



California Brown Act Primer

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I. Introduction

The Ralph M. Brown Act, one of California's main sunshine laws, is intended to provide public access to meetings of local government agencies. Known as the Brown Act and codified as Government Code sections 54950-54963, 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. Code § 54950. The Brown Act applies only to local agencies, but public access to the proceedings of other agencies and bodies is governed by other laws.¹

To achieve its objective, the Brown Act imposes strict procedural requirements on any "legislative body" covered by the Act. Legislative bodies must give the public advance notice of their meetings with agendas listing the subjects to be discussed, and generally topics not on the agenda may not be discussed. Meetings must be open to the public except to the limited extent a closed session is allowed 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 bodies are subject to the Act?
- (2) Has the body properly given notice of the matters it intends to address in the agenda for the meeting?
- (3) What constitutes a "meeting" and how must it be conducted, 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?

This primer will walk you through our summary of the Brown Act. We aim to make the Brown Act more useful and to explain some of the intricacies of the Act that have led to both litigation and abuse by the agencies it governs.

¹ State agencies are covered by the [Bagley-Keene Open Meetings Act](#). The California Legislature is covered by Gov. Code sections [9027-31](#). The Judicial Council, the state courts' policymaking arm, is covered by California Rules of Court, rule [10.6](#). Judicial proceedings are open to the public with limited exceptions under court rules and case law.

II. What Bodies Are Subject To The Act?

A. Legislative bodies subject to the Act include:

1. The governing body of a local agency or any other local body created by state or federal law.² Thus, entities such as city councils, boards of supervisors, school boards, redevelopment agencies, and air pollution control boards are covered. Agency staff reviewing and approving individual contracts under the delegated authority of a public body are not covered.³
2. A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.⁴
 - a. “Formal action” means action by the body, as opposed to action by an individual member of the body. Formal action need not be in the form of a formal motion but should indicate an agreement by a majority of the legislative body to create a committee, commission or other body.⁵ If such action is taken, the body created is subject to the Brown Act, provided that it constitutes a “standing committee,” as opposed to an ad hoc committee.
3. Although advisory committees composed solely of the members of the legislative body that are less than a quorum of the legislative body are not generally legislative bodies, standing committees of a legislative body, irrespective of their composition, which have continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body are legislative bodies.⁶
 - a. Whether a committee is “standing,” and thus subject to the Brown Act, does not depend on the label affixed to the committee by the legislative body. Rather, a committee is “standing,” and thus subject to the Brown Act -- even if it constitutes less than a majority of the legislative body’s members -- if it: (1) has “continuing subject matter jurisdiction,” that is, it was created to address a particular subject over an indefinite period, not perform a specific task within a fixed period, **or** (2) it has a meeting schedule established by some formal action of the legislative body of which it is part. Even standing committees that meet infrequently or sporadically are subject to the Brown Act if they consist of more than a

² [Gov. Code § 54952\(a\)](#).

³ [Golightly v. Molina](#), 229 Cal.App.4th 1501 (2014).

⁴ [Gov. Code § 54952\(b\)](#).

⁵ [Joiner v. City of Sebastopol](#), 125 Cal.App.3d 799 (1981).

⁶ [Gov. Code § 54952\(b\)](#).

quorum, or if they have ongoing authority to address issues with the subject matter jurisdiction of parent body.⁷

4. A board, commission, committee or other multimember body that governs a private entity that either:
 - a. Is created by that public entity to exercise authority on its behalf; or
 - b. 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.⁸

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.⁹
 - (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.
5. The governing board of a private corporation to which a public hospital district has turned over control of a hospital.¹⁰

III. What Notice Must Be Given Of A Public Meeting?

A. Advance notice of meetings must be provided

1. **Regular meetings** must be noticed through the posting of an agenda at least 72 hours before the meeting.¹¹ Any agency that has a website must also include a

⁷ [79 Ops. Cal. Atty. Gen. 69 \(1996\)](#).

⁸ [Gov. Code § 54952\(c\)\(1\)](#).

⁹ This example comes from a case called [Epstein v. Hollywood Entertainment District II Business Improvement Dist.](#), 87 Cal.App.4th 864 (2001). In addition, under 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. This also covers interagency task forces "delegated with authority possessed by city councils to exercise municipalities' police powers with public funds," [McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force](#), 134 Cal.App.4th 354, 363 (2005).

¹⁰ [Gov. Code § 54952\(d\)](#).

¹¹ [Gov. Code § 54954.2\(a\)](#).

prominent, direct link to the current agenda on its homepage.¹² (You may request that a copy of the agenda and “all documents constituting the agenda packet” be sent to you. They will be sent when the agenda is posted or when it is distributed to a majority of the legislative body, whichever is first. If sent via U.S. Mail, the agency may charge a fee for mailing the materials, not to exceed the cost of providing the mailing service.)¹³

2. **Special meetings** may be called, but only upon 24-hour notice to each local newspaper of general circulation, radio or television station that has in writing requested notice. The notice must be posted on the agency’s website and in a physical location freely accessible to the public. Only the business specified for discussion at the special meeting may be addressed.¹⁴
3. **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.¹⁵

B. The agenda must contain a brief description of each item of business to be transacted (generally not to exceed 20 words).¹⁶

1. 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.”¹⁷ 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.
2. Closed session items must be included on the agenda.¹⁸
 - 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.)

¹² [Gov. Code § 54954.2\(a\)\(2\)\(A\)](#).

¹³ [Gov. Code § 54954.1](#).

¹⁴ [Gov. Code § 54956](#).

¹⁵ [Gov. Code § 54956.5](#).

¹⁶ [Gov. Code § 54954.2\(a\)](#).

¹⁷ [The Brown Act, Open Meetings For Local Legislative Bodies](#), Office of the Attorney General, 2003, at pp. 16-17.

¹⁸ [Gov. Code §§ 54954.2\(a\), 54957.7\(a\)](#).

- b. The Act actually spells out the recommended content of closed session agenda notices, providing 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 or discussion 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 a member’s 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).
6. When an item has been expressly held over from a prior meeting occurring not more than five calendar days previously.¹⁹

IV. What Is A Meeting And How Must It Be Conducted?

A. A meeting as defined by the Brown Act includes any “congregation by a majority” of a legislative body at the same time and place to “hear, discuss, or deliberate” on any matter within the jurisdiction of the body.²⁰

1. As the Attorney General explains: *“This definition makes it clear that the body need not take any action in order for a gathering to be defined as a meeting. A gathering is a meeting if a majority of the members of the body merely receive information or discuss their views on an issue. A meeting also covers a body’s deliberations, including the consideration, analysis or debate of an issue, and any vote which may ultimately be taken.”*
2. A meeting does not have to be formally announced, agendized, or convened in order to be subject to the Act.²¹

¹⁹ [Gov. Code § 54954.2\(a\)\(3\)](#). “Action taken” means “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.” [Gov. Code § 54952.6](#).

²⁰ [Gov. Code § 54952.2\(a\)](#).

²¹ In [Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.](#), 263 Cal.App.2d 41 (1968), the court held that a luncheon gathering which included five county supervisors, the county counsel, a variety

B. Serial meetings, either in person or by text, telephone, fax or go-betweens, constitute a meeting if done to discuss public business, regardless of whether the group actually forms a consensus.²²

1. For example, a series of individual telephone calls between the attorney for the redevelopment agency and the members of the agency's governing board was held to constitute a meeting. The agency attorney had individually polled the members of the body to get their approval for a real estate transaction. The court concluded that even though the members never met together, their communications constituted a meeting for the purposes of the Act.²³
2. Similarly, when the San Diego City Council directed staff to take certain action in an eminent domain proceeding in a letter signed by a quorum of the council, the court held that it had violated the Brown Act.²⁴
3. Addressing e-mail communications, the Attorney General has opined as follows: "This office [has] concluded that a majority of a body would violate the Act if they e-mailed each other regarding current issues under the body's jurisdiction, even if the e-mails were also sent to the secretary and chairperson of the agency, the e-mails were posted on the agency's Internet Web site, and a printed version of each e-mail was reported at the next public meeting of the body." The opinion concluded that these safeguards were not sufficient to satisfy either the express wording of the Act or some of its purposes. Specifically, such e-mail communications would not be available to persons who do not have Internet access. Even if a person had Internet access, the deliberations on a particular issue could be completed before an interested person had an opportunity to become involved.²⁵
4. On the other hand, the California Supreme Court has held that a memorandum from a public body's attorney to the members of the body did not constitute a meeting under the Act.²⁶

C. Exempted from the definition of a meeting are:

1. Individual contacts or conversations that do not form part of a serial meeting.²⁷

of county officers, and representatives of a union to discuss a strike which was underway against the county was a meeting within the meaning of the Act.

²² [Gov. Code § 54952.2\(b\)](#).

²³ [Stockton Newspapers, Inc. v. Redevelopment Agency](#), 171 Cal.App.3d 95 (1985).

²⁴ [Common Cause v. Stirling](#), 119 Cal.App.3d 658 (1981).

²⁵ [The Brown Act, Open Meetings For Local Legislative Bodies](#), Office of the Attorney General, 2003, at p. 15, citing 84 Ops. Cal. Atty. Gen. 30 (2001).

²⁶ [Roberts v. City of Palmdale](#), 5 Cal.4th 363, 381 (1993).

²⁷ [Gov. Code § 54952.2\(c\)\(1\)](#).

2. Attendance of a majority of members at a conference open to the public that involves a discussion of general interest to the public or “to the public agencies of the type” attending the conference provided the members do not discuss legislative business among themselves. Fees may be charged to members of the public.²⁸
3. Attendance by a majority of the members at an open and publicized meeting called by someone other than the legislative body to discuss topics of community interest.²⁹
4. Attendance by a majority of members at an open and publicized meeting of another body of the local agency, provided the members do not discuss among themselves matters within their jurisdiction that are not the subject of the meeting.
5. Attendance at a ceremonial or social event by a majority of members provided they do not discuss among themselves matters within their jurisdiction.³⁰
6. 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, provided that the members of the legislative body who are not members of the standing committee attend only as observers.³¹

D. The meeting must be held within the boundaries of the agency’s jurisdiction, except:³²

1. When necessary to comply with state or federal law or court order.
2. To inspect real or personal property over which the agency has control, provided it is the topic of the meeting is related to the property.
3. To participate in multi-agency meetings, provided that the meeting is properly noticed by all the agencies and that the meeting takes place in the jurisdiction of one of the agencies involved.
4. To meet with federal or state officials when a local meeting would be impractical, solely to discuss matters of relevance with such officials.
5. To meet at the closest meeting facility or the principal office of the body if there exists no meeting facility within the jurisdiction of the body.

²⁸ [Gov. Code § 54952.2\(c\)\(2\).](#)

²⁹ [Gov. Code § 54952.2\(c\)\(3\).](#)

³⁰ [Gov. Code § 54952.2\(c\)\(5\).](#)

³¹ [Gov. Code § 54954\(c\).](#)

³² [Gov. Code § 54954\(c\).](#)

6. To meet at a facility outside of the jurisdiction if the facility is owned by the body, provided the discussion at the meeting is limited to items directly related to the facility.
7. To visit legal counsel to discuss pending litigation when to do so would reduce fees.
8. School boards may meet outside of the District on a variety of labor and employment matters.
9. Statewide joint powers authorities may meet within the territories of anyone in their organization.
10. Under the specific circumstances permitted for teleconference meetings described below in subsection F.

E. Regular meetings must be held at a time, place, and location fixed by official action (e.g., bylaws, ordinance, resolution).³³ If it is unsafe to meet at the designated place due to an emergency, the new location must be publicized by a notice to the local media in the most rapid means of communication available at the time.³⁴

1. The meeting place must be accessible to all members of the public.³⁵
2. No fees may be charged for admission to meetings.
3. Registration of one's name or any other condition of admission is prohibited.³⁶
4. Cameras, both still and video, and tape recorders are permitted, and any recording of a meeting subject to the Act made at the direction of the public body is a public record.³⁷
5. Public bodies must permit broadcast of their meetings, unless they can demonstrate that doing so would cause a persistent disruption of their proceedings.³⁸

³³ [Gov. Code § 54954\(a\)](#).

³⁴ See generally [Gov. Code §§ 54956, 54956.5](#).

³⁵ [Gov. Code §§ 54953\(a\), 54953.2](#).

³⁶ [Gov. Code § 54953.3](#).

³⁷ [Gov. Code § 54953.5](#). The public may use these recordings to engage in political speech without violating copyright law. See [City of Inglewood v. Teixeira](#), 2015 WL 5025839 (C.D. Cal. August 20, 2015).

³⁸ [Gov. Code § 54953.6](#).

F. At least until January 1, 2024, legislative bodies may conduct meetings via teleconference only under the following circumstances:

1. The meeting occurs during a state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; or
2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote: (a) **whether**, as a result of the emergency, meeting in person would present imminent risk to the health or safety of attendees, or (b) **that**, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. Legislative bodies must make the findings set forth in (a) or (b) above every thirty days in order to continue conducting meetings via teleconference. If they do so, the legislative body must provide a means for the public to participate remotely in the meeting in real time, and must provide notice of how to do so on the meeting agenda. The body may not require comments to be submitted in advance of the meeting. The legislation allowing such teleconference meetings, enacted in 2021, expires in January 1, 2024.³⁹

G. Records distributed at a public meeting are public records, unless otherwise exempted under the Public Records Act. The public is entitled to obtain them at the meeting if they were prepared by the public agency, or after the meeting if prepared by someone else. (This does not mean that the agency does not have to provide them prior to the meeting if they are available, only that it must make them available by the time of the meeting at the latest.)⁴⁰

H. Time must be provided for comment by the public.⁴¹

1. Legislative bodies may impose reasonable time limitations on public comment.⁴²
2. Legislative bodies may not prohibit criticism of “the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”⁴³
3. When time for comment is otherwise provided, the ability to speak and offer criticism at the meetings of public bodies is also protected by the First Amendment. In particular, the First Amendment has been held to protect the right

³⁹ [Gov. Code § 54953\(e\)\(1\)-\(2\)](#).

⁴⁰ See [Gov. Code § 54957.5\(c\)](#).

⁴¹ [Gov. Code § 54954.3\(a\)](#).

⁴² [Gov. Code § 54954.3\(b\)](#).

⁴³ [Gov. Code § 54954.3\(c\)](#).

of citizens to criticize the conduct of particular government officials and employees at public meetings.⁴⁴

V. Closed Sessions: When May The Public Be Excluded?

The public may not be excluded from a meeting, except as expressly authorized by the Brown Act. Exceptions to the open meeting requirement must be narrowly construed.⁴⁵

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

1. to confer with its negotiator to grant authority regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property;⁴⁶
2. 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;⁴⁷
3. 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;⁴⁸
4. 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;⁴⁹
5. to meet with the local agency’s designated representatives regarding the salaries, salary schedules, or fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.⁵⁰

⁴⁴ [Baca v. Moreno Valley Unified School Dist.](#), 936 F.Supp. 719 (C.D. Cal. 1996); [Leventhal v. Vista Unified School Dist.](#), 973 F.Supp. 951 (S.D. Cal. 1997).

⁴⁵ [Cal. Const. Art. I, § 3\(b\)\(2\)](#); [Page v. MiraCosta Community College Dist.](#), 180 Cal.App.4th 471, 501 (2009).

⁴⁶ [Gov. Code § 54956.8](#).

⁴⁷ [Gov. Code § 54956.9](#). The definition of “pending litigation” is discussed below.

⁴⁸ [Gov. Code § 54957\(a\)](#).

⁴⁹ [Gov. Code § 54957\(a\)](#).

⁵⁰ [Gov. Code § 54957.6\(a\)](#).

There are also a number of other narrow circumstances in which closed sessions may be held.⁵¹

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.⁵²

1. 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.⁵³
2. 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.
3. **Note:** This provision has been the subject of considerable abuse. For example, government agencies involved in enormous, multi-faceted 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. Abuse of these requirements can be costly. Los Angeles County erroneously permitted closed session deliberations on a range of issues related to the Los Angeles Memorial Coliseum, and was forced to pay \$400,000 in attorneys’ fees when they were sued by the Los Angeles Times for access to these meetings. *See Los Angeles Times Communications LLC and Californians Aware v. Los Angeles Memorial Coliseum Commission*, Case No. BS138331 (October 4, 2013).

B. Meetings to discuss “pending litigation.”⁵⁴ This exception has been carefully crafted due to frequent past disputes.

1. Litigation is any adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.
2. Pending litigation is:
 - a. litigation formally initiated to which the body is a party;

⁵¹ See [Gov. 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.

⁵² [Gov. Code § 54956.8](#).

⁵³ [Gov. Code § 54954.5\(b\)](#).

⁵⁴ [Gov. Code § 54956.9](#).

- 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.⁵⁵
 3. 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.
 4. 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.⁵⁶
 5. Although a legislative body may approve a litigation settlement in closed session, it may not take action in closed session on a related policy decision “that by substantive law may not be taken without a public hearing and an opportunity for the public to be heard,” such as a zoning variance.⁵⁷

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.⁵⁸

The closed session notice should identify the law enforcement agency and state the name and title of the law enforcement official.⁵⁹

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.⁶⁰

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.

⁵⁵ [Gov. Code § 54956.9\(a\), \(b\), \(c\).](#)

⁵⁶ [Gov. Code § 54959.](#)

⁵⁷ [Trancas Property Owners Assn. v. City of Malibu](#), 138 Cal.App.4th 172, 186 (2006).

⁵⁸ [Gov. Code § 54957\(a\).](#)

⁵⁹ [Gov. Code § 54954.5\(e\).](#)

⁶⁰ [Gov. Code § 54957\(b\).](#)

2. **Note:** An elected official is not a public employee.⁶¹
3. **Note:** The employee may request a public hearing.⁶²

VI. After A Closed Session

A. The agency must publicly report action taken in closed session as follows:

1. Approval of an agreement concluding real estate negotiations immediately if the closed session results in a final agreement, and upon inquiry if the agreement is finalized thereafter.⁶³
2. Approval given to counsel to defend or otherwise participate in litigation.⁶⁴
3. Approval given to counsel to settle pending litigation, reported immediately in open session if the body accepts a signed settlement offer, and otherwise upon later inquiry if final approval depends on the court or another party.⁶⁵
4. Action taken on claims.⁶⁶
5. Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee by title of position.⁶⁷
6. Approval of a labor agreement.⁶⁸
7. The public is entitled to copies of contracts, settlement agreements, and other documents approved by the public body and subject to any of these reporting requirements.⁶⁹

B. Records maintained during a closed session.

1. A local agency may maintain a minute book for actions taken during a closed session, but is not required to do so.⁷⁰

⁶¹ [Gov. Code § 54957\(b\)\(4\)](#).

⁶² [Gov. Code § 54957\(b\)\(1\)](#).

⁶³ [Gov. Code § 54957.1\(a\)\(1\)](#).

⁶⁴ [Gov. Code § 54957.1\(a\)\(2\)](#).

⁶⁵ [Gov. Code § 54957.1\(a\)\(3\)](#).

⁶⁶ [Gov. Code § 54957.1\(a\)\(4\)](#).

⁶⁷ [Gov. Code § 54957.1\(a\)\(5\)](#).

⁶⁸ [Gov. Code § 54957.1\(a\)\(6\)](#).

⁶⁹ [Gov. Code § 54957.1\(b\)](#).

⁷⁰ [Gov. Code § 54957.2](#).

2. If it does maintain a minute book, or similar documentation, such records are not a public record subject to disclosure.⁷¹
3. Absent court order, a local agency is not required to record its closed sessions.⁷²

VII. Enforcement Of The Brown Act

A knowing violation of the Brown Act with the intent to deprive the public of information to which it is entitled is a crime.⁷³

Individual citizens may bring essentially three types of legal suits to enforce the Brown Act: a suit over a government entity's alleged violation of the Act based on that entity's past violation of the Brown Act; a suit to contest or enjoin ongoing or future actions in alleged violation of the Brown Act; and a suit to void an action taken by a government entity in alleged violation of the Brown Act.

A. Challenging past actions to stop their recurrence:

Under amendments to the Brown Act adopted in 2012, persons alleging a past violation of the Brown Act, and seeking to bar further violations – but NOT to invalidate a specific government decision or action – must first attempt to resolve the matter, short of litigation, though an elaborate settlement procedure set forth in Government Code section 54960.2, as follows:

1. Within 9 months of the violation, a complainant must submit a “cease and desist” letter to the government entity “clearly describing the past action of the legislative body and nature of the alleged violation.”⁷⁴
2. The legislative body has 60 days to respond with “an unconditional commitment to cease, desist from, and not repeat the past action.”⁷⁵ (If it makes such a commitment within 30 days, the government body will immunize itself against any claim, in the course of litigation, for payment of the complainant's attorney's fees or costs.⁷⁶
3. If the Government body responds with a timely and unconditional commitment, that will be the end of the dispute (unless, subsequently, the agency reneges on its commitment). However, if the government doesn't

⁷¹ [Gov. Code § 54957.2.](#)

⁷² [Gov. Code § 54960\(b\).](#)

⁷³ [Gov. Code § 54959.](#)

⁷⁴ [Gov. Code § 54960.2\(a\)\(1\).](#)

⁷⁵ [Gov. Code § 54960.2\(a\)\(4\).](#)

⁷⁶ [Gov. Code § 54960.2\(b\).](#)

respond, or responds unsatisfactorily or conditionally, the complainant may file suit, and must do so within 60 days.⁷⁷

B. Barring an ongoing or future action:

“[A]ny interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter . . . or to determine the applicability of this chapter to ongoing actions or threatened future actions. . . of the legislative body.”⁷⁸ Because, practically speaking, lawsuits seeking injunctive relief against future actions are usually based on evidence of past violations, most cases involving prospective relief will be brought under Gov Code section 54960.2, discussed above.

C. Suits to Void Past Action:

If a complainant’s objective is to have a court declare a government action *null and void* on account of a Brown Act violation, the procedure spelled out in Gov Code section 54960.1 (a) applies. Notice and a demand to “cure and correct” the violation must be given, in writing, within 90 days from the date the action was taken (30 days if the basis for the notice is that the action was not on an agenda or not adequately described). The local agency has 30 days to take action. If the local agency responds and refuses to correct the problem or does nothing, the challenger has 15 days to initiate court proceedings to nullify the action.

Not every violation of the Brown Act allows a court to nullify an action taken by a legislative body. The Act allows nullification only “if the legislative body violated the open and public meeting provisions or the notice requirements of the Act. It does not offer a remedy for actions taken following a violation of section 54954.3 governing the public comment period required at local agency meetings.”⁷⁹ A public comment violation may be addressed by the procedure discussed above for seeking to prevent future violations.

Courts hold a plaintiff must show some prejudice to justify nullifying a legislative body’s action, although no such requirement appears in the text of the Brown Act.⁸⁰

D. Other

The District Attorney or any interested member of the public may take civil action to enforce the Brown Act under the provisions described above. In Brown Act cases brought by members of the public, attorneys’ fees may be recovered.⁸¹ They are not always mandatory, but they are usually awarded to prevailing plaintiffs.

⁷⁷ [Gov. Code § 54960.2\(a\)\(4\)](#).

⁷⁸ [Gov. Code § 54960\(a\)](#).

⁷⁹ [Olson v. Hornbrook Community Services Dist.](#), 33 Cal.App.5th 502, 518 (2019) (citations omitted).

⁸⁰ [Id.](#) at 517.

⁸¹ [Gov. Code § 54960.5](#)

About Brown Act "Cure and Correct" Demand Letters

This template is for informational purposes only. It is not intended to constitute legal advice and does not form an attorney-client relationship.

In general, a "Cure and Correct" demand letter is only needed under the Brown Act when a legislative body has taken an "action" that needs to be corrected. In other words, if the Brown Act is violated yet no action was taken, then a cure and correct demand letter would not be sent. Rather, a person would turn to the courts for an order preventing future violations or would ask the district attorney to do so.

"Action taken" means "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance." [Gov. Code § 54952.6](#).

Not every violation of the Brown Act allows a court to nullify an action taken by a legislative body. The Act allows nullification only "if the legislative body violated the open and public meeting provisions or the notice requirements of the Act. It does not offer a remedy for actions taken following a violation of section 54954.3 governing the public comment period required at local agency meetings." [Olson v. Hornbrook Community Services Dist.](#), 33 Cal.App.5th 502, 518 (2019) (citations omitted). See [Gov. Code § 54960.1\(a\)](#) for a list of the Brown Act violations which allow a court to declare an action null and void.

The act of sending a cure and correct demand letter triggers a number of requirements and deadlines that you must consider before you send your demand. [Gov. Code § 54960.1](#).

- A Cure and Correct Letter must be sent within 30 days of alleged Brown Act violations occurring at open and public meetings or within 90 days of alleged violations that do not occur at open and public meetings.
- The legislative body must correct action within 30 days of receiving the letter and inform the demanding party in writing of its action or decision not to take action.
- No response for 30 days is considered a decision by the legislative body not to take action.
- Any litigation challenging the legislative body's response to the cure and correct demand letter must be taken within 15 days of the body's official written response, or within 15 days of the day the legislative body's 30-day response deadline passes. For more information, see our [Brown Act Primer](#) or the text of the [Brown Act](#).

Here is a template for creating a “Cure and Correct” letter

Presiding Officer

Members

Name of Legislative Body

Name of Local Agency

Dear _____,

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by (name of legislative body and local agency).

In its meeting of (date), the (name of legislative body) took action to (describe the action taken). In so doing, the (name of legislative body) took “action” as defined in Govt. Code 54952.6 because (specify one or more of the following as appropriate):

- *A majority of the members made a collective decision*
- *A majority of the members made a collective commitment or promise to make a positive or a negative decision*
- *A majority of the members took an actual vote when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.*

The action violated the Brown Act because (specify one or more of the following as applicable):

- *It was taken in closed session on a matter the Act does not permit to be discussed in closed session.*
- *It was taken on a matter that was not properly described in the agenda for the open meeting at which the action was taken, and none of the exceptions specified in [Gov. Code § 54954.2\(b\)](#) was satisfied.*
- *If the action could properly be discussed in closed session, it was not sufficiently described in the closed session agenda.*
- *If the action was “adopting any new or increased general tax or any new or increased assessment,” the legislative body did not follow [Gov. Code § 54954.6](#).*
- *The action was taken at a special meeting that did not comply with the requirements of [Gov. Code § 54956](#).*
- *The action was taken at an emergency meeting that did not comply with [Gov. Code § 54956.5](#).*

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions — namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), I demand that the (name of legislative body) cure and correct the illegally taken action as follows: (specify whatever corrective action you believe necessary to redress the illegality and provide the public the awareness and opportunity to comment of which it was deprived, e.g. the formal and explicit withdrawal from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.)

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me with no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order you to pay my court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,

[Name]

cc (Name and title of agency's legal counsel)