

# *COUNTY OF MARIN*

## **3. BROWN ACT**

**“In enacting this chapter, the Legislature finds and declares that the 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 RALPH M. BROWN ACT (Government Code Section 54950, et seq.)**

#### General

The Brown Act embodies the philosophy that public agencies exist for the purpose of conducting public business, and the public has the right to know how its “collaborative decisions” are being made. It represents the determination of the balance that should be struck between access on the one hand, and the need for confidential candor on the other. There is a presumption in favor of access, with exceptions for confidentiality where there has been a demonstrated need. The exceptions are construed narrowly.

The Brown Act may be divided into six topics: to whom does the Act apply, what is a meeting, the agenda requirements, the public’s rights, closed sessions, and consequences for violation.

1. Bodies covered by the Brown Act
  - A. Legislative bodies of local agencies, e.g., boards, commissions, councils and committees. Also applies to person who is elected as part of body who has not yet taken office.
  - B. Does not apply to individual decision makers, e.g., department heads, legislative bodies acting in judicial capacity, bodies created by single

decision maker.

- C. “Local agencies” include cities, counties, school districts, special districts, municipal corporations, etc. (There is a separate law for state agencies.) Factors used in assessing “localness” include geographical coverage, duties of the agency, existence of oversight, provisions concerning membership, and appointment.
- D. “Legislative bodies” include governing bodies and their subsidiary bodies, e.g., boards, commissions, committees or other bodies of a local agency that are created by charter, ordinance, resolution or ‘normal action’ of a legislative body. This applies regardless of “temporary v. permanent,” and “advisory v. decision making.”
- E. Standing committees are those which have continuing jurisdiction over a particular subject matter (e.g. budget, finance, legislation) or whose meeting schedule is fixed by resolution or action of the body that created the committee. Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act.

- F. There is a specific exception for “non-standing” (or ad hoc) advisory committees that are composed of less than a quorum of the legislative body that serves a limited or single purpose, is not perpetual, and will be dissolved once its specific task is completed.
- G. If a legislative body designates less than a quorum of its members to meet with representatives from another body to exchange information, a separate body is not formed. However, if less than a quorum meets with another agency to perform a task, e.g., make a recommendation, a separate legislative body is formed.

2. What is a meeting?

- A. Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction. Can include lunches, social gatherings, board retreats.
- B. Serial meetings fall under the provisions of the Brown Act if they are for the purpose of developing a concurrence as to action to be taken.
  - 1. A serial meeting is a series of communications (whether in person or by phone or other media), each of which individually involves less than a quorum, *but* which, taken as a whole, involve a majority of the commission’s members. Examples include meetings of commission members’ intermediaries, chain communications (a@b@c), and hub communications (a@b, a@c).
  - 2. ‘Concurrence as to action to be taken’ includes substantive matters that are or are likely to be on a commission’s agenda, but does not include purely housekeeping matters (e.g., times, dates and locations of upcoming meetings.)
- C. Exemptions for: 1) individual contacts between members of the public and commission members; 2) \*conferences open to the general public which involve issues of interest to the body; 3) \*community meetings; 4) meetings of other bodies under same local agency; or 5) social or ceremonial occasions, as long as a majority of the members do not discuss application of specific issues to the legislative body.

(\*as long as majority does not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.)

### 3. Notice and Agenda Requirements

- A. Every regular meeting of a legislative body of a local agency must be preceded by a posted agenda.

An agenda must be posted at least 72 hours prior to meeting in a location accessible to the public 24 hours a day, 7 days a week. The agenda should contain a brief general description (generally no longer than 20 words are required) of each action or discussion item to be considered, including items to be considered in closed session.

The purpose is to notify members of public of items in which they may wish to participate.

The agenda must contain opportunity for public testimony. The legislative body may impose reasonable time limitations. The legislative body cannot take action on a matter raised for the first time during "public comment" if the item is not on the agenda.

- B. Exceptions:

1. Special meeting – requires 24 hours notice, no business may be considered except that for which meeting was called.
2. Emergency meeting - (crippling disasters, strikes, public health and/or safety threats) may be called on one-hour notice and requires majority vote of the body. No closed session permitted.
3. Urgency item – if there is a need to add an item to an existing agenda for immediate action and the need to take action came to the attention of the local agency subsequent to the agenda being posted (requires vote of 2/3 of entire body, or if fewer than 2/3 are present, 100% of all remaining members). This exception requires a degree of urgency. A "new" need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline.
4. Adjournments and continuances - need not be separately posted if subsequent meeting is continued for no more than five days. However, a copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

- C. Public Testimony - agenda must contain opportunity for public testimony. May impose reasonable time limitations. Cannot take action on matter raised for first time in "public comment" if item not on agenda.

- D. Location of meetings - must generally be within geographic boundaries of the body's jurisdiction, except for compliance with law or court order, to inspect real property, meetings of multi-agency significance, nearest available facility if body has none available, meeting with state or federal officials to discuss regulatory issues, nearby facility to discuss facility itself, visit to legal counsel to reduce fees.

4. Rights of the Public.

- A. Access generally means the right to be notified of items to be considered (agenda), to attend meetings of legislative bodies without identifying oneself, to record the meeting, to have access to documents distributed to members of the legislative body<sup>1</sup>, not to pay for the agency's costs in complying with the Brown Act, to be free from discrimination, and to provide public comment. No meeting can be held in a facility that is inaccessible to the disabled.
- B. Legislative bodies may provide greater public access than required by the Brown Act.

5. Permissible Closed Sessions.

The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public.

**\*In general, most advisory commissions do not hear matters which would qualify for a closed session. However, since there are some exceptions such as the Personnel Commission and Retirement Board, a brief discussion of the subject follows.**

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees.

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<sup>1</sup> Recent legislation (SB343) amends Section 54957.5 of the Government Code. The new law requires that a writing that relates to an agenda item for an open session of a regular meeting shall be made available for public inspection at the time the writing is distributed to all, or a majority of all, the members of the legislative body. In order to comply with the requirement to make writing that is distributed after the 72-hour posting "available" for public inspection, the local legislative body must make the writing available at a public office location that the agency shall designate for this purpose. Therefore, each local agency is required to list the address of that office or location on the agenda for all meetings of the body. Staff should also be prepared to provide additional copies of the supplemental material to the public at the meeting.

Closed sessions require three types of notice— agenda, pre-closed session announcement, and post-closed session report of action taken. The agenda must state the specific statutory exemption that applies.

A. Litigation and attorney-client privilege.

1. Existing litigation – includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The legislative body may meet to receive updates on the case from attorneys, participate in developing strategy as the case develops, or to consider alternatives for resolution of the case. Generally an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation that requires actions that are subject to public hearings cannot be approved in closed session.
2. Potential litigation – closed sessions are authorized for legal counsel to inform the legislative body of facts and circumstances that suggest that the local agency has significant exposure to potential litigation. The Brown Act lists six separate categories of such facts and circumstances (Government Code section 54956.9(b))
3. Initiation of litigation – a closed session may be held when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

B. Personnel exception.

1. Applies to appointment, employment, evaluation of performance, discipline or dismissal of public employee.
2. Employee may request hearing be conducted in public only if purpose is to discuss specific instances of misconduct. Employee has right to 24 hours notice of any closed session to hear specific complaints or changes. However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation.
3. Employee does not include elected officials, independent contractors, member of legislative body.
4. Must pertain to particular employee, not employees in general. No abstract discussions regarding creation of new positions, unless workload discussion involves performance of a specific employee. May not be used for discussion or action on proposed compensation, except for a disciplinary reduction in pay.

C. Real Estate Negotiations

1. A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency.
2. After real estate negotiations are concluded, approval of the agreement and the substance of the agreement must be reported.

D. Labor Negotiations

A legislative body may meet in closed session to instruct its bargaining representatives on employee salaries and fringe benefits. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

E. Grand Jury Testimony

A legislative body may testify in private before a grand jury, either individually or as a group.

F. License Applicants with Criminal Records

G. Public Security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, or to the public's right of access to public services or facilities.

H. Multijurisdictional Drug Law Enforcement Agency

6. Consequences of Violation.

A. Criminal penalties. Misdemeanor where action taken in violation of the act.

B. Civil remedies:

1. Injunction, mandamus, declaratory relief
2. Action may be voided following notice to correct, which must be received within 90 days, and acted on within 30 days, lawsuit filed within 15 days.

C. Attorney fees

1. Awarded against agency, not individual.

7. Further information/full text

If you would like additional information regarding the Brown Act or you would like the full text, please visit the California Attorney General's website at [www.ag.ca.gov/index.htm](http://www.ag.ca.gov/index.htm) and/or the California State Code website at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html) and search for Government Code 54950.



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# Charter board in violation of meeting act

## Judge sends directors back to school

By Con Garretson *IJ* reporter

The Novato Charter School Board of Directors broke the state's open meetings law several times last year and board members could face fines or jail time *if* future violations occur, a judge has ruled.

Also, board members and the school's director must attend a seminar on the Ralph M. Brown Act in the next six months under the terms of a final judgment and permanent injunction signed last week by Marin County Superior Court Judge Lynn Duryee.

Officials said they weren't certain, but it might be the first such judgment against a public agency in Marin County. An expert on the Ralph M. Brown Act said it is the first time that such a legal ruling has been made against a California charter school under the 48-year-old law. Novato Charter School officials, without admitting wrongdoing, settled a civil complaint filed by the Marin County District Attorney's Office resulting from a December letter signed by a group of school parents, said Deputy District Attorney Robert Nichols, who investigated the case.

At issue are seven instances in which the board failed to meet the requirements of the state public meetings law in the second half of 2000, including failure to properly notify the public of meetings, the agendas of closed sessions and decisions made during such sessions.

The judgment notes that the charter school, established in 1996, "has limited resources and experience regarding compliance with the Ralph M. Brown Act."

The act, established by the state Legislature, is designed "to ensure the accountability of government officers and to enable citizens' oversight of government agencies by keeping official decision-making processes as open as possible to public knowledge and participation," according to the California First Amendment Coalition.

The act sets out regulations governing public information on meetings and open and closed sessions. Nichols said there was no evidence that the board or the director *intended* to break the Brown Act, which could have led to an even rarer criminal prosecution.

"Our belief was that the violations in this case were more erroneous than intentional," he said. The judgment does not specifically identify the board members — Philip Hallstein, Curt Kruger, Jeanette Longtin, Janine Perra and Mary Williams, but applies to them and school Director Rachel Bishop, who also was not named.

Nichols said the Brown Act typically applies only to elected officials, but in this case Bishop was included because of the role she plays in setting and conducting public meetings. Bishop did not return a call left at the school yesterday.

“All I can really say in response to any question you may ask is that we have been advised by our attorneys to make no comment other than to say that the issue has been resolved,” Longtin said yesterday.

Nichols said the judgment, which included an order to pay \$2,500 in DA investigative costs, also will apply to all future board members and directors. Each future violation could mean a maximum \$1,000 fine, six months in jail or both, he said. Fines could apply to individuals and the school, he said.

## ***“This is probably something that other charter schools would want to be aware of”***

*–Terry Francke~ general counsel. California First Amendment Coalition*

The same penalties would apply to public officials or agencies convicted of a criminal violation of the Brown Act, however, no one has ever been found guilty of the misdemeanor, said Terry Francke, general counsel for the California First Amendment Coalition.

“Wow,” Francke said. “It’s the first time I’m aware of that a court has ever dealt with a Brown Act issue against the board of a charter school. This is probably something that other charter schools would want to be aware of.”

Francke said Novato Charter School officials could have argued that the school did not fall under the auspices of the Brown Act, although it is a public school with teachers paid by the Novato Unified School District. Because the issues will not be heard by a state appeals court, the decision will not become a state legal precedent, he said.

The violations came to light after some parents became frustrated by the way former eighth-grade teacher Chris Topham was fired by the board behind closed doors. The board failed to disclose what items were discussed on closed session agendas and what actions were taken during them, the parents wrote, both violations of the state open meetings law. Other meetings were not publicized in the manner required by the Brown Act, they wrote.

Topham, who could not be reached yesterday, was not advised of his option under the law to have his termination hearing in an open session; said Ann Falletta of Petaluma, who pulled her two children out of the school. Topham later financially settled with the school for legal costs and other expenses from his unsuccessful fight for reinstatement, she said.

Seven of the 24 children in Falletta’s daughter’s eighth-grade class left for other schools after Topham was fired. Her daughter, Ashlan, followed Topham to Summerfield Waldorf School in Santa Rosa, where he still teaches.

Falletta brought the violations to the attention of the First Amendment Project of Oakland and was advised to write a letter to the school board and the district attorney’s office to “correct” the wrongdoing. Once the letter was received, Falletta said the violations ceased for the most part.

“The board is required to notice any public meetings in an accessible way 72 hours in advance,” Falletta said. “There was one time (earlier this year) that the only notice was posted in a courtyard of the school at 3 p.m. on Friday for a special meeting on Sunday, and it was closed all weekend. That’s not following the spirit of the law.”

Falletta said she did not know much about the Brown Act until she began doing research on public access laws. “The more I looked into it the more I realized this is a tool for newspaper people,” Falletta said. “Everything I read said, ‘Call your editor. Well I don’t have an editor. It’s really a journalist’s bailiwick.’”

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# Sanitary District settles complaint

## Las Gallinas Valley board accused of violating meeting law

By Con Garretson  
*IJ reporter*

The Las Gallinas Valley Sanitary District yesterday settled a civil complaint that accused board members of violating the state's open meetings law by deliberating in private. It was only the second judgment against Marin elected officials in connection with violations of the Ralph M. Brown Act, according to Marin Deputy District Attorney Bob Nichols, who led an investigation by his agency.

The settlement approved by Judge Lynn Duryee and filed yesterday, indicates the violations were made up of district matters being deliberated and decided upon by a majority of directors outside of a meeting setting, which is two separate violations. The illegal meetings did not have an agenda, nor were they publicized by a public notice, which made up the two other alleged violations in this case, according to the court documents.

In settling the lawsuit without admitting wrongdoing, the district agreed to pay \$7,500 in district attorney investigative expenses and have board members attend a seminar on the Brown Act, a term that was met in January.