BROWN ACT

THE BROWN ACT

Presented by

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Government 101
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Brown Act Quiz

(please complete before Brown Act portion of training)

True or False?

1. *A meeting as defined in the Brown Act occurs only when some action is taken.* ***T F***

2. *Board members may poll each other by e-mail on any issues which may come before the board.* ***T F***

3. *A telephone conference between two members of a five-member board is a meeting under the Brown Act if they discuss district business.* ***T F***

4. *The board may take a vote by secret ballot:*
   in open session. ***T F*** *in closed session.* ***T F***

5. *Any person may record an open meeting of the board via audio or video tape recordings.* ***T F***

6. *A member of the public may address the board at a* <u>*regular*</u> *meeting on any item of interest to the public provided the matter is within the jurisdiction of the board.* ***T F***

7. *The board may limit the amount of time members of the public are allowed to speak on matters of public interest.* ***T F***

8. *The board is not required to announce in open session the items to be discussed in closed session.* ***T F***

9. *When considering the discipline of employees, the board must provide the employee 24 hours notice of his/her right to request a public session.* ***T F***

10. *In general,* <u>*reportable*</u> *action taken in closed session must be reported out in open session at the same meeting.* ***T F***

11. *The board may hold its meetings at any location it chooses within the county provided the public is notified, even if the agency is not countywide.* ***T F***

12. *A board member may divulge closed session information provided that he/she so advises the board before adjournment.* ***T F***

Understanding Brown Act Open Meeting Requirements

Harold Wood
Chief Deputy County Counsel

Barb Grunwald
Deputy County Counsel

Gary de Malignon
Chief Deputy County Counsel (Retired)

The Brown Act
What?

Establishes the procedural framework for members of local governmental decision-making bodies to openly meet, debate, and act.

Provides the means for the public to be informed about the views, discussions and actions of its locally elected and appointed government representatives.

The Brown Act

Why?

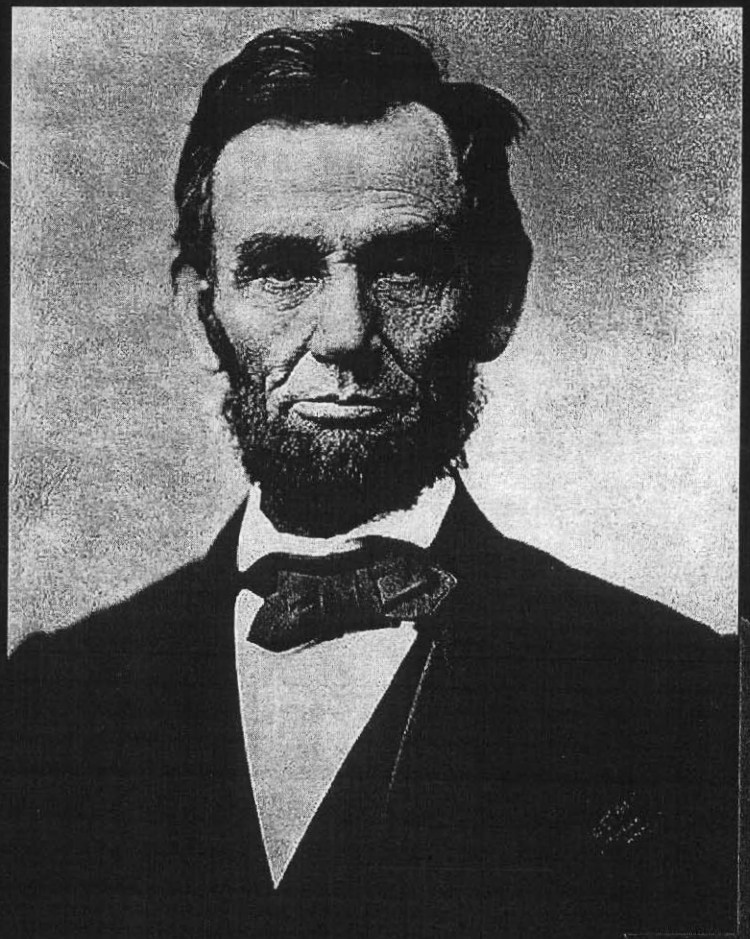
Government officials are elected by the people, represent the people, and govern on behalf of the people.

The public needs to observe, monitor, and evaluate its elected representatives

The Brown Act is designed to encourage public participation in local government.

"...government
of the people,
by the people,
for the people."

Abraham Lincoln,
Gettysburg Address
November 19, 1863



The Brown Act

- Legislature's stated intent -

". . . the public commissions, boards and councils. . . in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions. . . and. . . deliberations be conducted openly.

"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."

- Government Code § 54950

The Brown Act
History

Introduced by Modesto Assemblyman Ralph M. Brown more than 50 years ago.

Legislature has ***frequently*** added to the requirements of the Act over the years.

Requirements are detailed, comprehensive and complex.

The Brown Act
Who (is Covered)?

All governing boards of local government agencies.

The advisory and standing sub-committees created by such governing boards.

All boards, committees and bodies created by federal or state law.

The Brown Act
- *How?*

All meetings of government bodies must be fully open and accessible to the public.

Boards must discuss, deliberate and act on the public's business openly.

Exceptions to the rule of openness are few and narrowly construed.

The Brown Act
What is a Meeting?

A meeting is:

A majority of board members present at the same time and place to "**hear**, **discuss** or **deliberate**" government business.

The Brown Act

- 3 Important Points -

Only "face-to-face" meetings of a majority of board members are authorized meetings.

Collective decision-making is a process with three different aspects.

Any gathering of a majority of board members that involves any aspect of the ***decision-making*** process triggers Brown Act open meeting requirements.

The Brown Act
What is not a Meeting?

Conferences, training, workshops.

Community forums, and meetings of other government bodies.

Social or ceremonial occasions.

The Brown Act

What is an Illegal Meeting?

A majority of members ***cannot***:

Use a telephone, fax machine, e-mail, a chat room, an intermediary or other devices ***to develop*** consensus, agreement, or a decision.

A "***serial meeting***" is a series of meetings to develop a decision, each of which involves less than a majority of members, but which taken together involve a majority of board members.

The Brown Act

Examples of Prohibited Meetings

"Polling" of board members by another board member (personally or through staff or technology) is strictly prohibited.

Staff can meet individually with a majority of board members if no info re other board members' views provided.

The Brown Act

What is not an illegal meeting?

Attorney-client communication.

"One-way" communication by staff to solitary board members.

A board member individually may confer with constituents, staff, consultants, or a colleague.

The Brown Act
What about E-Mail?

A majority of board members cannot:

Use e-mail to develop a collective consensus, agreement, or decision.

Exchange information in e-mail about their views or positions on public business.

The Brown Act
Specifics

Meetings must:

- Be noticed in advance;
- Include only business described in the agenda;
- Take place within agency boundaries;
- Be completely accessible by the public.

The Brown Act
Notice Requirements

Notice and agenda for regular meeting must be:

Posted 72 hours in advance;

Posted in an accessible location;

Mailed to persons who request notice.

Special meetings may be called by posting an agenda at least 24 hours before the meeting.

The Brown Act
Agenda Requirements

Agendas must contain a brief description of every item to be discussed, including closed session items.

Descriptions must be clear enough to be understood by members of the public.

Agendas for regular meetings must include a time for public comment.

The Brown Act
What are the Public's Rights?

Members of the public have the right to:

- address the board on both agenda and non-agenda items;
- be accommodated, if disabled, so they can access and participate in the meeting;
- get copies of written materials distributed to the board, except privileged items.

The Brown Act

Location of Meetings

The Brown Act
Location of Meetings

Boards must meet within the boundaries or jurisdiction of the government agency.

Certain exceptions:

Inspect real/personal property;

Meet with federal/state officials to discuss legislative or regulatory issues;

Hold a closed session meeting with legal counsel.

The Brown Act

Are Closed Door Meetings Allowed?

Closed sessions are narrowly authorized for specific matters.

Special disclosures have to be made by the board before and after holding a closed session.

The Brown Act
Closed Session – Personnel

- ✓ To consider the employment, evaluation of performance, discipline or dismissal of a public employee.
- ✓ To hear complaints or charges against an employee by another person or employee.

The Brown Act

Closed Session – Student Matters

- ✓ To consider the expulsion, suspension, discipline, or any other action concerning a pupil that would divulge pupil information.
- ✓ Written notice must be provided to the parent and pupil of their right to request that the matter be considered in an open session.

The Brown Act
Closed Session – Labor Negotiations

- ✓ To meet with bargaining representatives to review the agency's negotiating position and instruct its representatives regarding represented or unrepresented employees.

The Brown Act
Closed Session – Pending Litigation

- ✓ To consult with or receive advice from legal counsel concerning pending litigation when a public discussion of such matters would prejudice the local agency in the litigation.

The Brown Act
Closed Session – Real Property Matters

- ✓ To grant authority to the agency's negotiator regarding price and terms of payment prior to the purchase, sale, exchange, or lease of real property.

- ✓ A discussion of potential sites is **<u>not</u>** authorized.

The Brown Act
Closed Session – Security of Public Facilities

To meet with law enforcement or security consultants on matters posing a threat to:

- ✓ the security of public buildings;
- ✓ the security of essential public services; or
- ✓ the public's right of access to public services or public facilities.

The Brown Act

Limited Scope of Closed Sessions

Caveat:

Discussions in closed session must not go beyond the limited scope of the closed session.

The Brown Act
Special Requirements for Closed Sessions

Agenda must include a brief description of the nature of the closed session.

The board must disclose, in open session, the items to be discussed in closed session.

The board must make a public report of certain actions taken in closed session.

The Brown Act

Closed Session – Confidentiality

Except for reporting-out requirements, confidentiality of closed session matters must be preserved.

Sanctions – violation can result in a lawsuit to enforce confidentiality, disciplinary action against an employee, or referring the matter to the grand jury.

The Brown Act
Can you be sued?

Civil Remedies:

- Compliance with the Brown Act can be enforced by civil lawsuit.
- A court can declare board actions void that are not in compliance with the Act, if not cured.
- The agency can be liable for significant costs and attorneys' fees.

The Brown Act
Criminal Penalty

A violation of the Brown Act may be a misdemeanor if a member participates in board action with the "wrongful intent to deprive the public of information."

The Brown Act
Quiz Answers

True or False?

1. *A meeting as defined in the Brown Act occurs only when some action is taken.* *FALSE*

2. *Board members may poll each other by e-mail on any issues which may come before the board.* *FALSE*

3. *A telephone conference between two members of a five-member board is a meeting under the Brown Act if they discuss district business.* *FALSE*

The Brown Act
Quiz

4. *The board may take a vote by secret ballot: in open session; FALSE in closed session.* *FALSE*

4. *Any person may record an open meeting of the board via audio or video tape recordings.*

5. *A member of the public may address the board at a regular meeting on any item of interest to the public provided the matter is within the jurisdiction of the board.* *TRUE*

The Brown Act
Quiz

7. *The board may limit the amount of time members of the public are allowed to speak on matters of public interest.* *TRUE*

8. *The board is not required to announce in open session the items to be discussed in closed session.* *FAL*

9. *When considering the discipline of employees, the board must provide the employee 24 hours notice of his/her right to request a public session.* *TRUE*

The Brown Act
Quiz

10. *In general, reportable action taken in closed session must be reported out in open session at the same meeting.* TRUE

11. *The board may hold its meetings at any location it chooses within the county provided the public is notified, even if the agency is not countywide.* FALSE

12. *A board member may divulge closed session information provided that he/she so advises the board before adjournment.* FALSE

Conclusion

- Board members are representatives of the people whom the people entrust to manage government affairs.
- The Brown Act is for the benefit of the public that board members represent.
- The Brown Act must be taken seriously: failure to do so can result in legal penalties and public criticism.