



OPEN & PUBLIC IV:
A Guide to the Ralph M. Brown Act
(2nd Edition, July 2010)

September 2013 Supplement

This supplement to *OPEN & PUBLIC IV: A Guide to the Ralph M. Brown Act* discusses changes to the law that have taken effect since the publication of the second edition of the guide in 2010. The supplement covers both statutory changes and appellate decisions that affect the Brown Act. For ease of reference, these updates direct the reader to the chapter, subheading and page of the guide's main text. Our objective is to provide the most complete and current resource to assist local agencies in complying with Brown Act requirements. This supplement is to be used in conjunction with the original publication.

This supplement is made available thanks to the hard work and dedication of the Brown Act Committee of the City Attorneys' Department and League Staff:

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CHAPTER 3: MEETINGS

■ **LOCATION OF MEETINGS**

Page 20 – Add new endnote to the 4th bullet point:

__ 94 Ops.Cal.Atty.Gen. 15 (2011) (water district may hold its board meetings at the principal office of the district even if it is located outside the jurisdiction of the district)

CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

■ **AGENDAS FOR REGULAR MEETINGS**

Page 24 – Replace the second paragraph with the following:

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.” [Gov. Code § 54954.2(a)(1).] The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend. [78 Ops.Cal.Atty.Gen. 327 (1995).] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period. [88 Ops.Cal.Atty.Gen. 218 (2005).] While posting an agenda on an agency’s Internet Web site will not, by itself, satisfy the “freely accessible” requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its Web site if: (1) the local agency has a Web site, and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body. [Gov. Code §§ 54954.2(a)(1) and 54954.2(d).]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city’s Web site or if the Web site was not operational during part or all of the 72-hour period preceding the meeting?

A. The Brown Act does not address this question nor is there any case law on the subject. Public agency attorney opinions vary. Hence, should this situation arise, seek a legal opinion from your agency attorney.

The agenda must state the meeting time and place and must contain “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.” [Gov. Code, § 54954.2(a)(1).] Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a “project” if the “project” is actually a set of distinct actions that must each be separately listed on the agenda. [San Joaquin Raptor Rescue v. County of Merced (2013) 216 Cal.App.4th 1167 (legislative body’s approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)]

■ **NOTICE REQUIREMENTS FOR SPECIAL MEETINGS**

Page 25 –Replace the second to the last sentence in the second paragraph, to read:

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency’s Web site if: (1) the local agency has a Web site, and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body. [Gov. Code §§ 54956(a) and (c).]

Page 26 – Add the following new heading and paragraphs after “Notice Requirements for Emergency Meetings” to read:

■ **NOTICE OF COMPENSATION FOR SIMULTANEOUS OR SERIAL MEETINGS**

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body verbally announces (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body, and (2) that the compensation or stipend is provided as a result of convening the meeting of that body. [California Government Code section 54952.3]

No verbal disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member’s official duties, such as for travel, meals, and lodging.

■ NOTICE REQUIREMENTS FOR TAX OR ASSESSMENT MEETINGS AND HEARINGS

Page 26 – Replace the first paragraph with the following:

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses. [California Government Code Section 54954.6] Though written broadly, these Brown Act provisions do not apply to new or increased *real property taxes or assessments* as those are governed by the California Constitution, Cal. Const. Art. XIIC or XIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days' notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

■ THE RIGHT TO ATTEND AND OBSERVE MEETINGS

Page 28 – Add a new paragraph immediately before the Q & A box to read:

All actions taken by the legislative body in open session and the vote of each member thereon must be disclosed to the public at the time the action is taken. [Gov. Code §54953(c)(2)]

Page 28 – Replace the last paragraph with:

The legislative body may remove persons from a meeting who willfully interrupt proceedings. [California Government Code section 54957.9] Ejection is justified only when audience members actually disrupt the proceedings. [*Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption)] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance. [California Government Code section 54957.9]

CHAPTER 5: CLOSED SESSIONS

■ REAL ESTATE NEGOTIATIONS

Page 37-- Replace the final two sentences on page 37 to read:

If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person as soon as the agency is informed of it.

■ PUBLIC SECURITY

Page 41-- Replace the paragraph in this section in its entirety with:

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.⁴⁰ Action taken in closed session with respect to such public security issues is not a reportable action.

Page 43 – Replace endnote 14 with:

14 California Government Code section 54956.9 (e).

Page 43 – Replace endnote 16 with:

Shapiro v. San Diego City Council (2002) 96 Cal.App.4th 172; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for property already subleased to loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).

CHAPTER 6: REMEDIES

Page 47 – Add the following new bullet after the bullet title “Invalidation”:

■ APPLICABILITY TO PAST ACTIONS

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action. [Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a “cease and desist” letter to the legislative body, clearly describing the past action and the nature of the alleged violation.[Government Code Sections 54960.2(a)(1), (2)] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[Government Code Section 54960.2(b)] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days. [Government Code Section 54960.2(a)(4)]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar. [Government Code Section 54960.2(c)(2)] The unconditional commitment must be substantially in the form set forth in the Brown Act. [Government Code Section 54960.2(c)(1)] No legal action may thereafter be commenced regarding the past action. [Government Code Section 54960.2(c)(3)] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions. [Government Code Section 54960.2(d)]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days' written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions. [Government Code Section 54960.2(e)]