EOH Public Participation Policy Research – Outline

I. Contract Requirements
   a. Posting: date, location, draft agendas and materials for meetings 1 wk in advance
      i. Revised drafts posted at least 2hrs before mtg
   b. Public vs. “Closed” meetings
   c. Public vs. Confidential Meeting Materials
   d. Public Comments (When/If)
   e. Policies must be posted on EOH website
   f. Must post summaries of decisions and actions taken by HUD CoC and related sub-committees w/in 5 days
      i. Other committees and Leadership Board?
   g. Not required
      i. Values statement
      ii. Policy regarding recording meetings
      iii. Policy regarding teleconferences
      iv. Grievance/ enforcement process

II. San Francisco Sunshine Ordinance [Chapter 67 of Admin Code]
   a. Value statement/ Goals of Policy
      i. Transparency
      ii. Stakeholder Engagement
      iii. Accountability
   b. Posting date, location and agenda
      i. Date/Location 67.6
         1. All meetings held in SF / SF County
         2. Regular meetings: place, date, time provided by bylaws or other rule
            a. If regular date falls on a holiday move to next business day
            b. Post “as soon as reasonably possible” if meeting is cancelled, changed, continued or rescheduled due to emergency, etc.
         3. Special Meetings: May be called at any time by the presiding officer or majority of members, by delivering notice personally or by mail to each member of the policy body
            a. Special meeting shall be held at the regular meeting location or a designated alternate place. If an alternate location, must give notice 15 days prior to meeting.
   ii. Accessibility
      1. Disability
         a. Chemical sensitivity disclaimer
         b. Accessible meeting location and seating
         c. Sign language interpreter or note taker provided if request is made 48 hours before [If Monday/Tuesday, last business day of the preceding week]
2. Barriers to attendance
   a. Time, location, date, etc.
   b. Discrimination (protected class)
   c. Language
      i. Translators provided if request is made 48 hrs before (If Monday/Tuesday, last business day of the preceding week)
   d. Payment, purchase or other req to enter location
   e. Requirement to register name to enter meeting

iii. Posting Agenda 67.7
   1. Posted at least 72 hrs before mtg (mailed, posted, published)
   2. Includes time and location of meeting
   3. Meaningful description of each item
      a. Plain English
      b. Brief / concise
      c. Clear and specific
      d. Person of average intelligence/education will understand if their interests are affected and have reason to attend or ask questions
   4. Specify if proposed action or just discussion item
   5. When can a committee take action or discuss item not on agenda?
      a. Responding to statement or question from public
      b. Person asks body to report back at a later meeting
      c. Good faith, reasonable determination +
         i. 2/3 vote: Threat to public health or safety, serious injury to the public interest w/o immediate action
      d. Item was continued to meeting
   6. Agendas available to speech, hearing and sight impaired upon request
   7. Each agenda includes notice of rights under sunshine ordinance, who to contact re ordinance and how to obtain copy of ordinance

iv. Special Meetings
   1. Must post notices of meeting 72 hours before
   2. Only business stated in notice shall be considered

v. Revisions
   1. Nothing in ordinance regarding revisions to the agenda

C. Open vs. “Closed” meetings 67.5
   i. Under the Brown Act, all policy body meetings are open to the public. [67.5]
      1. Audio/video recording- everyone has the right to record (audio/visual) or broadcast any public meeting. [exception= causing disruption]
      2. Each commission/policy body will record every meeting open to public and make available to the public
   ii. Closed Sessions 67.8-12
1. Every closed session shall be recorded audio/visual and recordings retained for at least 10yrs
2. Prior to meeting, must post “statement of general reason” for closed session
3. Permitted topics for closed session
   a. Matters= threat to security of public buildings or a threat to the public’s right of access to public services or public facilities
   b. Appointment, employment, evaluation of performance or dismissal of city empee if policy body has authority
   c. Based on advice from legal counsel / pending litigation
   d. Employee actions
   e. Collective bargaining
4. Written summary of info req under this ordinance to be immediately reported or documents with info shall be posted by close of business on the next business day where the agendas are posted

d. Public vs. Confidential Meeting Materials
   i. Public: Agendas and other docs intended for the distribution to all or a majority of the policy body members, that are related to a matter that will be discussed/considered at a public meeting shall be made available to the public
      1. Internet
         a. Available upon request, before its sent to body
         b. “ During discussion
         c. “ After, immediately or as soon as practicable
      2. Excludes materials that are exempt from public disclosure under this ordinance (confidential under state and/or federal law)
   ii. Closed:
      1. After meeting, policy body may decide to share non-confidential info that is in the public’s interest

e. Public Comments (When/If)
   i. General/ Specific Comments
      1. Every agenda for regular meeting shall provide public opportunity to speak directly to the policy body on matters that are w/in the body’s subject matter jurisdiction
         a. No action shall be taken on any item not appearing on the agenda
      2. Special meetings with an action item(s) shall provide public opportunity to address the body prior to the body taking action on the item
      3. Public has opportunity to speak re item before or during committee’s consideration
      4. Time limits if necessary to allow everyone to speak
         a. total amount of time for speaking
         b. 1-3 mins per person
5. Members of body also have right to make public comment
   
   ii. Written comments
      1. Public notice of meeting must inform public that if they are unable to
         attend they can submit written comments by the time the proceedings
         begin (name and address)
         a. Will be part of public record and brought to the attention of the
            persons holding the meeting
      2. Any person speaking can give a brief summary of their comments (150
         words max) to be included in the minutes
   
   iii. Language Barriers
      1. Seek to provide translators at regular meetings for each language
         requested at least 48hrs before mtg

   f. Public Participation Policies must be posted
      i. Posted on policy body website
      ii. Explained in every agenda and available to public
      iii. Info about taskforce for questions/ enforcement

   g. Summaries of decisions and actions
      i. Minutes
         1. Each board/commission shall record minutes for regular and special
            meetings
         2. Must state time, names of those attending, roll call vote on each matter
            considered during meeting,
         3. Closed sessions: Time began/ended, names/titles of others that
            attended
         4. List of those who spoke from the public if they identify themselves,
            whether they supported or opposed and brief summary of statement
         5. Time meeting was adjourned
         6. Draft minutes must be available no later than 10 working days after
            meeting
      ii. Officially adopted minutes, available 10 working days after minutes are adopted
      iii. Upon request, must be made available in Braille or increased type size
CHAPTER IV. PUBLIC MEETINGS

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This chapter describes the key steps necessary for complying with the Brown Act and City policy for public meetings of boards and commissions.

The Brown Act (Government Code Sections 54950 et seq.) is the state’s open meetings act. It is intended to ensure that the public has adequate notice of what actions its elected and appointed local decision makers may take and that those decisions and the deliberations leading to them occur in public.

A. LEGISLATIVE BODIES
The Brown Act applies to any legislative body. This includes all City of Berkeley boards and commissions.

City of Berkeley commissions can only create ad hoc (or temporary) subcommittees. Ad hoc committees are not legislative bodies under the Brown Act, but they must follow Brown Act procedures per City policy.

B. MEETINGS
Any contact between a quorum of the legislative body, either directly or through intermediaries, to hear, discuss, deliberate, or take action “on any matter within the subject matter jurisdiction” of the City or commission is a meeting. All meetings must be conducted in compliance with the Brown Act. Meetings include retreats, forums, workshops, and similar types of events. A meeting can be in person, by telephonic or other electronic medium, or through intermediaries. With a few narrow exceptions not applicable to most commissions, all meetings of legislative bodies must be open to the public (Government Code Section 54953).

1) Types of Meetings
   Regular Meetings
   Regular Meetings occur at the dates, times, and locations set by formal action of the commission at the beginning of each year to follow for the next 12 months. Regular meetings require 72-hour notice that includes the time and location of the meeting. Commissions may change the meeting schedule by formal action. Council sets the maximum number of meetings the commission may have during a calendar year.

3 All statutory references in this Chapter are to the Government Code unless otherwise noted.
If a committee needs to change the meeting schedule after it is approved, it must agendize and readopt the new schedule at a meeting.

Special Meetings
Special Meetings are called by the chair or a quorum of the commission to hear a specific item or items. Special meetings require 24-hour notice. Council establishes the number of meetings each commission is allowed to have in a given year. Special meetings count against that total. Absences from special meetings do not, however, affect commissioner attendance records. Any meeting not on the regular meeting schedule is a special meeting.

Subcommittee Meetings
Subcommittees are less than a quorum of the parent committee, designated by action of the commission for a specific task and a limited duration. Subcommittees shall conduct their meetings in public and in accessible locations that are open to the public. Meetings may be held at privately owned facilities provided that the location meets all the requirements of the Brown Act, including the following:

- The location is open to all who wish to attend and there is no requirement for registration or purchase to attend.
- No prohibition on attendance based on a protected class (e.g. race, ancestry, gender)
- Must be accessible to persons with disabilities.
- The agenda must be publicly viewable at the meeting location for the full 24 hours prior to the meeting.

Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular commission meetings (posting board, website, meeting location) except that subcommittee agendas may be posted with 24-hour notice instead of 72-hour notice.

Public Hearings
Public hearings are held when required by law. Generally, the need for a public hearing is limited to the quasi-judicial commissions: Zoning Adjustments Board, Landmarks Preservation Commission, Housing Advisory Commission, Fair Campaign Practices Commission, Police Review Commission, and Planning Commission. Advisory commissions do not generally require public hearings.

Public hearing noticing practices are specified by law and must be adhered to. Noticing beyond the legal requirements is permitted but is not required.

Please see page 59, for proper public hearing procedures. If needed, the City Attorney’s Office or the City Clerk Department can work with a commission secretary determine if a public hearing is required.

Note: In the event that a public hearing is continued to a later meeting date, a commissioner who missed the first meeting should review the transcript or video of the previous meeting prior to voting.
Concurrent Meetings of Commissions
Two or more commissions may hold concurrent meetings to discuss an issue that falls under their purview. Such meetings should not be noticed as "Joint Meetings," but as two separate meetings occurring at the same place and time. The secretaries of the commissions must each prepare and post separate agendas. During the meeting, each commission must vote independently on each agenda item. The secretary for each commission must prepare separate minutes for the meeting of his or her commission as well.

2) Exceptions
Gatherings That Are Not Meetings
Certain gatherings of a quorum of a legislative body are not considered meetings under the Brown Act.

- **Attendance by One Legislative Body at a Meeting of Another**
  Attendance at a meeting of another commission or the City Council does not need to be separately noticed, provided that a quorum of the attending body does not discuss privately among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of that body (Government Code Section 54952.2(c)(4)). This exception includes noticed meetings of legislative bodies of other public agencies, not just those of City commissions or the Council.

- **Attendance at Conferences and Other Gatherings Open to Members of the Public**
  Attendance at a public conference is permissible as long as a quorum of the body do not discuss among themselves specific business that is within the subject matter jurisdiction of the City.

- **Purely Social or Ceremonial Occasions**
  Attendance at purely social or ceremonial occasions are not considered meetings as long as the participants do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the City (Government Code Section 54952.2(c)(5)).

- **Open and Public Community Meeting Organized by An Entity Other Than the City to Address a Topic of Local Community Concern**
  Attendance at a meeting organized by persons or groups other than the City to address a subject of local community concern may be attended without noticing the meeting as long as members of the legislative body only participate in the public program and do not discuss among themselves matters of specific business within the jurisdiction of the City.

Any activity that involves a quorum discussing commission business is a meeting and must be compliant with all Brown Act requirements.
3) Violations and Danger Areas

Serial Meetings

One type of illegal meeting is a "serial meeting." A serial meeting is one in which a quorum of a legislative body communicates with each other, directly or indirectly, through whatever medium, to develop collective concurrence.

There are many types of serial meetings, all of which are prohibited.

A literal serial meeting is one in which members of a legislative body constituting a quorum meet in smaller groups, serially, or a single member meets with enough other members to constitute a quorum individually, one after the other.

A communication from staff asking a quorum of a legislative body for comment can lead to a serial meeting if feedback from commissioners assists staff in developing a policy or taking an action that takes into account their points of view.

However, a staff member may have separate conversations or communications 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 commission if that staff person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

Special Note:

It is acceptable for staff to provide information to commissioners, communicate meeting information, and answer questions as long as staff does not share commissioners’ opinions with other commissioners.

Another type of serial meeting can result—sometimes unintentionally—from improper use of e-mail. E-mail communication between a quorum of a legislative body to develop a collective concurrence constitutes an illegal serial meeting (Government Code Section 54952.2(b)). To avoid this problem, members of legislative bodies should never use the “reply to all” function to an e-mail that may be addressed (even via “bcc”) to a quorum of the legislative body. Since it is not always possible to know who might receive a “reply to all,” it is better to simply never use the function. Of course, a serial meeting can occur from forwarding an e-mail as well.
**Question:**
If a commission secretary sends an e-mail to a quorum of his or her commissioners requesting feedback on a subject under the commission’s purview, is it a violation of the Brown Act?

**Answer:**
It could be. If the secretary shares answers among the commissioners, it could be construed as a serial meeting. If the feedback from the commission assists staff in developing a policy or taking an action, it could be considered collective concurrence.

**Question:**
If a commissioner is unable to attend a commission meeting but has valuable information for the commission to consider, may he or she send an e-mail to the full commission?

**Answer:**
E-mail communication between a quorum of a legislative body can constitute an illegal serial meeting (Government Code Section 54952.2(b)). In this case, it would be best for the commissioner to share his or her information with the secretary, who can then disseminate it to the full commission and the public.

**Retreats, Forums, Workshops**
Retreats, forums, study sessions, workshops, and similar are considered meetings. Any such activity, where a quorum of the commission is present and discussing commission business, is a meeting. It must meet all the requirements for notice, public participation, location, and accessibility. Any such meeting would count toward the limit on the number of meetings set by Council.

**Lobbying**
Serial lobbying by members of the public of all commission members is not prohibited as long as they are not acting as intermediaries between members of the legislative body (Govt. Code Section 54952.2 (c)(1)).

**Question:**
A member of the public who is not a member of the commission contacts the chair and advocates for an item the commission will hear at the next meeting. The member of the public states that he already has the support of four out of nine commissioners and asks if he can count on the chair’s vote. Is this a Brown Act violation?

**Answer:**
It is not illegal for a member of the public to advocate for an agenda item. However, when this person tells commissioners about other commissioners’ intentions, he or she may be considered as acting as an intermediary. In this scenario, the chair should suggest the member of the public send an e-mail through the secretary for all the commissioners and the public to read.
C. PUBLIC COMMENT AT MEETINGS

Every agenda for a regular meeting must allow the public to speak on any item in the commission's purview as well as on each specific item of business before the commission. Per the Brown Act, no member of the public can be required to give his or her name in order to attend or speak at a meeting.

1) Public Comment on Items Not on the Agenda
Members of the public must be allowed to speak on any item under the commission's purview, even if it is not on the agenda. The time allowed for these comments is the same as that for Action or Discussion items (generally two or three minutes per speaker). Non-agenda comments may be at the beginning or end of the meeting depending on the preferred agenda sequence of the commission.

2) No Discussion of Items Raised at Public Comment
Public comment on items that are not on the agenda cannot be used to start a discussion between commissioners or to take action in response to comments. Government Code Section 54954.2 does allow members of the legislative body or its staff to make brief responses to comments made during non-agenda public comment. It is also permissible for a member of a legislative body to ask a question for clarification, make a brief report on his or her own activities, and make a referral to staff or ask that an item be placed on a future agenda.

3) Public Comment Must be Allowed Prior to the Vote
For items on the agenda, the Brown Act requires that public comment be permitted prior to the commission voting on the item. The procedure for public comment should be the same for all meetings and adopted as a commission policy or in the commission bylaws, if any. Generally, two or three minutes per speaker is allowed.

4) Limiting the Time for Public Speaking
Government Code Section 54954.3(b) allows a commission to adopt reasonable regulations to govern public comments. Typical of such rules are time limits on individual speakers and overall time limit on public comment. The commission should decide whether to set an overall time limit and/or limit per speaker and are encouraged to adopt it in the bylaws, if any, or as a commission policy, to be followed consistently.

5) Distinction Between Public Comment at Regular Meetings Versus Special Meetings
Government Code Section 54954.3(a) requires public comment at special meetings as well as regular meetings. At special meetings, the comment must be confined to the subject matter to be considered at the special meeting. There is no non-agenda public comment at special meetings.

6) Formal Participation by the Public/Presentations
An individual wishing to formally address the commission or make a presentation should prepare a written request to the secretary to be scheduled on a future agenda. The request is discussed at the next meeting, and the commission may grant or deny the request.
7) Recording Meetings
Audio or video taping of the meeting must be allowed except when the legislative body finds that the recording is performed in a manner that constitutes "a persistent disruption of the proceedings" (Government Code Section 54953.5(a)).

D. MEETING LOCATION AND ACCESSIBILITY

Location
Meetings of legislative bodies are generally held in public buildings. Meetings may be held in a privately owned building or facility provided that all Brown Act requirements for noticing and accessibility are met. In addition, no member of the public shall be required to make a purchase or meet any other requirement of the private establishment as a condition of attending and participating in the meeting.

Meetings must be held within City limits unless a meeting falls within one of the exceptions in Government Code Section 54954(b).

Consult the City Clerk or City Attorney if there is some special reason to have a meeting outside City limits.

Accessibility
The Americans with Disabilities Act (ADA) has always been applicable to the manner in which the City conducts its public meetings, and provisions of the ADA have been expressly incorporated into the Brown Act.

In addition, Council policy requires that all meetings be held in accessible facilities. This includes the approach to the facility, entry, path of travel within the facility, and restrooms. Secretaries should contact the Disability Compliance Program manager for recommended locations or for a location assessment, if necessary. Secretaries should be aware of commission items related to accessibility or persons with disabilities to prepare for accessible participation needs in advance of the meeting.

Pursuant to City of Berkeley Administrative Regulation 1.12 - Communication Access Policy, all boards and commissions must provide communication access in the form of accommodation to members of the public who have disabilities so that they may have an equal opportunity to participate in and benefit from board and commission meetings. This particularly affects members of the public who are vision or hearing impaired and may involve requests for such accommodations as providing meeting agendas in large print or braille, utilizing the City's assistive listening devices, or the provision of a sign language interpreter at the meeting itself.

Upon request, it is the responsibility of the Disability Compliance Program to arrange for reasonable accommodation at no cost to the requesting individual. Although A.R 1.12 states that three working days advance notice will ensure accommodation availability, every attempt will be made to arrange accommodation even on short notice. Although primary consideration should go to the disabled individual's preferred type of accommodation, when a particular type of accommodation is not available on short notice, an alternative type of
accommodation may be considered. For example, if braille or large print isn't available on short notice, staff may read the document to the vision-impaired person as an alternative.

Commissioners with disabilities will receive accommodation through the Disability Compliance Program upon request. Review Appendix I for more information.

E. AGENDA AND NOTICE REQUIREMENTS

The agenda for all regular, special, and subcommittee meetings shall specify the time and location of the meeting, the business to be transacted, and shall be posted in the following locations:

1. On the bulletin board at Old City Hall at 2134 Martin Luther King Jr. Way.
2. At the location the meeting will be held.
3. On the City of Berkeley website.

Commission Secretaries must also ensure that commission meetings are posted to the online Community Calendar.

No business, other than that included on the agenda, can be considered by the commission at any type of meeting.

1) Regular Meetings
At least 72 hours before a regular meeting, the commission secretary shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

2) Special Meetings
Special meetings may be called by the chair or a majority of commissioners. The notices and agendas must be posted no less than 24 hours prior the meeting.

3) Subcommittee Meetings
Subcommittee meetings fall under this special meeting rule and their agendas must be posted at least 24 hours prior to their meetings.

4) Media List for Meetings
In order to give proper notice of a meeting, it is important to ensure that the commission secretary maintain a current list of media. The City Clerk has developed a list of media that is used to give notice of City Council meetings. This list may be used along with any other media outlet that may have requested notice of a particular commission's meetings.

5) Agenda Titles/Purpose
The purpose of the agenda is to inform the public regarding the issues to be discussed. Government Code Section 54954.2 of the Brown Act requires that agenda item titles fully describe the issue or action to be discussed.
and/or taken. This requirement, therefore, precludes such agenda titles as "University Avenue Improvements" or listing a topic on every meeting agenda to cover the "possibility" of discussion.

In preparing the agenda, consider the position of a member of the public and determine if a reasonable person could determine from the agenda title what the commission is discussing and what action is being proposed.

For example: "University Avenue Improvements" listed on an agenda by itself does not provide enough information. An appropriate title might be:

"Adopt a Recommendation to the City Council to Proceed with the Proposed $5 million University Avenue Landscaping Improvements"

Another example: "Earth Day" listed on an agenda by itself is too vague. An appropriate title might be:

"Discussion of Recommendation to Council to Sponsor Earth Day Parade"

The agenda must be clear on what action, if any, may be taken on an item. The agenda should list the recommendation or action proposed using the 20-word guideline. By using a full explanation in the item title (never use acronyms), members of the public who may be in favor of or opposed to such an issue will know to be present at the commission meeting to discuss their views.

6) Agenda Format/Headings

Prior to each meeting of the commission, the secretary prepares and distributes an agenda, which usually includes but is not limited to the following: Roll Call, Public Comment, Approval of Minutes, Public Hearings, Old Business, New Business (with appropriate description of the item under the headings of Public Hearings, Old Business, and New Business), Information Items, Communications, and Adjournment. The agenda must be approved by the chair prior to distribution.

Commission agendas may vary to suit commission needs, but the Council agendas provide a good guideline.

Every regular and special meeting agenda, including subcommittee meetings, must include the following.

- Name of the commission
- Type of Meeting (regular or special)
- Day, date, time, and location of the meeting
- A brief, general description of each item of business, including the recommended action
- Public comment period
- Communication access information (A.R. 1.12) and ADA disclaimer:
"This meeting is being held in a wheelchair-accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting."

- SB 343 Disclaimer:
  "Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at ______________________________ Department located at ______________________________."

- Communications Disclaimer:
  "Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: E-mail addresses, names, addresses, and other contact information are not required but, if included in any communication to a City board, commission, or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission, or committee for further information."

Agendas may include the following if applicable:

- Accessibility of Meeting Facilities
  All meeting facilities must be accessible. If, however, the accessible entry or path of travel is other than the main or common entrance or path to the meeting location, such information and directions must be so noted on the agenda.

- Use of Dates
  Items for which material was included in the past and which are not duplicated again as part of the agenda packet should contain the date of the previous agenda packet for reference.

- Identification of Written Reports
  It is always best practice to have complete reports published when the agenda packet is distributed. If reports on agenda items will be delivered at the meeting, they should be identified in the following way: "(to be delivered)."

- Oral Reports
  Agenda items for which there will only be an oral report will be identified in the following way: "(oral report)".
F. SUBMISSION OF COMMISSION AGENDA REPORTS
Any commissioner may submit items to appear on the commission agenda. Commissions should formally adopt procedures and guidelines in their bylaws, if any, or through adoption of a policy, for submitting items to the commission agenda that include, at a minimum these requirements:

- Items will be submitted as is – commissioners are responsible for typing their own items.
- The subject of the item must be within the commission’s purview.
- The item must be submitted at least 10-14 days prior to the meeting in order to provide adequate time to compile and distribute the agenda packet seven days prior to the meeting.

Commissions may adopt procedures for late submissions if desired. The Chair approves the agenda prior to distribution. This authority is limited to the structure and order of the agenda and does not grant the chair the authority to remove any items submitted by commissioners or staff by the established deadline.

G. DISTRIBUTION OF COMMISSION AGENDA PACKETS
When all necessary documents are submitted from the commissioners by the deadlines noted above, the secretary will mail complete agenda packets, first-class postage, to commissioners no later than seven days before the meeting. All written communications sent to the commission shall be distributed to all commissioners in the packet or at the next meeting. Any commissioner may opt to receive the agenda packet in electronic format only. This request must be made in writing to the secretary of the commission.

Complete agenda packets must be available in the office of the secretary prior to the meeting and be available at the meeting for public perusal. Any supplemental items must also be included in the packet for public perusal at the meeting.

An agenda without supporting materials may be distributed to other commissions or City departments whose area of interest is complementary or whose work directly impinges on the subject to be discussed.

Secretaries must maintain a list of persons requesting mailed notice and agenda packets pursuant to Government Code Section 54954.1. These rules require that any person who requests a copy of the agenda and agenda packet in writing must be mailed a copy of the agenda and packet at the time that the agenda is posted or a distribution is made to a majority of the commission. Such a written request for agendas and packets is effective for the calendar year in which it is requested and must be renewed January 1 of each year. Failure to follow this requirement will not result in the invalidation of the action taken by the legislative body. Per City policy, a fee to cover the cost of mailing and such agendas and supporting documents should be charged. The Brown Act requires that the secretary maintain a continuously updated list of persons who have requested agendas and agenda materials in writing.
H. NOTICING FOR CANCELLED AND ADJOURNED MEETINGS

1) Cancellation of Meetings

When the Meeting Is Cancelled Prior to the Meeting Date
General practice is to post a notice of cancellation, stating that the meeting has been cancelled, in all the locations that the notice and agenda are regularly posted (at the meeting location, on the bulletin board at Old City Hall at 2134 Martin Luther King Jr. Way, and on the commission web page). Any persons or members of the media on a subscription list for notices and agendas should be notified as soon as possible. This should be done as soon as it is known that the meeting will be cancelled. The secretary may cancel a meeting if there is no quorum upon polling the commission.

When the Meeting Must Be Cancelled Due to Lack of a Quorum
When less than a quorum of a body appears at a noticed meeting, the body may meet as a committee of the parent body, adjourn to a future date pursuant to the provisions of Government Code Sections 54955 or 54954.2(b)(3), or simply consider the meeting to be cancelled. If no members of the legislative body appear at a noticed meeting, the secretary may adjourn the meeting to a future date, determined by the secretary, and provide notice to members of the legislative body and to the media in accordance with the special meeting notice provisions set forth in Government Code Section 54956. The meeting may be cancelled for lack of quorum after waiting for 15 minutes past the noticed start time.

Although it is generally not advisable for the present commissioners to continue in the meeting as a committee because the committee cannot make recommendations to the Council, it may be advisable under some circumstances. For example, when members of the public are present and want to give their input on a policy matter pending before the commission, the commissioners present may wish to continue as a subcommittee in order to obtain the input from the public so as to not inconvenience the members of the public who came to give testimony.

Per Resolution No. 65,127-N.S. (and its successors), commission secretaries must submit an Information Report to the City Council whenever a commission cancels two consecutive meetings for lack of a quorum.

When a Meeting Is Adjourned to a Subsequent Date
Notice of the adjournment, including the date to which the meeting is adjourned, must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment.

Rescheduling a Cancelled Meeting
In order to reschedule a meeting, the commission must act to modify the meeting schedule through the commission agenda. A special meeting called to replace a cancelled regular meeting counts toward the annual meetings per year limit set by Resolution No. 68,258-N.S. and its successors. Most commissions are limited to 10 meetings per year. Any meeting not on a regular meeting date is a special meeting unless the commission formally voted to amend the annual meeting schedule.
Brown Act Primer: Access to Meetings

I. Introduction

The Ralph M. Brown Act (Government Code sections 54950-54963, referred to as the "Brown Act") is intended to provide public access to meetings of California local government agencies. Its purpose is described in the Act:

"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." Gov't Code § 54950.

In order to achieve this objective, governmental bodies subject to the requirements of the Brown Act must provide public notice of their meetings, post agendas of the subjects to be discussed at those meetings, and provide public access to those meetings. Public notice of every meeting subject to the Brown Act is required, and access is mandatory unless the meeting is held in closed session under a specific exception contained in the Act.

However, the Brown Act is complex, and problems often arise in application. The following issues come up consistently: (1) What kinds of public bodies are subject to the Act? (2) Has the public body properly given notice of the matters it intends to address in the agenda for the meeting? (3) What constitutes a "meeting," and what kinds of communications among members of a legislative body are permitted outside of meetings? (4) Are the exceptions permitting closed sessions are being properly applied?

The following links will walk you through our summary of the Brown Act that aims to explain some of the intricacies of the Act that have led to both litigation and abuse by the agencies it governs and make it more useful to its users.

Part II: What public bodies are subject to the Act?

Part III: What notice must be given of a meeting

Part IV: What is a meeting?

https://firstamendmentcoalition.org/open-meetings-3/facs-brown-act-primer/
Part V: Closed Sessions  VI: After the closed session

Part VII: Enforcement of the Brown Act

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https://firstamendmentcoalition.org/open-meetings-3/facs-brown-act-primer/
Brown Act Primer: Public bodies subject to the Act

II. What public bodies are subject to the Act?

Public bodies subject to the Act include:

A. The governing body of a local agency or any other local body created by state of federal law. Thus, entities such as city councils, boards of supervisors, school boards, redevelopment agencies, and air pollution control boards are covered. The judiciary is not covered. State agencies and the legislature are covered by separate, similar acts.

B. A commission, committee, board, or other body of a local agency created by charter, ordinance, resolution, or formal action of a legislative body.

- Advisory committees composed solely of the members of the legislative body that constitute less than a quorum and that have neither a continuing scope of business nor a schedule set by the legislative body are not covered by the Act.

- Standing committees are included if they have schedules fixed by official action irrespective of their composition.

For example, a standing committee of a city council, such as a budget committee or a rules committee, would be subject to the Brown Act. However, an ad hoc committee consisting of three out of seven council members appointed to investigate a claim of fraud would not be. (The Brown Act would apply if a citizen or someone else who was not a member of the council was appointed to the committee.)

In addition, while a standing committee that meets pursuant to a regular schedule is always subject to the Brown Act, even standing committees that meet infrequently or sporadically are subject to the Brown Act if they consist of more than a quorum, or if they have ongoing authority to address issues with the subject matter jurisdiction of parent body.

C. A board, commission, committee or other multimeber body that governs a private entity that either:

1. Is created by that entity to exercise authority in its behalf; or
2. Receives funds from a local agency and has on its governing board a member of that agency’s legislative body who is appointed by the legislative body.4.

For example: (1) If a city creates a special local assessment district, collects assessments from local property owners, and provides by ordinance that the programs paid for with those funds will be governed by a non-profit association, the non-profit corporation set up to govern those programs will be subject to the Act;5 Gov’t Code § 54952(c)(1), and (2) if a private, non-profit corporation receives funds from a city, and the corporation has a council member on its board who has been appointed by the city council, the corporation will be subject to the Act.

D. The governing board of private corporation to which a public hospital district has turned over control of a hospital.6

E. State agencies are not covered by the Brown Act, but are subject to the Bagley-Keene Open Meetings Act, which is very similar to the Brown Act. The courts and court administrative offices are exempt from state open meeting laws.

NOTES
1 Gov’t Code § 54952(a).
2 Gov’t Code § 54952(b).
4 Gov’t Code § 54952(c)(1).
5 This example comes from a case called Epstein v. Hollywood Entertainment District II Business Improvement Dist., 87 Cal. App. 4th 862 (2001). In addition, under a court decision in a case called Frazer v. Dixon Unified School Dist., 18 Cal. App. 4th 781 (1993), a board, committee or commission created by an individual government official, rather than a local governmental agency, also is subject to the Brown Act, if the local agency delegated to the individual official the authority to create the committee or other body.
6 Gov’t Code § 54952(d).

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Brown Act Primer: Notice of a Meeting

III. What notice must be given of a public meeting?

A. Advance notice of meetings must be provided:

Regular meetings must be noticed through the posting of an agenda at least 72 hours before the meeting. 7 (You may request that a copy of the agenda and “all documents constituting the agenda packet” be mailed to you. They will be mailed when the agenda is posted or when it is distributed to a majority of the legislative body, whichever is first. The agency may charge a fee for mailing the materials, not to exceed the cost of providing the mailing service.) 8

Special meetings may be called, but only upon 24 hours notice to each local newspaper of general circulation, radio or television station that has in writing requested notice. The notice must be posted in a location freely accessible to the public. Only the business specified for discussion at the special meeting may be addressed. 9

Emergency meetings may be called under specific, drastic circumstances (“work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body”). The 24 hour notice is not necessary, but a 1 hour notification of those media requesting notice is necessary if possible. 10

B. The agenda must contain a brief description of each item of business to be transacted (generally not to exceed 20 words). 11

Agenda descriptions must not be misleading. According to the California Attorney General’s guide to the Brown Act, “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 or participate in the meeting of the body.” 12 For example, using the agenda item “flood control” to refer to a discussion on a request to Congress to exempt a certain stream from the Wild and Scenic Rivers Act would be clearly inadequate.

Closed session items must be included on the agenda. 14
(a) They must be described with enough particularity to protect the confidentiality of the subject to be discussed, but at the same time provide the public with a general idea of the topic being discussed in closed session. (See the discussion below of what must be included for specific exemptions.)

(b) The Act actually spells out the recommended content of closed session agenda notices, and provides a “safe harbor” ensuring that government agencies will not be in violation of the agenda requirements of the Act if they follow the recommended format.

C. No action can be taken on items not on the agenda, except:

1. Brief responses to public testimony.
2. Requests for clarification from or references of matters to staff.
3. Brief reports on personal activities.
4. When there is an emergency (see above).
5. When two-thirds of the legislative body agree there is a need to take immediate action on a matter about which the body could not have been aware earlier (see above).

NOTES

7. Gov’t Code § 54954.2(a).
10. Gov’t Code § 54956.5.
11. Gov’t Code § 54954.2(a).
14. Gov’t Code §§ 54954.2(a), 54957.7(a).
15. Gov’t Code § 54954.5.

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Brown Act Primer: Closed sessions

V. When may the public be excluded?

The public may not be excluded from a meeting, except as expressly authorized by the Brown Act.

A public body may exclude the public from meetings, holding what are called "closed sessions" or "executive sessions," in the following circumstances:

(1) to determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license; 43

(2) to with its negotiator to grant authority regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property; 44

(3) to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation; 45

(4) to meet with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, or a threat to the public's right of access to public services or public facilities; 46

(5) to 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; 47

(6) to meet with the local agency's designated representatives regarding the salaries, salary schedules, or fringe benefits of its represented and represented employees, and, for represented employees, any other matter within the statutorily provided scope of representation; 48

There are also a number of other narrow circumstances in which closed sessions may be held. 49

However, although there are many provisions permitting closed sessions, certain provisions are more commonly invoked, and hence are more frequently the subject of questions and disputes. Those provisions are discussed below.

A. Meetings with a body’s negotiator prior to the purchase, sale, exchange or lease of real property in order to grant authority to the negotiator regarding the price and terms of payment. 50

   • The closed session notice should state the address of the property, the identity of the negotiator, and whether the instruction will concern price, payment terms, or both. 51

   • Prior to the closed session, the public body must hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

   • Note: This provision has been the subject of considerable abuse. For example, government agencies involved in enormous, multifaceted transactions have used a real property portion of the potential transaction to discuss the entire matter in secret. It has also been invoked to cover meetings attended by representatives of the adverse party in the negotiation.

B. Meetings to discuss “pending litigation.” 52 This exception has been carefully crafted due to frequent past disputes.

   • Litigation is any adjudicatory proceeding.

   • Pending litigation is:

     (a) litigation formally initiated to which the body is a party;

     (b) a situation where, based on the advice of counsel taking into account “existing facts and circumstances” there exists a “significant exposure” to litigation; or

     (c) when the agency itself has decided or is deciding whether to initiate litigation. 53

   • For existing litigation, the closed session notice should state the name of the case or parties (unless it would jeopardize service of process or existing settlement negotiations), and for anticipated litigation or litigation the agency is considering initiating, it should state the number of potential cases.

   • Prior to holding a closed session pursuant to this section, the legislative body of the local agency must state on the agenda or publicly announce the subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision

     • (a), the body must state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency’s ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. 55

C. Meetings with law enforcement or security consultants about threats to the security of public buildings, to essential public services, or to the public’s right of access to public services or public facilities. 56

   • The closed session notice should identify the law enforcement agency and state the name and title of the law enforcement official. 57

   • Note: Expect to see this exception invoked with increasing frequency.

D. Meetings to discuss the appointment, employment, evaluation of performance, discipline or dismissal of a public employee or to hear complaints brought against the employee. 58

1. The closed session notice should state the position to be filled or the title of the employee being reviewed. It need not do so in the case of complaints. tippy title=”59”] 59. Gov’t Code § 54954.5(e).[tippy]

2. Note: An elected official is not a public employee. 60

3. Note: The employee may request a public hearing. 61

NOTES

43 Gov’t Code § 54956.7.
44 Gov’t Code § 54956.8.
45 Gov't Code § 54956.8.
46 Gov't Code § 54957(a).
47 Gov't Code § 54957(b).
48 Gov't Code § 54957.6(a).
49 See Gov't Code §§ 54956.86, 54956.87, 54956.95, 54957.8, and 54957.10. Because these provisions have much more limited application, they are not addressed here.
50 Gov't Code § 54956.8.
51 Gov't Code § 54954.5(b).
52 Gov't Code § 54956.9.
53 Gov't Code § 54955.9(a), (b), (c).
54 Gov't Code § 54954.5(c).
55 Gov't Code § 54959.
56 Gov't Code § 54957(a).
57 Gov't Code § 54954.5(e).
58 Gov't Code § 54957(b)
59 Gov't Code § 54954.5(e).
60 Gov't Code § 54957(b)(4).
61 Gov't Code § 54957(b)(1).
62 Gov't Code § 54954.5(f).

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