

A. CONDUCTING THE PUBLIC'S BUSINESS IN PUBLIC

GENERAL RULES

- ✓ Public agency decision-making bodies – which include many advisory committees – must conduct their business in an open and public meeting.
- ✓ A “meeting” is any situation involving a majority of a decision-making body in which agency business is transacted or discussed. In other words, a majority of the governing body cannot talk privately about an issue before the body no matter how the conversation occurs, whether by telephone or e-mail, or at a local coffee shop.
- ✓ These are legal minimums for local governmental transparency in decision-making; local agencies can provide for greater transparency.



KEY THINGS TO KNOW

- **Committees and Advisory Bodies.** Advisory groups or committees formally created by the governing body are subject to the open meeting laws. Standing committees are subject to the open meeting laws if they have a continuing subject-matter jurisdiction or have a meeting schedule fixed by formal action of the governing body.
- **Serial Meetings.** A key thing to avoid is unintentionally creating a “serial” meeting—a series of communications that result in a majority of governing body members having conferred on an issue.

EXAMPLE

If two members of a five-member governing body consult outside of a public meeting (which is not in and of itself violation) about an issue before the body and then one of those individuals consults with a third member on the same issue and shares what the first member is thinking, a majority of the body has consulted on the same issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member’s polling governing body members in a way that reveals the members’ positions to one another.



- **Posting and Following the Agenda.** In general, public officials may only discuss and act on items included on the posted agenda for a meeting. However, governing body members or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Officials can also make requests to staff to place a matter on the agenda for a subsequent meeting. Only under extraordinary circumstances can matters be added to the agenda.
- **Permissible Gatherings.** Not every gathering of governing body members outside a posted meeting violates the meeting laws. For example, an open meeting violation would not occur if a majority of the governing body attended the same educational conference or attended a meeting not organized by the local agency as long as agency business is not discussed during the gathering. Nor is attendance at a social or ceremonial event in and of itself a violation. The basic rule to keep in mind is a majority of the governing body members cannot gather *and* discuss agency business except at an open and properly noticed meeting.
- **Closed Sessions.** The open meeting laws include provisions for closed discussions under very limited circumstances (see “typical closed sessions issues” at right). However, the reasons for holding the closed session must be noted in the agenda and different disclosure requirements apply to different types of closed sessions.
- **Disclosure of Confidential Information Prohibited.** The decision to disclose confidential information received in closed session is one that is generally made by the body as a whole, not individual members. Among the remedies for unlawful disclosure is referral to the grand jury, which has authority to remove officials for corrupt or willful misconduct in office.

Because of the complexity of the open meeting laws, close consultation with an agency’s legal advisor is necessary to ensure that no missteps occur.

(See page 5 for information about consequences of non-compliance with these rules.)

GOOD-ETHICS-IS-GOOD-POLITICS NOTE

The media is highly vigilant in monitoring compliance with open government requirements – and quick to report on perceived violations.



TYPICAL CLOSED SESSION ISSUES

Local agency open meetings laws vary in terms of what kinds of closed sessions are allowed. The following list is illustrative. Consult with agency counsel concerning 1) whether a particular type of closed session is available to your agency, 2) under what circumstances, and 3) what disclosure requirements apply before and after the closed session.

Personnel. To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints against an employee.

Litigation. To confer with or receive advice from an agency’s legal counsel with respect to existing, threatened or potential litigation.

Real Estate Negotiations. To provide direction to the agency’s negotiator on the price and terms under which the agency will purchase, sell, exchange or lease real property.

Labor Negotiations. To meet with the agency’s labor negotiator regarding salaries and benefits and other matters within the scope of labor negotiations.

Student Disciplinary Issues. (For school districts and community college districts) To consider discipline of a student if a public hearing would result in disclosure of prohibited information, after notifying the student (or parents in the case of minor students) and if they do not request a public hearing.

Grand Jury Proceedings. To allow testimony in private before a grand jury (either individually or collectively).

License Applicants with Criminal Records. To allow an agency to determine whether a would-be licensee with a criminal record is sufficiently rehabilitated to obtain the license.

Public Security. To confer with designated law enforcement officials regarding threats to public facilities and services or the public’s right to access those services and facilities.

Multi-jurisdictional Law Enforcement Agency. To discuss ongoing criminal investigations.

Hospital Peer Review and Trade Secrets. To discuss issues related to medical quality assurance or trade secrets.



B. THE PUBLIC'S RIGHT TO PARTICIPATE IN MEETINGS

GENERAL RULES

- ✓ **Democracy in Action.** The public has a right to address the governing body at any open meeting. An elected official’s role is to both hear and evaluate these concerns.
- ✓ **The Public’s Right to be Heard.** Generally, every agenda must provide an opportunity for the public to address the governing body on any item of interest to the public within the body’s jurisdiction. If the issue of concern is one pending before the legislative body, the opportunity must be provided before or during the body’s consideration of that issue.
- ✓ **Posting and Following the Agenda.** The open meeting laws require the public be informed of the time of and the issues to be addressed at each meeting. The agenda must be posted at least 72 hours in advance of a meeting and written in a way that informs people of what business will be discussed. Members of the public may request a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body. Many local agencies also post these materials on their websites. There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances.



KEY THINGS TO KNOW

- **Taping or Recording of Meetings Is Allowed.** Anyone attending a meeting may record it with an audio or video recorder unless the governing body makes a finding the noise, illumination, or obstruction of view will disrupt the meeting. Any tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days.
- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or fulfill any other condition for attendance or speaking at a meeting. If an attendance list is used, it must clearly state signing the list is voluntary.
- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.



- **Dealing with Dissention.** The chair cannot stop speakers from expressing their opinions or their criticism of the governing body. If a group willfully interrupts a meeting and order cannot be restored, the room may be cleared. Members of the media must be allowed to remain and only matters on the agenda can be discussed.
- **Other Notice and Hearing Requirements.** Other state laws may provide additional, subject-specific notice and hearing requirements.

CONSEQUENCES OF NON-COMPLIANCE

- **Nullification of Decision.** As a general matter, decisions that are not made according to the open meeting laws are voidable. After asking the agency to cure the violation, either the district attorney or any interested person may sue to have the action declared invalid. Costs and attorneys fees may be awarded to those who successfully challenge open meeting violations.
- **Criminal Sanctions.** Additionally, governing body members who intentionally violate the open meeting laws may be guilty of a misdemeanor. The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.
- **Other Measures.** Either the district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws. Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape-recorded. Costs and attorneys fees also may be awarded.
- **Potential Civil Rights Violations.** Regulations of public participation beyond those allowed by applicable statutory and constitutional law can be a civil rights violation, which can include liability for attorneys fees.

GOOD-ETHICS-IS-GOOD-POLITICS NOTE

Community relations – and the public’s views of an official’s responsiveness – are seriously undermined when it appears an official is not listening to the input being provided by the public. Even if you disagree with the views being offered, treat the speaker with the same respect you would like to be treated with if the roles were reversed.



C. THE PUBLIC’S RIGHT TO ACCESS AGENCY RECORDS

GENERAL RULE

- ✓ Public agencies must generally make their records available for inspection by the public.



KEY THINGS TO KNOW

- **Agenda and Meeting Materials.** Copies of the agenda materials and other non-attorney-client documents distributed to the governing body must be available to the public. Any materials distributed by the local agency, its consultants, or decision-makers must be available for public inspection at the meeting. Materials prepared and distributed by some other person must be made available after the meeting.
- **Scope of Access.** The public has the right to see any materials that are created as part of the conduct of the people’s business. These materials include any writing that was prepared, owned, used, or retained by a public agency. They include documents, computer data, e-mails, facsimiles, and photographs.
- **Presumption and Exceptions.** A document is presumed to be a public record unless an exception applies. There are a number of exceptions. For example, the “pending litigation” exemption exempts documents that are prepared in support of ongoing litigation (otherwise opposing counsel could obtain all documents containing the agency’s legal strategy just by asking for them).

Despite these exceptions, the safe assumption is virtually all materials involved in one’s service on the governing body – including e-mails – are public records subject to disclosure.

CONSEQUENCES OF VIOLATION

Anyone can sue the agency to enforce his or her right to access public records subject to disclosure. If the agency loses or otherwise produces the records as the result of the lawsuit, it must pay costs and attorneys fees.

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The ABCs of Open Government Laws

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government. Conducting government openly and transparently is an opportunity to include the public in decision-making processes and demonstrate that the agency has nothing to hide.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California’s constitution.

CALIFORNIA’S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:

- Conduct the public’s business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.**
- Allow the public to participate in meetings.**
- Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.**

This pamphlet summarizes these three requirements for local officials in broad terms. For information about how these requirements apply in any given situation or more information about this area of the law in general, local officials are encouraged to consult with their agency attorneys.

The law also requires certain local officials to be transparent about their personal financial interests and relationships. For more information about these requirements, please see the Institute’s bookmark entitled “Key Ethics Law Principles for Local Officials” and *A Local Official’s Reference on Ethics Laws*. Both are available at www.ilsg.org/trust.



OPEN NEXT TWO FOLDS TO
INSIDE PANELS TO CONTINUE

RESOURCES FOR FURTHER INFORMATION

California’s open government laws are complex and extensive. Consult the following resources for more general information on these laws.

- *Open and Public III: A User’s Guide to the Ralph M. Brown Act*, 2000. Available on the League of California Cities website at www.cacities.org or by calling 916.658.8257.
- *The Brown Act: Open Meetings for Local Legislative Bodies*, 2003. Available on the California Attorney General’s website at www.caag.state.ca.us (click on “Publications,” then click on “General Publications and Forms”).
- *Public Records Act Summary*. Available on the California Attorney General’s website at www.caag.state.ca.us (click on “Publications,” then click on “General Publications and Forms”).

For specific questions, contact your agency’s attorney.

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