

## The Ralph M. Brown Act

Civil Service Commission  
December 21, 2011

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### Brown Act Policy Declaration

- Government Code section 54950 provides, in relevant part, that "It is the intent of the law that their actions be taken openly and their deliberations be conducted openly."
- Exceptions are those matters that are subject to closed session

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### Duties of the Civil Service Commission

- Duties are set forth in Chapter 2.40 of the County Ordinance
- "The commission shall prescribe, amend, repeal and enforce rules for the classified service..."
- The duties of the Commission, therefore, provide a general guideline for matters that can be heard and considered and matters that can be taken up in closed session

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Balancing The Public's Right To Know  
with the Efficient Conduct of Business

- Must assure full participation of the public
- Must preserve the integrity of the decision making process
- Should not be used as a mechanism for hindering efficient and orderly meetings
- Must not impede the effective operation of government

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Who is Subject to the Brown Act?

- Applies to the legislative bodies of local agencies and includes virtually every type of public commission, subsidiary committee, board, task force, council, and agency
- If created by formal action of the governing board, it is a legislative body
- This is true whether the body is permanent or temporary, decision-making or advisory
- But...there are exceptions

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Subject to the Brown Act or Not?

- Board of Supervisors – Yes
- Civil Service Commission - Yes
- Commissions and Committees created by the BOS and CSC – Sometimes yes, sometimes no

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Subject to the Brown Act or Not?

- Standing Committees – Yes
  - Members of a legislative body
  - Which have either
    - Continuing subject matter jurisdiction; or
    - A meeting schedule fixed by charter, ordinance or resolution or formal action of a legislative body
  - Examples: Executive Committees, Finance Committees, Rules Committees

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Subject to the Brown Act or Not

- Temporary Advisory Committees – No
  - Composed of less than a quorum
  - Serves a limited or single purpose
  - Is not perpetual and will be dissolved once task is completed
  - Examples: interview panels, working groups

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Agendas

- Agenda must list the items to be considered in general language
- Items off agenda may not be discussed; no action may be taken on such items . . . except
  - Commission Members may report on their activities,
  - In response to public comment on a non-agenda item
    - Brief questions may be asked
    - Staff can be requested to respond
    - Item can be placed on future agenda

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### Agendas (cont.)

- Items that need immediate attention
  - Came up after 72 hour noticing period
  - 2/3's of members vote there is need for immediate action

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### Agenda Posting Requirements

- Must be posted in an area freely accessible to the public 24 hours/day
- Regular Meetings: must be posted at least 72 hours in advance of a meeting
  - Inside a bulletin board
  - Internet posting alone is inadequate
- Special Meetings: must be posted 24 hours in advance
- **Practical Pointer:** Agendas take time to plan, set and create.

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### Public Participation

- General comments within the Commission's purview must be allowed (i.e. within the purview set out by the Board of Supervisors)
- Public comment on each agenda item must be allowed
- Length of any person's public comment may be limited by Commission rule

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Closed Session

- Closed sessions limited to specific matters designated by law – litigation, real estate negotiations, public employment, labor negotiations
- Must be briefly described on the agenda with specific statutory exemption identified
  - General language and samples provided in the Act

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Closed Session (cont.)

- Purpose of closed session is to allow the legislative body to discuss confidential information with legal counsel and staff.
- Closed sessions are allowed so as to discuss, in private, those matters that may otherwise prejudice or compromise the legal or negotiating position of the legislative body.

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Closed Session (cont.)

- Closed sessions are limited by:
  - Duties as set out by Board of Supervisors
  - Specific sections within the Brown Act
- CSC may go into closed session for the following reasons:
  - Disciplinary and Grievance Hearings
  - Rules Negotiations
  - Pending Litigation or Anticipated Litigation (limited to matters within the scope of authority of the CSC)

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Closed Session (cont.)

- Reporting Out
  - Act identifies certain issues that must be reported out of closed session if final action is taken
  - Examples: settlement of litigation, agreement to purchase property
- Prohibition Against Discussing Information Discussed in Closed Session

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When Can Meetings be Held?

- "Regular meetings" – occurring at dates, times, and location set by resolution, ordinance, or other formal action by the legislative body.
- CSC Rule states that Commission shall hold "at least one regular meeting in January of each year and at such other times throughout the year for the conduct of Commission business."
- "Special meetings" – called by presiding officer or majority of the legislative body to discuss only discrete items on the agenda.

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Meetings (cont.)

- "Emergency meetings" – held only when prompt action is necessary due to the actual or threatened disruption of public facilities; may be held without notice in emergency situation There are post-meeting posting requirements
- "Adjourned meetings" – regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment

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What Constitutes a Meeting?

- "...any congregation of a majority of the members...at the same time and place to *hear, discuss, or deliberate* upon any item that is within the subject matter jurisdiction..."
- This definition is not limited to meetings where action is taken but also includes deliberative proceedings or any type of discussion about matters that may come before the Commission.

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What Constitutes a Meeting (cont.)

- Regular Meetings, Special Meetings, Emergency Meetings and Collective Briefings
- Retreats, Workshops and Training
- Must always be noticed

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What Constitutes a Meeting (cont.)

- Teleconferences
  - Members are in different locations
  - Connected via phone, skype, etc
  - Quorum must be in locations within jurisdiction (i.e. SLO County)
  - Each location must be identified in the notice and agenda
  - Each location must be accessible to the public

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Serial Meetings/Collective Concurrence  
Prohibited

- Effective January 1, 2009, the Act prohibits a majority of members of a legislative body from using a "series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."
- "hub-and-spoke"
- "daisy chain"

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Exceptions to Definition of Meeting  
\*\*\*\*Be Cautious\*\*\*\*

- Individual contacts with constituents or members of the public
- Conferences or Outside Training (i.e. Ethics Training)
- Community Meetings
- Other Legislative Bodies
- Ceremonial Events

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Exceptions to Definition of Meeting  
\*\*\*\*Be Cautious\*\*\*\*

- Social or Informal Gatherings
- Highly Discouraged/Should be Avoided
- Examples: Gathering before hearings, lunches during hearings and meetings
- Alternative: Noticing on agenda the time and location of gathering/lunch and allowing the public to attend

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Still Permitted . . . Separate Conversations With Agency Staff

- Separate conversations or communications between an employee or official of a local agency and members of its legislative body
- Purpose:
  - Efficiency/Effective Operation of Government
  - To answer questions or provide information regarding a matter within the subject matter jurisdiction.
  - Agency staff must not communicate to a member or members of the legislative body the comments or position of any other member or members.

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Violations & Remedies

- Invalidation – court action by any interested person to invalidate certain actions of a legislative body
  - Must first request a "cure"
- Civil Action to Prevent Future Violations – court action by any interested person asking legislative body to stop or prevent violation
- Costs and Attorney's Fees – may be awarded if litigation is successful
- Criminal Charges – may be brought against a member whose intent was "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act – rarely occurs

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Avoiding Violations

- Regular Training
- Ask for advice and assistance from legal counsel and the Human Resources Director
  - HR Director is required pursuant to ordinance and rules to administer the CSC system and advise CSC upon civil service matters
  - CSC is provided with legal counsel
- We are here to help

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QUESTIONS?

Thank you!

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