



**SPECIAL MEETING
OF THE POLICY COMMITTEE
LOCATION: TELECONFERENCE – SEE BELOW**

January 19, 2023, 3:00 PM

AGENDA

IMPORTANT NOTICE REGARDING COVID-19 AND TELECONFERENCED MEETINGS:

Based on the authority under AB 361 and the guidance from the County Public Health Officer and the CDC to minimize the spread of the coronavirus, please note the following changes to the District's ordinary meeting procedures:

- The District's Board Room is not open to the public at this time.
- The meeting will be conducted via teleconference using Zoom.
- All public members seeking to observe and/or to address the local legislative body may participate in the meeting telephonically or electronically in the manner described below.

HOW TO OBSERVE THE MEETING:

Telephone: Listen to the meeting live by calling Zoom at **(408) 636-0968** or **(669) 900-6833**.

Enter the **Meeting ID# 650-344-8592** followed by the pound (#) key. If the line is busy, more phone numbers can be found on Zoom's website at <https://zoom.us/u/abb4GNs5xM>.

Computer: Watch the live streaming of the meeting from a computer by navigating to <https://zoom.us/j/6503448592> using a computer with internet access that meets Zoom's system requirements (see <https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>)

Mobile: Log in through the Zoom mobile app on a smartphone and enter **Meeting ID# 650-344-8592**.

ACCESSIBILITY INFORMATION:

Board Meetings are accessible to people with disabilities and others who need assistance. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to observe and/or participate in this meeting and access meeting-related materials should contact Brian Weber, District Manager, at least 48 hours before the meeting at (650) 344-8592 or bweber@smcmvcd.org. Advanced notification will enable the District to swiftly resolve such requests to ensure accessibility.

PUBLIC RECORDS:

Public records that relate to any item on the open session agenda for a meeting are available for public inspection. Those records that are distributed after the agenda posting deadline for the meeting are available for public inspection at the same time they are distributed to all or a majority of the members of the Board. The Board has designated the District's website at <https://www.smcnvcd.org/board-meetings> as the place for making those public records available for inspection. The documents may also be obtained by calling the District Manager.

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
 - Secretary of the Board will take roll call
- 4. PUBLIC COMMENTS AND ANNOUNCEMENTS**
 - This time is reserved for public members to address the Board relative to matters of the District, not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to three minutes per person (or six minutes where a translator is used). Speaker cards are available for those making a public comment
- 5. Review District Policy 2070 Family Care and Medical Leave**
- 6. Review new District Policy 4000 District use of unmanned aerial systems (UAS)**
- 7. Discuss information and alternatives related to in-person Board meetings**
- 8. ADJOURNMENT**

Agenda Item 5

**SUBJECT: POLICY 2070 FAMILY, MEDICAL, AND PREGNANCY DISABILITY
LEAVE FOR EMPLOYEES IN CALIFORNIA**

This item will be tabled until a future meeting.

Agenda Item 6

**SUBJECT: REVIEW POLICY 4000 DISTRICT PRIVACY POLICY REGARDING
USE OF UNMANNED AERIAL SYSTEMS (UAS)**

SUMMARY

In 2022, the District received authorization from the Federal Aviation Agency (FAA) and the California Department of Pesticide Regulations (DPR) to use Unmanned Aerial Systems (UAS) to conduct mosquito control applications. With increased UAS use imminent, staff developed a series of administrative policies to ensure safe, transparent, and responsible UAS use within vector control operations.

The policy intends to promote responsible UAS use by District staff and publicly address privacy concerns. The policy was drafted using guidelines from the National Telecommunications Information Administration (NTIA) Voluntary Best Practices for UAS Privacy, Transparency, and Accountability.

STAFF RECOMMENDATION

Staff recommends that the Policy Committee recommend that the Board approve Policy 4000 District use of unmanned aerial systems as part of the District's integrated vector management program.

Materials Attached:

- A. District Draft Policy 4000 District use of unmanned aerial systems (UAS)

Materials Available upon request:

- B. Voluntary Best Practices for UAS Privacy Transparency and Accountability



POLICIES AND PROCEDURES

TITLE: **District Privacy Policy regarding Use of Unmanned Aerial Systems (UAS)**

NUMBER: **4000**

4000.10 This policy establishes guidelines on the use of unmanned aerial systems (UAS) by the San Mateo County Mosquito and Vector Control District (“District”) with respect to privacy concerns. The District is committed to using this technology responsibly, ethically, and respectfully. As a result, the District has adopted this Policy to promote privacy, transparency, and accountability to the residents of San Mateo County.

4000.101 This policy shall govern the District's use of UAS. The District intends to utilize this technology to aid surveillance and control operations while ensuring that all UAS use is focused on safety and respect for individual privacy while reducing the District's environmental footprint.

4000.102 The District will monitor and comply with all laws (Federal, State, & County) and regulations applicable to UAS. As laws and regulations evolve and UAS technology improves, the District will review this policy and update it as needed.

4000.20 The District shall only use UAS in a manner consistent and applicable to vector surveillance and control methods in San Mateo County and consistent with the District's Integrated Mosquito and Vector Control Program. The District prohibits using a UAS to collect information on individuals or private property except when statutorily required.

4000.30 The District adopts the following guidelines for operating UAS and collecting and storing data:

4000.31 In the absence of a compelling need to do otherwise, or consent of the data subjects, the District will refrain from collecting covered data¹ when the District knows

¹ “Covered data” means information collected by a UAS that identifies a particular person. If data collected by UAS likely will not be linked to an individual's name or other personally identifiable information, or if the data is altered so that a specific person is not recognizable, it is not covered data.

the data has a reasonable expectation of privacy.

4000.32 The District will make a reasonable effort to avoid knowingly retaining covered data longer than reasonably necessary to fulfill its statutorily required purpose.

4000.33 If publicly disclosing covered data is not necessary to fulfill the purpose for which the UAS is used, the District will endeavor to avoid knowingly publicly disclosing data collected via UAS until the operator has undertaken a reasonable effort to obfuscate or de-identify covered data unless the data subjects provide consent to the disclosure.

4000.50 Only District employees with a valid remote pilot license issued by the US Federal Aviation Administration (FAA) and a properly trained pilot are permitted to operate a UAS.

4000.51 Any UAS work carried out by SMCMVCD staff will comply with the SMCMCD UAS Operators' manual.

Reviewed by legal:

Approved: February 8, 2023

Agenda Item 7

SUBJECT: REVIEW COVID-19 INFORMATION AND DETERMINE OPTIONS AND ETIQUETTE FOR IN-PERSON BOARD MEETINGS

SUMMARY

Governor Gavin Newsom recently announced that the COVID-19 State of Emergency will end on February 28, 2023, effectively removing any prior Brown Act teleconference modifications and some COVID prevention regulations. The SMCMVCD Board must consider how to comply with pre-COVID Brown Act provisions (**Attached as Item 7.1**) and determine which COVID-19 safety precautions they would like to adopt for in-person Board and Committee meetings.

BACKGROUND

The Board has directed the Policy Committee to review options related to in-person public meetings, including the associated cost, staff time requirements, and safety precautions. The information below should be used to advise the Board and eventually direct staff on preparing a meeting space and drafting an in-house policy on meeting attendance etiquette. Staff is asking that the three key items be considered when deciding the future of Board and Committee meetings in the following order. They are as follows:

1. The meeting **location** and their impacts on staff time, finances, and other considerations
2. **Attendance requirements** (i.e., masks, vaccinations proof, food, wellness checks, testing) for the Board, staff, consultants, and the public
3. **Attendee etiquette** (i.e., distancing requirements, food, eating location, etc.)

Below is information regarding the various meeting locations.

Location	Cost	Staff Time	Other considerations
Rented space, public or private	From \$400-\$1,200 per meeting, depending on location and amenities	2 hours per meeting, depending on location, amenities, and meeting frequency	<ul style="list-style-type: none"> • Policies will need to be altered • Food, date, property rules, and time restrictions • Staff may be limited in implementing safety measures (i.e., filtration, ventilation, cleaning, etc.)

<p>1415 N. Carolan</p>	<ul style="list-style-type: none"> • carpet - \$3,200 • wall partitions - \$8,000- \$12,000 • A/V equipment - \$200 - \$1,000 <p>Approximate total - \$ 11 – 16k</p>	<p>8-16 hours one-time</p>	<ul style="list-style-type: none"> • Policies will need to be altered • Heating and sound issues • May not look professional
<p>Headquarters</p>	<p>N/A</p>	<p>N/A</p>	<ul style="list-style-type: none"> • Small space could increase exposure potential

When deciding on attendance requirements and meeting etiquette, the committee should know that the CDC’s multi-layered approach for indoor public spaces will be implemented to the extent feasible at all locations. Below is a list of the CDC’s approach.

Engineering Controls

This includes increasing ventilation and filtration.

Administrative Controls

These practices are designed to reduce crowding or occupancy by allowing remote/video meetings for non-essential attendees. Limiting the number of meeting attendees, limiting the use of small spaces, such as bathrooms, lobbies, and kitchens

Reconfiguration of Building Spaces and Furnishings

Reconfiguration efforts may include reorientation, spacing, or elimination of furniture.

Cleaning and Disinfection

Staff will clean and disinfect surfaces in all meeting locations before use by the Board.

Once the Policy Committee decides on a location, the meeting requirements and etiquette should be considered and tailored to the meeting space. It should be mentioned that as of January 2023, the Occupational Safety and Health Standards Board (OSHA) no longer requires any distance, masking, or other typical COVID prevention controls (see attached **Agenda item 7.2**). Therefore, meeting requirements adopted by the Board must also be enforced by the Board.

Below are things to consider:

- Should food be served, and if so, where?
- Should masks, proof of vaccination, negative tests, and social distancing be required?
- Should attendance conditions be applied to staff and the public?
- When will these conditions be reconsidered, and what are their triggers?

STAFF RECOMMENDATION

Staff recommends that the Policy Committee use the included information to help determine the best course of action related to in-person Board meetings.

Materials Attached:

1. Summary of the Major Provisions and Requirements of the Ralph M. Brown Act
2. Cal/OSHA COVID-19 Prevention – Non-Emergency Regulation



Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

The Ralph M. Brown Act is California's "sunshine" law for local government. It is found in the California Government Code beginning at Section 54950. In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.

A. Application of the Brown Act to "Legislative Bodies"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council) and any commission, committee, board or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body (Section 54952).

Standing committees of a legislative body, which consist solely of less than a quorum of the body, are subject to the requirements of the Act. Some common examples include the finance, personnel, or similar policy subcommittees of the city council or other city legislative body that have either some "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. Standing committees exist to make routine and regular recommendations on a specific subject matter, they survive resolution of any one issue or matter, and are a regular part of the governmental structure.

The Brown Act does not apply to *ad hoc* committees consisting solely of less than a quorum of the legislative body, provided they are composed solely of members of the legislative body and provided that these *ad hoc* committees do not have some "continuing subject matter jurisdiction," and do not have a meeting schedule fixed by formal action of a legislative body. Thus, *ad hoc* committees would generally serve only a limited or single purpose, they are not perpetual and they are dissolved when their specific task is completed.

Standing committees may, but are not required to, have regular meeting schedules. Even if such a committee does not have a regular meeting schedule, its agendas should be posted at least 72 hours in advance of the meeting (Section 54954.2). If this is done, the meeting is considered to be a regular meeting for all purposes. If not, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply.

The governing boards of private entities are subject to the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the public agency, or (ii) the private entity receives funds from the local agency and the private entity's governing body includes a member of the legislative body who was appointed by the legislative body (Section 54952).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency who have not yet assumed the duties of office (Section 54952.1). Under this provision, the Brown Act is applicable to newly elected, but not-yet-sworn-in councilmembers.

B. Meetings

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act definition of the term "meeting" (Section 54952.2) is a very broad definition that encompasses almost every gathering of a majority of Council members and includes:

"Any congregation of a majority of members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."

In plain English, this means that a meeting is any gathering of a majority of members to hear or discuss any item of city business or potential city business.



There are six specific types of gatherings that are not subject to the Brown Act. We refer to the exceptions as: (1) the individual contact exception; (2) the seminar and conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of members falls within one of the exceptions discussed below, if a majority of members are in the same room and *merely listen* to a discussion of city business, then they will be participating in a Brown Act meeting that requires notice, an agenda, and a period for public comment.

1. The individual contact exception

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting (Section 54952.2(c)(1)). However, such contacts may constitute a “serial meeting” in violation of the Brown Act if the individual also makes a series of individual contacts with other members of the legislative body serving as an intermediary among them. An explanation of what constitutes a “serial meeting” follows below.

2. The seminar and conference exception

The attendance by a majority of members at a seminar or conference or similar educational gathering is also generally exempt from Brown Act requirements (Section 54952.2 (c)(2)). This exception, for example, would apply to attendance at a California League of Cities seminar. However, in order to qualify under this exception, the seminar or conference must be open to the public and be limited to issues of general interest to the public or to cities. Finally, this exception will not apply to a conference or seminar if a majority of members discuss among themselves items of specific business relating to their own city, except as part of the program.

3. The community meeting exception

The community meeting exception allows members to attend neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings sponsored by an organization other than the city at which issues of local interest are discussed (Section 54952.2(c)(3)). However, members must observe several rules that limit this exception. First, in order to fall within this exception, the community meeting must be “open and publicized.” Therefore, for example, attendance by a majority of a body at a homeowners association meeting that is limited to the residents of a particular development and only publicized among members of that development would not qualify for this exemption. Also, as with the other exceptions, a majority of members cannot discuss among themselves items of city business, except as part of the program.

4. The other legislative body exception

This exception allows a majority of members of any legislative body to attend meetings of other legislative bodies of the city or of another jurisdiction (such as the county or another city) without treating such attendance as a meeting of the body (Section 54952.2(c)(4)). Of course, as with other meeting exceptions, the members are prohibited from discussing city business among themselves except as part of the scheduled meeting.

5. The social or ceremonial occasion exception

As has always been the case, Brown Act requirements do not apply to attendance by a majority of members at a purely social or ceremonial occasion provided that a majority of members do not discuss among themselves matters of public business (Section 54942.2(c)(5)).

6. The standing committee exception

This exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the standing committee without making the gathering a meeting of the full legislative body itself. The exception is only applicable if the attendance of the members of the legislative body who are not standing committee members would create a gathering of a majority of the legislative body; if not, then there is no “meeting.” If their attendance does establish a quorum of the parent legislative body, the members of the legislative body who are not members of the standing committee may only attend as “observers” (Section 54952.2(c)(6)). This means that members of the legislative body who are not members of the standing committee should not speak at the meeting, sit in their usual seat on the dias or otherwise participate in the standing committee's meeting.



With a very few exceptions, all meetings of a legislative body must occur within the boundaries of the local governmental agency (Section 54954). Exceptions to this rule which allow the City Council to meet outside the City include meeting outside the jurisdiction to comply with a court order or attend a judicial proceeding, to inspect real or personal property, to attend a meeting with another legislative body in that other body's jurisdiction, to meet with a state or federal representative to discuss issues affecting the local agency over which the other officials have jurisdiction, to meet in a facility outside of, but owned by, the local agency, or to visit the office of the local agency's legal counsel for an authorized closed session. These are meetings and in all other respects must comply with agenda and notice requirements.

“Teleconferencing” may be used as a method for conducting meetings whereby members of the body may be counted towards a quorum and participate fully in the meeting from remote locations (Section 54953(b)). The following requirements apply: the remote locations may be connected to the main meeting location by telephone, video or both; the notice and agenda of the meeting must identify the remote locations; the remote locations must be posted and accessible to the public; all votes must be by roll call; and the meeting must in all respects comply with the Act, including participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. No person can compel the legislative body to allow remote participation. The teleconferencing rules only apply to members of the legislative body; they do not apply to staff members, attorneys or consultants who can participate remotely without following the posting and public access requirements.

All actions taken by the legislative body in open session and the vote of each member thereon must be disclosed to the public at the time the action is taken. (Section 54953(c)(2)).

C. Serial Meetings

In addition to regulating all gatherings of a majority of members of a legislative body, the Brown Act also addresses some contacts between individual members of legislative bodies. On the one hand, the Brown Act specifically states that nothing in the Act is intended to impose Brown Act requirements on individual contacts or conversations between a member of a legislative body and any other person (Section 54952.2(c)(1)). However, the Brown Act also prohibits a series of such individual contacts if they result in a “serial meeting” (Section 54952.2(b)).

Section 54952.2(b)(1) prohibits a majority of members of a legislative body outside of a lawful meeting from directly or indirectly using a series of meetings to discuss, deliberate or take action on any item of business within the subject matter jurisdiction of the body. Paragraph (b)(2) expressly provides that substantive briefings of members of a legislative body by staff are permissible, as long as staff does not communicate the comments or positions of members to any other members.

A serial meeting is a series of meetings or communications between individuals in which ideas are exchanged among a majority of a legislative body (i.e., three council members) through either one or more persons acting as intermediaries or through use of a technological device (such as a telephone answering machine, or e-mail or voice mail), even though a majority of members never gather in a room at the same time. Serial meetings commonly occur in one of two ways; either a staff member, a member of the body, or some other person individually contacts a majority of members of a body and shares ideas among the majority (“I’ve talked to Councilmembers A and B and they will vote ‘yes.’ Will you?”) or, without the involvement of a third person, member A calls member B, who then calls member C, and so on, until a majority of the body has reached a collective concurrence on a matter.

We recommend the following guidelines be followed to avoid inadvertent violation of the serial meeting rule. These rules of conduct apply **only** when a majority of a legislative body is involved in a series of contacts or communications. The types of contacts considered include contacts with local agency staff members, constituents, developers, lobbyists and other members of the legislative body.



1. Contacts with staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. To avoid an illegal serial meeting through a staff briefing:

a. Individual briefings of a majority of members of a legislative body should be “unidirectional,” in that information should flow from staff to the member and the member’s participation should be limited to asking questions and acquiring information. Otherwise, multiple members could separately give staff direction thereby causing staff to shape or modify its ultimate recommendations in order to reconcile the views of the various members, resulting in an action outside a meeting.

b. Members should not ask staff to describe the views of other members of the body, and staff should not volunteer those views if known.

c. Staff may present its viewpoint to the member, but should not ask for the member’s views and the member should avoid providing his or her views unless it is absolutely clear that the staff member is not discussing the matter with a quorum of the legislative body.

2. Contacts with constituents, developers and lobbyists

As with staff, a constituent or lobbyist can also inadvertently become an intermediary who causes an illegal serial meeting. Constituents’ unfamiliarity with the requirements of the Act aggravate this potential problem because they may expect a member of a legislative body to be willing to commit to a position in a private conversation in advance of a meeting. To avoid serial meetings via constituent conversations:

a. First, state the ground rules “up front.” Ask if the constituent has or intends to talk with other members of the body about the same subject; if so, make it clear that the constituent should not disclose the views of other members during the conversation.

b. Explain to the constituent that you will not make a final decision on a matter prior to the meeting. For example: “State law prevents me from giving you a commitment outside a meeting. I will listen to what you have to say and give it consideration as I make up my mind.”

c. Do more listening and asking questions than expressing opinions.

d. If you disclose your thoughts about a matter, counsel the constituent not to share them with other members of the legislative body.

3. Contacts with fellow members of the same legislative body

Direct contacts concerning local agency business with fellow members of the same legislative body, whether through face-to-face or telephonic conversations, notes or letters, electronic mail or staff members, are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a quorum of the body, no “meeting” has occurred. There is, however, always the risk that one participant in the communication will disclose the views of the other participant to a third or fourth member, creating an illegal serial meeting. Therefore, we recommend you avoid discussing local agency business with a quorum of the body or communicating the views of other members outside a meeting.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act’s goal of achieving open government. If you have questions about compliance with the Act in any given situation, please ask for advice.



D. Notice and Agenda Requirements

Two key provisions of the Brown Act that ensure that the public's business is conducted openly are the requirements that legislative bodies post agendas prior to their meetings (Sections 54954.2, 54955 and 54956) and that no action or discussion may occur on items or subjects not listed on the posted agenda (Section 54954.2(a)(2)). Limited exceptions to the rule against discussing or taking action on an item not on a posted agenda are discussed below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings (Section 54954(a)). Meeting agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting (Section 54954.2(a)). The description need not exceed 20 words. Each agenda must be posted in a place that is freely accessible to the public and must be posted on the agency's website, if it has one. After January 1, 2019, additional online posting requirements apply. Agenda posting requirements differ depending on the type of meeting to be conducted.

If the meeting is a "regular meeting" of the legislative body (i.e., occurs on the body's regular meeting day, without a special meeting call), the agenda must be posted 72 hours in advance of the meeting (Section 54954.2(a)). For "special meetings," the "call" of the meeting and the agenda (which are typically one and the same) must be posted at least 24 hours prior to the meeting (Section 54956). Each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as fax, electronic mail or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and if they have, that notice must be given at the same time notice is provided to members of the legislative body. A special meeting may not be held to discuss salaries, salary schedules or compensation paid in the form of fringe benefits of a local agency "executive" as defined in Government Code section 3511(d). However, the budget may be discussed in a special meeting. Section 54956(b).

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned (Section 54955). If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting (Section 54954.2(b)(3)).

The Brown Act requires the local agency to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. The agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting (Section 54954.1).

If materials pertaining to a meeting are distributed less than 72 hours before the meeting, they must be made available to the public as soon as they are distributed to the members of the legislative body. Further, the agenda for every meeting of a legislative body must state where a person may obtain copies of materials pertaining to an agenda item delivered to the legislative body within 72 hours of the meeting. (Section 54957.5).

A legislative body that has convened a meeting and whose membership is a quorum of another legislative body (for example, a city council that also serves as the governing board of a housing authority) may convene a meeting of that other legislative body, concurrently or in serial order, only after an oral announcement of the amount of compensation or stipend, if any, that each member will receive as a result of convening the second body. No announcement need be made if the compensation is set by statute or if no additional compensation is paid to the members. (Section 54952.3(a)).



E. Public Participation

1. Regular Meetings

The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda. Either method is permissible, though public comment on *public hearing* items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to “pull” items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendaized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3).

2. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the body concerning any item listed on the agenda prior to the body's consideration of that item (Section 54954.3). Unlike regular meetings, in a special meeting the body does not have to allow public comment on any non-agenda matter.

3. Limitations on the Length and Content of the Public's Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. For example, typical time limits restrict speakers to three or five minutes. A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance (Section 54954.3(b)). However, we do not recommend setting total time limits per item for any quasi-judicial matter such as a land use application or business license or permit application hearing. Application of a total time limit to a quasi-judicial matter could result in a violation of the due process rights of those who were not able to speak to the body during the time allotted.

The Act precludes the body from prohibiting public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the city council (Section 54954.3 (c)). This does not mean that a member of the public may say anything. If the topic of the public's comments is not within the subject matter jurisdiction of the agency, the member of the public can be cut off.

The body also may adopt reasonable rules of decorum for its meetings which preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of public meetings. Also, the right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body.



The use of profanity may be a basis for stopping a speaker. However, it will depend upon what profane words or comments are made and the context of those comments in determining whether it rises to the level of impeding the orderly conduct of a meeting. While terms such as “damn” and “hell” may have been disrupting words thirty years ago, today’s standards seem to accept a stronger range of foul language. Therefore, if the chair is going to rule someone out of order for profanity, the chair should make sure the language is truly objectionable *and* that it causes a disturbance or disruption in the proceeding before the chair cuts off the speaker.

4. Discussion of Non-Agenda Items

A body may not *take action or discuss* any item that does not appear on the posted agenda (Section 54954.2).

There are two exceptions to this rule. The first is if the body determines by majority vote that an emergency situation exists. The term “emergency” is limited to work stoppages or crippling disasters (Section 54956.5). The second exception is if the body finds by a two-thirds vote of those present, or if less than two-thirds of the body is present, by unanimous vote, that there is a need to take immediate action on an item and the need for action came to the attention of the local agency subsequent to the posting of the agenda (Section 54954.2 (b)). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required.

In addition to these exceptions, there are several *limited* exceptions to the no discussion on non-agenda items rule. Those exceptions are:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Members or staff may ask questions for clarification and provide a reference to staff or other resources for factual information;
- Members or staff may make a brief announcement, ask a question or make a brief report on his or her own activities;
- Members may, subject to the procedural rules of the legislative body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and
- The legislative body may itself as a body, subject to the rules of procedures of the legislative body, take action to direct staff to place a matter of business on a future agenda.

The body may not discuss non-agenda items to any significant degree under these exceptions. The comments *must* be brief. These exceptions do not allow long or wide-ranging question and answer sessions between the public and city council or between legislative body and staff.

When the body is considering whether to direct staff to add an item to a subsequent agenda, these exceptions do not allow the body to discuss the merits of the matter or to engage in a debate about the underlying issue.

To protect the body from problems in this area, legislative bodies may wish to adopt a rule that any one member may request an item to be placed on a subsequent agenda, so that discussion of the merits of the issue can be easily avoided. If the legislative body does not wish to adopt this rule, then the body’s consideration and vote on the matter must take place with virtually no discussion.

It is important to follow these exceptions carefully and interpret them narrowly because the city would not want to have an important and complex action tainted by a non-agendized discussion of the item.

5. The public’s right to photograph, videotape, tape-record and broadcast open meetings

The public has the right to videotape or broadcast a public meeting or to make a motion picture or still camera record of such meeting (Section 54953.5). However, a body may prohibit or limit recording of a meeting if the body finds that the recording cannot continue without noise, illumination, or obstruction of a view that constitutes, or would constitute, a disruption of the proceedings (Section 54953.5). These grounds would appear to preclude a finding based on nonphysical grounds such as breach of decorum or mental disturbance.



Any audio or video tape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the city is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. The city must not destroy the tape or film record of the open and public meeting for at least 30 days following the date of the taping or recording. Inspection of the audiotape or videotape must be made available to the public for free on equipment provided by the city (Section 54953.5).

If a member of the public requests a duplicate of the audio or videotape, the city must provide such copy. If the city has an audiotape or videotape duplication machine, the city must provide the copy on its own machine. If the city does not have such a machine, the city must send it out to a business that can make a copy. The city may charge a fee to cover the cost of duplication.

The Brown Act requires written material distributed to a majority of the body by *any person* to be provided to the public without delay. If the material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting (Section 54957.5).

One problem in applying this rule arises when written materials are distributed directly to a majority of the body without knowledge of City staff, or even without the members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the body to ensure that staff gets a copy of the document so that copies can be made for the city's records and for members of the public who request a copy.

F. Closed Sessions

The Brown Act allows a legislative body during a meeting to convene a closed session in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as “executive sessions,” a holdover term from the Brown Act's early days. Examples of business which may be conducted in closed session include personnel evaluations or labor negotiations, pending litigation, and real estate negotiations (See Sections 54956.7 through 54957 and Sections 54957.6 and 54957.8). Political sensitivity of an item is not a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. And, there is a “bonus” of sorts for using prescribed language to describe litigation closed sessions in that legal challenges to the adequacy of the description are precluded (Section 54954.5). This so-called “safe harbor” encourages cities to use a very similar agenda format. The legislative body must identify the City's negotiator in open session before going into closed session to discuss either real estate negotiations or labor negotiations.

The legislative body must reconvene the public meeting after a closed session and publicly report specified closed session actions and the vote taken on those actions (Section 54957.1). There are limited exceptions for certain kinds of litigation decisions, and to protect the victims of sexual misconduct or child abuse.

Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends (Section 54957.1).

The Brown Act also includes detailed requirements describing when litigation is considered “pending” for the purposes of a closed session (Section 54956.9). These requirements involve detailed factual determinations that will probably be made in the first instance by the City Attorney.

Roberts v. City of Palmdale, 5 Cal.4th 363 (1993), a California Supreme case, affirms the confidentiality of attorney-client memoranda. See also Section 54956.9(b)(3)(F) with respect to privileged communications regarding pending litigation.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.



One perennial area of confusion is whether a body may discuss salary and benefits of an individual employee (such as a city manager) as part of an evaluation session under Section 54957. It may not. However, the body may designate a negotiator to negotiate with that employee and meet with its negotiator in closed session under Section 54957.6 to provide directions. The employee in question may not be present in such a closed session.

G. Enforcement

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, and orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body (Section 54960.1). The provision relating to efforts to penalize expression may come up in the context of measures by the legislative body to censure or penalize one of its members for breaching confidentiality or other violations. This area of law is charged with difficult free speech and attorney-client privilege issues. The tape recording of closed sessions is not required unless the court orders such taping after finding a closed session violation (Section 54960).

Prior to filing suit to invalidate an action taken in violation of the Brown Act, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. The written demand must be made within 90 days after the challenged action was taken in open session unless the violation involves the agenda requirements under Section 54954.2, in which case the written demand must be made within 30 days. The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions, or its decision not to cure or correct, within 30 days. A suit must be filed by the complaining party within 15 days after receipt of the written notice from the legislative body, or if there is no written response, within 15 days after the 30-day cure period expires.

Any person may also seek declaratory and injunctive relief to find a past practice of a legislative body to constitute a violation of the Brown Act (Section 54960). In order to do so, the person must first send a “cease and desist” letter to the local agency, requesting that the practice cease. If the agency replies within a designated time, and disavows the practice, no lawsuit may be initiated. However, if the agency fails to reply or declares its intent to continue the practice, the lawsuit seeking to declare the practice a violation of the Brown Act may be filed, and attorney fees will be granted in the event the practice is found to violate the Act.

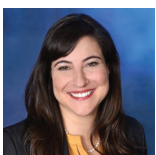
A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act (Section 54959). This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

Under Section 54963, it is a violation of the Brown Act for any person to disclose confidential information acquired in a closed session. This section enumerates several nonexclusive remedies available to punish persons making such disclosures and to prevent future disclosures.

H. Conclusion

The Brown Act contains many rules and some ambiguities; it can be confusing and compliance can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your City Attorney.

Please contact either of today's presenters if you would like more details on these issues and how your agency can address them:



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UPDATE - COVID-19 Prevention – Non-Emergency Regulation

What Employers Need to Know

December 15, 2022

On December 15, 2022, the Occupational Safety and Health Standards Board voted to adopt non-emergency COVID-19 Prevention regulations. These regulations will take effect once they are approved by the Office of Administrative Law (OAL) in the month of January 2023 and will remain in effect for two years after the effective date, except for the recordkeeping subsections, which will remain in effect for three years. These regulations include some of the same requirements found in the COVID-19 Prevention Emergency Temporary Standards (ETS), plus new provisions aimed at making it easier for employers to provide consistent protections to workers and allow for flexibility if changes are made to CDPH guidance in the future.

Note: These regulations apply to most workers in California who are not covered by the [Aerosol Transmissible Diseases standard](#).

Important requirements from the ETS that are also part of the COVID-19 Prevention regulations include:

- Employers must provide face coverings and ensure they are worn by employees when CDPH requires their use.
 - Employers must review [CDPH Guidance for the Use of Face Masks](#) to learn when employees must wear face coverings.
 - **Note:** Employees still have the right to wear face coverings at work and to request respirators from the employer when working indoors and during outbreaks.
- Employers must report information about employee deaths, serious injuries, and serious occupational illnesses to Cal/OSHA, consistent with existing regulations.
- Employers must make COVID-19 testing available at no cost and during paid time to employees following a close contact.
- Employers must exclude COVID-19 cases from the workplace until they are no longer an infection risk and implement policies to prevent transmission after close contact.
- Employers must review CDPH and Cal/OSHA guidance regarding ventilation, including [CDPH and Cal/OSHA Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments](#). Employers must also develop, implement, and maintain effective methods to prevent COVID-19 transmission by improving ventilation.

(continued on next page)

Important changes to the COVID-19 Prevention regulations include:

- Employers are no longer required to maintain a standalone COVID-19 Prevention Plan. Instead, employers must now address COVID-19 as a workplace hazard under the requirements found in [section 3203 \(Injury and Illness Prevention Program, IIPP\)](#), and include their COVID-19 procedures to prevent this health hazard in their written IIPP or in a separate document.
 - Employers must do the following:
 - Provide effective COVID-19 hazard prevention training to employees.
 - Provide face coverings when required by CDPH and provide respirators upon request.
 - Identify COVID-19 health hazards and develop methods to prevent transmission in the workplace.
 - Investigate and respond to COVID-19 cases and certain employees after close contact.
 - Make testing available at no cost to employees, including to all employees in the exposed group during an outbreak or a major outbreak.
 - Notify affected employees of COVID-19 cases in the workplace.
 - Maintain records of COVID-19 cases and immediately report serious illnesses to Cal/OSHA and to the local health department when required.
- Employers must now report major outbreaks to Cal/OSHA.
- The COVID-19 Prevention regulations do not require employers to pay employees while they are excluded from work. Instead, the regulations require employers to provide employees with information regarding COVID-19 related benefits they may be entitled to under federal, state, or local laws; their employer's leave policies; or leave guaranteed by contract.

Important changes to definitions

- "Close contact" is now defined by looking at the size of the workplace in which the exposure takes place. For indoor airspaces of 400,000 or fewer cubic feet, "close contact" is now defined as sharing the same indoor airspace with a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period. For indoor airspaces of greater than 400,000 cubic feet, "close contact" is defined as being within six feet of a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period.
- "Exposed group" was clarified to include employer-provided transportation and employees residing within employer-provided housing that are covered by the COVID-19 Prevention standards.

This guidance is an overview, for full requirements see Title 8 sections [3205](#), [3205.1](#), [3205.2](#), and [3205.3](#)