

Supplemental Answers to Questions Posed at the Brown Act Webinar

www.ca-ilg.org/clerks-brown-act-questions

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During our June 10, 2013 webinar on the topic of the Brown Act, attendees asked several questions that we were unable to address due to time constraints. We have included general answers to some of these questions below.

These answers are for general informational purposes only and are not intended to provide legal advice to any individual or entity. Court decisions and amendments to statutes change the law on an almost daily basis; moreover reasonable attorneys can disagree about what the law says or how it may apply in a specific situation. The Institute urges you to consult with agency counsel before taking any action based on information appearing in this document.

Question: *Public comments at a special meeting are limited to what is on the posted agenda. What is the impact when a body, such as a successor agency oversight board, most often meets by special meeting?*

Answer: Although there is no statutory right of the public to address the body on topics not on the agenda, there is nothing that prohibits including “Public Comments” on the agenda of a special meeting. If public comment raises an issue that warrants further discussion, the issue can be noted for inclusion on the agenda at a future meeting.

Note that all legislative bodies of a local agency, except for advisory committees or standing committees, must establish a time and place for holding regular meetings. Meetings of advisory committees or standing committees for which an agenda is posted 72 hours in advance of the meeting are considered regular meetings for all purposes under the Brown Act, even if the committee does not have a regular meeting schedule.

Question: *When a member of the public asks for copies of all of the backup material in the board packet, even though that info is available on the web site, can we charge for copies?*

Answer: Generally yes. The Brown Act allows agencies to collect fees for the direct costs of providing physical copies of public records or to impose a statutory fee. (Note that these materials must be made available for inspection during the office hours of the local agency regardless of whether it is available on the agency web site) Agencies may not charge a fee if

the request for the materials is made by an individual with a disability requesting the materials in an appropriate alternative format.

Question: *We call meetings moved to a different week due to a holiday, 'adjourned' meetings. Is this the correct term to use?*

Answer: An “adjourned” meeting occurs when the legislative body convenes a meeting and then decides to delay or reschedule the meeting to a later date. Adjournment is an action typically made by a body that has already convened, but can also be adjourned by less than a quorum of the body. A meeting can also be declared adjourned to a stated time and place by a clerk or secretary if all members of the decision-making body are absent. Such an adjourned meeting must be noticed in the same way as a special meeting. In all cases of adjournment, notice must be posted on or near the door of the meeting room within 24 hours of the adjournment

If a regular meeting is not convened due to a holiday, then the meeting scheduled to replace the regular meeting should be noticed as a “special” meeting.

Question: *Are you required to put "handouts" on the web site after the meeting?*

Answer: There is no requirement that materials handed out at the meeting be posted on the agency web site; however, making such materials available on the agency web site is a good practice and a way to promote transparency and public trust. Such materials must be available for inspection, so posting them on the web site can serve to reduce the burden of in-person requests for inspection of these materials. Remember that the agenda itself must be posted on the agency’s web site.

Question: *We hold agenda review (also known as "pre board") meetings on the day before our board of commissioners meetings. It includes our board chair, vice chair, one other commissioner and our executive management staff. Is that subject to the Brown Act or is that a serial meeting?*

Answer: Whether chair, vice-chair, and one additional commissioner represents a quorum of the board of commissioners or not, this “pre-board” meeting is subject to the Brown Act. A standing committee of the legislative body with an appointed duty such as agenda review is subject to the Brown Act even if it is comprised of less than a quorum of the legislative body.

Related Resources

For more information, see the following resources available at www.ca-ilg.org/BrownActWebinar :

- *Open & Public: A User's Guide to the Ralph M. Brown Act*
- ILG Pamphlet: “The ABCs of Open Government”
- “Clerks Quick Reference: Safe Harbor Agenda Listings & Minute Contents”
- *Understanding the Basics of Public Service Ethics, Chapter 4: Transparency Laws* available at: www.ca-ilg.org/TransparencyLaws

Question: *What about two commission members that regularly speak to each other about agenda items outside of meeting time. Can that be a violation of Brown Act?*

Answer: It can be a violation if these two commissioners represent a quorum of a legislative body that is subject to the Brown Act. If the two commission members do not represent a quorum, and if one of these two commissioners then discuss agenda items or voice their positions with additional commissioners such that a quorum of commissioners have discussed these items, they run the risk of creating a serial meeting.

Question: *How should one handle the following – a closed session prior to the regular meeting start time, (in other words a 6:00pm closed session and a 7:00pm regular session)?*

Answer: The best approach is to notice the closed session as a special meeting that begins at 6:00pm.

Question: *Regarding responding to speakers during public comment: Can clarifying questions can be asked by any commissioner or should they be directed to the chair person who then asks the question of the speaker?*

Answer: It depends on local procedures. Some local agencies have adopted rules of procedure that require questions be asked through the chair. Others are more informal or invoke such practices on an as needed basis to avoid engaging in debate with speakers.

Question: *Regarding closed session announcements prior to closed session – must each of the closed session items and sections be read?*

Answer: The items to be discussed in a closed session must be properly described on the agenda. See Government Code section 54954.5 for closed session descriptions. In most instances, this announcement can simply reference the agenda item number or letter(s) which will be discussed in closed session. Closed sessions regarding pending litigation have additional requirements (See California Government Code section 54956.9).

The agenda must include the appropriate disclosure for each of the various types of authorized closed session meetings. These “safe harbor” disclosures are listed in the Clerks Quick Reference available at: www.ca-ilg.org/webinar/brown-act-webinar-keeping-clerks-ahead-curve.

Question: *If a staff report is distributed in a meeting packet and posted on the agency's web site, and staff subsequently wants to replace that report with a revised report, should that be allowed, or should staff submit a revised report, clearly marked as such, for distribution so that the original report remains part of the record? Otherwise won't there be complications if the public has the original report and is unaware of the new document?*

Answer: Staff should submit a revised report, clearly marked as such, for distribution. If the report has been distributed to all or a majority of all the members of a legislative body or local agency, it is a disclosable public record. Both the original report and the revised report must be available for inspection and maintained in accordance with your local records retention schedule.

Question: *Is it good practice to note in action minutes when a decision-maker excuses himself from taking action on an item?*

Answer: Yes.

Question: *What about when a decision-maker excuses himself from one item from an invoice list; does that need to be noted in the minutes?*

Answer: Yes.

Question: *Should ex parte contacts verbally disclosed by a decision-maker also be included in the official meeting minutes? Is verbal disclosure sufficient?*

Answer: An “ex parte” contact occurs when a decision-maker receives outside information about an item before the decision making body (for example, this could be a communication with an individual applying for a permit, or a decision-maker conducting a site visit before a hearing). Ex parte contacts usually are an issue when the body is acting in a quasi-judicial capacity. (For more information see www.ca-ilg.org/bias).

Noting the disclosure in the minutes is good practice to show the disclosure occurred and the parties had an opportunity to present additional information on the subject of the communication. Depending on a local agency’s practices, there may be other ways of making this showing (for example, if meetings are recorded). Verbal disclosure may be sufficient unless local rules require written disclosure.

About ILG

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The Institute welcomes feedback on this resource:

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