

## BROWN ACT SUMMARY

### December 1, 1998

The Brown Act (California Government Code § 54950 et seq.) requires that all meetings of the City Council, City Boards and Commissions and other legislative bodies be open and public, except under certain very limited circumstances.

#### A. Applicability

##### 1. Council, Boards, Commissions and Task Forces

The Act applies to any "legislative body". A "legislative body" is any body, whether temporary or permanent and whether decision-making or advisory, which either is a governing body or which was created by formal action of another legislative body. Not only the City Council and the Redevelopment Board, but all Boards, Commissions, and formally created Task Forces are "legislative bodies" for purposes of the Act. If the Mayor or an individual Councilmember creates a Task Force on his or her own initiative and does not receive *any* form of Council concurrence, the Task Force would not be subject to the Brown Act. **However**, all Council approved Task Forces are subject to the Act.

##### 2. Committees or Subcommittees

Any committee or subcommittee, no matter how informal, which has continuing subject matter jurisdiction or a fixed meeting schedule is subject to the Brown Act. A temporary advisory committee composed solely of members of less than a quorum of the legislative body is not subject to the Act. This less than a quorum exception does not apply unless the committee or subcommittee does not include any non-members and is truly *ad hoc*.

3. New Members

The Brown Act provisions apply to newly elected members, even before they are sworn into office.

B. Agendas

1. Mailed Notice

A mailed notice of every meeting must be sent at least one week prior to the meeting, unless impractical, to every person who has filed a written request for notice of meetings with the legislative body.

2. Agenda to be Posted

The agenda must be posted at least 72 hours before the meeting. It must contain a brief general description of each item discussed at the meeting.

3. No Discussion or Consideration of Items Not on Agenda

There can be no discussion or consideration of items not on the posted agenda, except in accordance with very narrow exceptions discussed below.

4. Items not on Agenda

Items can be added to the agenda after the 72 hours ONLY if:

- a. If a majority determines that an emergency situation such as a work stoppage, or crippling disaster that impairs public health or safety exists; or
- b. If two-thirds of the members (where less than two-thirds of the members are present, a unanimous vote of the members who are present.); make both of the following findings:
  - (1) there is a need to take immediate action; and
  - (2) the need for action came to the attention of the City subsequent to the posting of the agenda.

5. Oral Petition

Every agenda must provide an opportunity for the public to directly address the legislative body on any item whether it is pertinent to the agenda or not. Issues raised during Oral Petition may be referred to staff for factual information, a report back at a future meeting; or to be placed on a future agenda for discussion. However, **members may not enter into a discussion** on the issue.

Public criticism of the policies, procedures, programs, or services of the City cannot be prohibited. However, this provision does not preclude the Mayor or Chair from exercising proper control of the meeting by precluding personal attacks on individuals, preventing disorderly conduct and imposing time limits.

6. Sign-up Sheets

Any written sign up sheet must specifically state that no one is required to sign his/her name.

7. Tax or Assessment Provisions

The Brown Act requires specified notices which will affect the timing of the adoption of any new or increased general tax or benefit assessment.

C. Meetings

1. Definition of "Meeting"

A "meeting" of a legislative body is defined to include the following:

- a. 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 their subject matter jurisdiction.
- b. Seriatim meetings (or a series of individual conversations are prohibited). Any use of direct communication, **personal intermediaries, or technological devices** that is employed by a majority of the members to develop a collective concurrence as to action to be taken on an item is prohibited. **Caution has to be taken when using electronic communications especially "E-mail" so that they do not result in seriatim meetings.**

Certain situations would not be considered a "meeting" as long as a majority of the members do not discuss, other than as part of the scheduled program, any business of a specific nature that is within their jurisdiction among themselves. These include:

- a. Individual contacts or conversations between a member and any other person but such **conversations cannot be carried on in a seriatim manner.**
- b. Attendance of a majority of the members at a conference or similar gathering that is open to the public and involves a discussion of issues of general interest to the public or to public agencies.
- c. Attendance of a majority of the members at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency.
- d. Attendance of a majority of the members at an open and noticed meeting of another body of the local agency.
- e. Attendance of a majority of the members at a purely social or ceremonial occasion.

## 2. Location of Meetings

**Meetings must be held within the San Jose city boundaries** except for the following purposes:

- a. To comply with state or federal law or to comply with a court order, or to attend a judicial or administrative proceeding to which San Jose is a party.
- b. To inspect real or personal property which cannot conveniently be brought to San Jose, provided that the topic of the meeting is limited to items directly related to the real or personal property. Thus, for example, the Real Estate Committee of the Retirement Boards can meet outside of San Jose to perform due diligence with respect to a real estate acquisition.
- c. To participate in meetings of multiagency significance, provided that the meeting or discussion is held within the jurisdiction of one of the participating agencies and is noticed by all participating agencies.

- d. To meet with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the City and over which the federal or state officials have jurisdiction.
- e. To visit the office of legal counsel for a closed session on pending litigation when to do so would reduce legal fees or costs.
- f. To meet in or nearby a facility owned by the City, provided that the topic of the meeting is limited to items directly related to that facility. For example, the Council could meet at Family Camp to discuss Family Camp's future.

3. Non-discrimination Requirement

Meetings cannot be held in any facility that prohibits the admittance of any person on the basis of race, religious creed, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.

4. Recording of Meetings

The Brown Act provides that any person attending an open meeting shall have the right to record the proceedings by audio or video tape recorder or a still or motion picture camera in the absence of a finding by the legislative body that the recording constitutes a disruption of the proceedings.

D. Closed Sessions

1. Reasons for Closed Sessions

The Brown Act prohibits closed session meetings unless the meeting comes under one of the specified exceptions. Most Boards, Commissions, and Task Forces **cannot** conduct closed sessions. There are detailed requirements for noticing a closed session and for disclosing votes taken in closed session. The exceptions which allow closed sessions are very limited. The exceptions which are relevant are:

a. Pending Litigation

A closed session may be held to confer with or receive advice from legal counsel regarding pending or threatened litigation when

discussion in open session concerning those matters would prejudice the position of the City in the litigation.

b. Personnel

The City Council may hold a closed session to consider the appointment of Department Heads, as well as employment, evaluation of performance, discipline or dismissal of Council Appointees or to hear complaints or charges brought against an Appointee, unless the Appointee requests a public session. The closed sessions held pursuant to the personnel exception are not to include discussion or action on proposed compensation, except for a reduction of compensation that results from the imposition of discipline.

Closed sessions may also be held by the Civil Service Commission to consider the discipline of employees who appeal to the Commission.

c. Labor

The Council can meet to review its position and provide instruction to its designated representatives with regard to the salaries, salary schedules and fringe benefits of both represented and unrepresented employees. It can direct its negotiators with regard to any other matter subject to collective bargaining for represented employees. These sessions may include discussions of a City's available funds and funding priorities, but only insofar as these discussions relate to providing instruction to the designated representative. Closed sessions held pursuant to this Section, shall not include final action on proposed compensation of one or more unrepresented employees.

d. Real Estate Negotiation

The Council can meet with its negotiator prior to the purchase, sale, exchange or lease of real property to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease.

E. Distribution of Materials and Reports

If staff or a member of the legislative body distributes a memorandum in connection with an agenda item, it must be made available to the public at the meeting. Therefore, **it is critical for the City Clerk or secretary** to the body to receive a copy of any last minute memorandum prior to the meeting.

Writings distributed by a member of the public at the meeting must be made available to members of the public after the meeting.

Any writing "distributed to all or a majority of the members by any other person" in connection with a matter subject to discussion or consideration at a public meeting," are considered public records subject to disclosure and must be made available to members of the public upon request without delay. Whenever a communication on an agenda item is addressed to the Mayor and City Council or Chair and members of a body, the Mayor's Office or Chair should provide a copy to the City Clerk or the secretary to the body.

## F. Enforcement.

### 1. Civil Actions

A civil lawsuit can be brought to invalidate certain actions taken by a legislative body in violation of the Brown Act, if a written demand to cure the violation has been rejected.

**The District Attorney or any interested person may initiate a civil action for the purpose of stopping or preventing violations or threatened violations of the Act.** If a court finds there are violations of the open meeting requirements, the court may order the legislative body to tape record its closed session and preserve recordings under terms of security and confidentiality as the court deems appropriate. If the court orders the legislative body to tape record closed sessions, it may also order disclosure of portions of the recordings in any future case brought for Brown Act violations.

The Act allows a court to award costs and attorneys fees to the prevailing plaintiff, and also allows the court to award costs and attorneys fees to the City, if the court finds that the action brought by plaintiff was clearly frivolous and totally lacking in merit.

### 2. Criminal Penalties

Certain violations of the Brown Act are misdemeanors. However, the criminal penalty sections apply only where an action is taken in violation of the Act, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Act. **This means that the criminal penalties are not imposed on a strict liability basis.**

This memorandum is intended as a general background of the Brown Act's main provisions. For more specific guidance and for answers to questions about the Brown Act, please feel free to contact the City Attorney's Office.