

⁴⁴ Govt C §54954.2(a)(3).

⁴⁵ Govt C §54957.7(b).

⁴⁶ Govt C §54963(a).

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Does the Public Have a Right to Comment?

Members of the public have a right to address the city council or other legislative body at regular and special meetings.⁴⁷ Agendas for regular meetings must provide an opportunity for the public to address the council on any item of interest to the public within the subject matter jurisdiction of the council, before or during the time the council considers the item.⁴⁸ Special meeting agendas must provide the public an opportunity to address the council concerning only those items addressed in the notice of special meeting before or during consideration of such item.⁴⁹

A legislative body may limit public comment to matters that serve the purpose for which the council holds meetings.⁵⁰

Members of the public cannot be required to provide their name, address, or other information as a condition to participating in a meeting.⁵¹

Any person may record a meeting by audio or videotape, or by still or motion picture camera, unless the legislative body makes a reasonable finding the recording cannot continue because noise, illumination, or disruption of a view constitutes or would constitute persistent disruption of the proceedings.⁵²

What Are the Remedies for Violating the Brown Act?

1. Criminal Prosecution of Member of the Legislative Body

A member who attends a meeting of their legislative body when a violation of the Brown Act occurs is guilty of a misdemeanor if the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act.⁵³

2. Civil Actions

Most actions taken in violation of the Brown Act are voidable. The district attorney or any interested person may commence an action by mandamus or injunction to obtain a judicial determination that an action taken in violation of specified sections is null and void.⁵⁴ The party who alleges a violation must make a written demand to the legislative body to cure or correct the violation within 90 days from the date the action was taken, unless the action was taken in an open session but in violation of §54954.2 (regular meeting agenda posting requirement), in which case the written demand must be made within 30 days from the date the action was taken.⁵⁵ The legislative body may still cure or correct the defect and have the action dismissed with prejudice.⁵⁶

One common approach to cure and correct a challenged action, is for a city council to consider the challenged action in a subsequent, duly agendized open-session meeting.

⁴⁷ Govt C §54954.3(a).

⁴⁸ Govt C §54954.3(a).

⁴⁹ Govt C §54954.3(a).

⁵⁰ 78 Ops Cal Atty Gen 224, 226 (1995).

⁵¹ Govt C §54953.3.

⁵² Govt C §54953.5.

⁵³ Govt C §54959.

⁵⁴ Govt C §54960.1.

⁵⁵ Govt C §54960.1(b), (c)(1).

⁵⁶ Govt C §54960.1(e).

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The district attorney or any interested person may also bring a civil action to ascertain the applicability of the Brown Act to past, ongoing, or threatened actions of a legislative body and to obtain injunctive relief to enjoin future violations.⁵⁷

3. Costs and Attorney Fees Awarded Unless Unjust ~~✶~~

A court may award a plaintiff court costs and reasonable attorney fees in an action brought under Govt C §54960, §54960.1, or §54960.2 when it finds a violation of the Brown Act.⁵⁸ The court has discretion to deny fees only if the defendant shows special circumstances exist that would make such an award unjust.

⁵⁷ Govt C §§54960, 54960.2.

⁵⁸ See Govt C §54960.5.