

The Ralph M. Brown Act

California's Open Meeting ("Sunshine") Law
Government Code Section 54950 *et seq.*

Purpose

To provide the public with access to the decision-making process of local legislative bodies



Policy Declaration

“[t]he 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 insist on remaining so informed so that they may retain control over the instruments they have created.” (Govt. C. § 54950)



Scope: Broadly construed in favor of Public Access

- Applies to
 - Meetings
 - Of local legislative bodies



“Legislative Body”

1. Governing body of a local agency.
2. Commission, board, committee, etc. created by formal action of legislative body.
3. Board of a private entity that either:
 - a) was created by the City Council in order to exercise authority delegation to it by the Council; or
 - b) received funds from the City and includes a City Council member if appointed by the Council.



“Meeting”

1. Gathering of a majority of legislative body;
2. At same time and place;
3. To receive information, discuss an issue or take any action.



“Exemptions”

1. Conferences or meetings open to public so long as no discussion of specific issues among themselves.
2. Purely social or ceremonial gatherings so long as specific business is not discussed.



Serial Meetings Prohibited

A “Serial Meeting” is

1. a series of communications between individual members or groups of members, that ultimately involve a majority;
2. regarding a specific issue to be addressed by the body;
3. to develop a concurrence on an action to be taken by the body.



“Communication”

- Includes face-to-face meetings, e-mail, text messages, phone calls, social media, and “personal intermediaries.”
- **“Personal intermediaries”** can include City staff



Open Meeting Requirements

1. No action on items unless properly agendized and posted.
2. Notice
 - a. Regular meetings set by ordinance, resolution or by-laws; 72-hour posting of Agenda.
 - b. Special meeting – 24 hours notice to members and media.
 - c. Emergency meeting – 1 hour notice to media.
3. Agenda – Clear description of issue to be discussed.
4. Opportunity for public to speak.
5. Generally, meeting must be held within jurisdiction.



Closed Meeting Exceptions

Body can only meet in private for specified reasons:

1. Litigation: pending; anticipated.
2. Real Estate Negotiations: limited to price and terms of payment.
3. Threat to public service/facilities: requires law enforcement or security personnel to be present.
4. Personnel: appointment or evaluation of public employee.
5. Labor negotiations.



Criminal Sanctions

Misdemeanor, if member of a body:

- a. attends a meeting where a violation occurs;
- b. intended to deprive the public of information; and
- c. knows that the public was entitled to receive such information.



Civil Remedies

1. Invalidation of Action if:

- a. Written demand to cure within 90 or 30 (depending on violation) days of action complained of; and
- b. Corrective action is not taken within 30 days

A decision to take corrective action raises no inference that the action “cured” was unlawful.



Civil Remedies (continued)

2. Injunction for Prospective Relief can be obtained:
- Without proof of knowing violation
 - Without demand for cure of alleged violation

The Brown Act gives broad authority to courts to impose an order sufficient to stop and prevent violations.



Civil Remedies (continued)

3. Attorney's Fees:

May be awarded to successful plaintiff in civil action for the Injunctive Relief or suit to invalidate.



San José Resolution No. 77135

MATRIX OF PUBLIC MEETING REQUIREMENTS

Meeting Requirements	City Council	Council Committees	Decision-Making Bodies (Quasi-Judicial)	Boards, Commissions	Other Advisory Entities
1. Agenda Posting (Regular Meeting)	10 days; exceptions may be requested from Rules if within Brown Act; amended agenda allowed if within Brown Act	7 days in advance; 6 days for Rules	7 days** amended agendas allowed if within Brown Act	7 days	3 days
2. Staff Reports	10 days; exceptions may be requested from Rules or City Council if within Brown Act	7 days in advance; 6 days for Rules; exceptions may be requested from the Committee	7 days	7 days	No posting requirement
3. Cost Benefit of Public Subsidy (\$1M or More)	Info Memo 28 days; Staff Reports 30 days	7 days in advance; 6 days for Rules	NA	7 days	NA
4. Supplemental Staff Reports	Informational Anytime; Substantive Changes: Exceptions may be requested from Rules, or City Council if possible Thursday prior to meeting	Informational Anytime; Substantive Changes prior to 4 days; Committee may hear the item or defer it but action should be deferred	When necessary, presented at the Evidentiary Hearing	Informational Anytime; Substantive Changes prior to 4 days; May hear the item or defer it, but action should be deferred	No posting requirement
5. Memos from Member(s) of the Body	More than 1 signature 72 hours Single signatures anytime but encouraged to be ≥ 72 hours	More than 1 signature 72 hours Single signatures anytime but encouraged to be ≥ 72 hours	NA	More than 1 signature 72 hours Single signatures anytime but encouraged to be ≥ 72 hours	No distribution deadline
6. Agenda Posting (Special Meeting, including Study Session)	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	24 hours
7. Recording	Video record and maintain for at least 2 years*	Video record and maintain for at least 2 years*	Video record Planning Commission, and/or record all others	Audio record and maintain for at least 2 years	May audio record but not required
8. Public Testimony	At Chair's discretion; May set reasonable limits	At Chair's discretion; May set reasonable limits	At Chair's discretion; May set reasonable limits	At Chair's discretion; May set reasonable limits	At Chair's discretion; May set reasonable limits
9. Minutes	Synopsis posted by next meeting; Action Minutes as soon as possible	Action Minutes posted 6 days before meeting at which Council will hear Committee's report; if not posted in time, report will be deferred	Action Minutes; Post within 10 days of holding meeting	Action Minutes; Post within 10 days of holding meeting	No requirement

*Except if Council Meeting is called to order for the sole purpose of either convening or reporting out on the results of a closed session.

**Not required to specify "Recommended Action" on agendas or list all documents for each item.



Government Code Section 87103

GOVERNMENT CODE - GOV

TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)

CHAPTER 7. Conflicts of Interest [87100 - 87505] (Chapter 7 added June 4, 1974, by initiative Proposition 9.)

ARTICLE 1. General Prohibition [87100 - 87105] (Article 1 added June 4, 1974, by initiative Proposition 9.)

87103. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

(Amended by Stats. 2000, Ch. 130, Sec. 7. Effective January 1, 2001. Note: This section was added on June 4, 1974, by initiative Prop. 9.)

