CHAPTER 1

Access to Meetings

IN THIS CHAPTER

The Brown Act and the Bagley-Keene Act are the basic laws that Californians use to access meetings of local and state governmental bodies. The Brown Act covers meetings of local legislative bodies, for example, city councils, county boards of supervisors and school districts. The Bagley-Keene Act applies to legislative bodies of state agencies, such as the Air Resources Board, the Industrial Welfare Commission and the Integrated Waste Management Board. Other open meeting laws that apply specifically to the state Legislature, the U.C. Board of Regents and federal executive agencies are discussed in more detail below.

Additionally, Article I, Section 3 of the California Constitution establishes that Californians have a constitutional right of access to information concerning the conduct of the people's business, the meetings of public bodies and the writings of public officials and agencies.

The various laws that govern open meetings have five basic tenets: (1) The public has a presumptive right to attend meetings of a legislative body, which are required to be open unless a specific exemption allows the body to meet in closed session; (2) The public is entitled to advance notice of the date, time and location of open and closed meetings, as well as an agenda describing the items the legislative body intends to discuss or act upon; (3) The public has the right to obtain copies of memos, background materials and any other writings related to matters for public discussion as soon as the materials are distributed to members of the legislative body; (4) The public has the right to speak at a meeting of a legislative body; and (5) After meeting in closed session, legislative bodies are required to publicly disclose the actions taken and any documents approved in closed session.

In the past decade, there have been several disputes resulting in legislative change or significant liability for public agencies. A new cease-and-desist procedure was added to law to create a right to demand that an agency cease from violating the Brown Act in the future. A "serial meeting" prohibition was added to code to clarify that any time a quorum is reached, a discussion must comply with the Brown Act. The California Supreme Court ruled this is true even if accomplished by text messages or other communications held on private devices. In another case, the County of Los Angeles broadly interpreted the Brown Act to permit closed session deliberations on a range of issues related to the Los Angeles Memorial Coliseum. The county was ultimately forced to pay $400,000 in attorneys' fees after the Los Angeles Times sued to enforce the public's right to access the meetings.

PART I:
OVERVIEW

A. INTRODUCTION.

Much of the business of government is conducted at meetings. In addition, meetings are among the few – and one of the most important – ways that members of the public have to communicate with public officials about matters that affect them. This is particularly true of local governments – cities, counties, school districts, joint powers authorities and the like. Most local government activities are governed by "legislative bodies" such as city councils or school boards. They regularly make decisions involving millions of dollars and affecting millions of people. They also make decisions that may be vital to individuals, businesses, community groups and others.

California law is intended to make such meetings public, subject to certain exceptions. In addition, it generally provides that action taken in violation of the requirements of public notice and participation may be void. The purpose of California law is to ensure that not only the government's final decisions are public, but also the deliberations by which those decisions are reached. The law also is intended to ensure that the public has a meaningful opportunity to participate in government meetings.

Citizens who are interested in what the government is doing, reporters who are assigned to cover local or state government, and public officials who are involved in the work of the government need to familiarize themselves with the public's right to attend meetings of public agencies.

B. OVERVIEW OF THE LAW.

There are several different laws that regulate government meetings in California. In general, these laws operate similarly. They require that meetings of certain government bodies be conducted in public, and they establish certain limited situations in which meetings may be closed to the public. They also provide guidelines for how public meetings are to be conducted. For example, they require advance notice of meetings, describe the kind of information that must be included in agendas (including certain information about closed meetings), and provide for public comment at meetings.

There are two main sets of laws in California: (1) The Ralph M. Brown Open Meetings Act (known as the "Brown Act"), which governs local governments; and (2) the Bagley-Keene Open Meetings Act (known as the "Bagley-Keene Act"), which applies to meetings of state government agencies. However, other laws also affect the public's right to attend, participate in, or know about meetings. The following is a list of the main laws that apply to government meetings in California:

Law	Application
California Constitution, Article I, Section 3(b), known as "Proposition 59"	State executive agencies and all local government agencies. The Legislature is exempt. There is no exemption for the judicial branch.
Brown Act (Government Code sections 54950-54963)	Local government agencies.

Bagley-Keene Act (Government Code sections 11120-11132)	State executive agencies. The Legislature and the courts are exempt.
Proposition 42, Compliance of Local Agencies with Public Records (2014)	Requires local agencies to comply with the Brown Act and the Public Records Act, and eliminates requirements that the State reimburse local agencies for compliance with these laws.
Grunsky-Burton Open Meeting Act (Government Code sections 9027-9031)	State Legislature.
Public Display of Legislative Bills Prior to Vote Initiative (2016)	Prop. 54 requires a bill to be in print for 72 hours before a final vote from the Legislature. Also permits the public to film any public proceeding in the Legislature, unless reasonable rules prevent such recording.
Local Sunshine Ordinances	Local government agencies, in places where such local ordinances have been adopted.
Government in the Sunshine Act (United States Code, Title 5, section 552b)	Federal executive agencies.

The reason this book focuses mainly on the laws governing local government meetings is that nearly all important decisions by local governments are taken in the course of meetings of legislative bodies. There are a wide variety of such bodies: county boards of supervisors, city councils, redevelopment agency boards, school boards, community hospital district boards, various commissions and committees established by local governments, and even private, nonprofit corporations that are created by the government or undertake government responsibilities. Meetings of these bodies are governed by the Brown Act.

PART II:
LOCAL GOVERNMENT – THE RALPH M. BROWN ACT

A. INTRODUCTION.

The Brown Act regulates the conduct of the governing bodies of all local public agencies: counties, cities, school and community college districts and other special districts, joint powers authorities (groups of public agencies from different areas working together), committees and boards created by local governments, etc. In addition to the Brown Act, several local bodies have adopted "sunshine ordinances," which provide greater access than the Brown Act. As a matter of course, always check to see if a sunshine ordinance has been adopted and what additional access rights might be available.

The Brown Act is intended to provide public access to meetings of 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.[1]

The courts have said that the Brown Act "serves to facilitate public participation in all phases of local government decision-making and to curb misuse of the democratic process by secret legislation of public bodies."[2] In order to achieve these objectives, 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.*** As the California attorney general has explained:

> Where matters are not subject to a closed meeting exception, the Act has been interpreted to mean that ***all of the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information, be open and available for public scrutiny***.[3]

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) What constitutes a "meeting" and what kinds of communications among members of a legislative body are permitted outside of meetings? (3) Has the public body properly given notice of the matters it intends to address in the agenda for the meeting? (4) Are the exceptions permitting closed sessions being properly applied? (5) Has the legislative body properly reported what actions were taken in closed session?

Many provisions of the Act have been interpreted by the courts. These cases generally control how the Brown Act is applied in certain circumstances and are important in understanding how it operates. In addition, the attorney general has issued many opinions interpreting the Act. These opinions are not binding on public agencies or the courts, but they are considered important guidance in applying the Brown Act.

B. WHAT ARE MY RIGHTS UNDER THE BROWN ACT?

When the Brown Act applies, the public has the following rights:

1. Right to Attend Most Meetings.

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1 Government Code § 54950.

2 *Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.*, 87 Cal. App. 4th 862 (2001); *Bell v. Vista Unified School Dist.*, 82 Cal. App. 4th 672 (2000).

3 *The Brown Act: Open Meetings For Local Legislative Bodies*, Office of the Attorney General (2003), at p. 1 (emphasis added), citing *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41 (1968); 42 Ops. Cal. Atty. Gen. 61, 63 (1963); 32 Ops. Cal. Atty. Gen. 240 (1958).

The main purpose of the Brown Act is to require the bodies that govern local government – such as county boards of supervisors, city councils, planning commissions and the like – to conduct their deliberations and make their decisions in public.[4] Therefore, "all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in [the Brown Act]."[5]

2. Right to Notice of Meetings.

The public has the right to be notified in advance of all meetings, both open and in closed session. Specifically:

- **a. Regular meetings** must be noticed by posting an agenda for the meeting at least 72 hours in advance.[6] As of Jan. 1, 2019, any agency that has a website must also include a prominent, direct link to the current agenda on its homepage.[7]
- **b. Special meetings** may be called, but only upon 24 hours notice to each local newspaper of general circulation, radio station or television station that has in writing requested notice. The notice must also be posted in a location freely accessible to the public.[8] It should also be posted on the agency's homepage, if it has a website.[9]
- **c. Emergency meetings** may be called under specific, drastic circumstances ("work stoppage, crippling activity, mass destruction, terrorist act, threatened terrorist activity or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body"). One-hour notification of those media that have requested notice is required, if possible.[10]
- **d. Closed sessions** must be identified in an agenda posted at least 72 hours before each regular meeting and must be orally disclosed in an open session held before the closed session. The oral disclosure may be a reference to closed-session items listed in the posted agenda.[11]

3. Right to an Agenda.

The public has the right to an agenda that contains a brief description of each item of business to be transacted.[12] The descriptions of agenda items must not be misleading.[13]

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4 Government Code section 54950.

5 Government Code section 54953(a).

6 Government Code section 54954.2(a).

7 Government Code section 54954.2(a)(2)(A).

8 Government Code section 54956.

9 Government Code section 54954.2(a)(2)(A).

10 Government Code section 54956.5.

11 Government Code sections 54954.2(a), 54957.7.

12 Government Code section 54954.2(a).

13 *See* *The Brown Act: Open Meetings For Local Legislative Bodies*, Office of the Attorney General (2003), pp.