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.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California’s constitution by adopting Proposition 59 in 2004.

California’s open government laws require public officials to:

- Conduct meetings of public bodies openly, except for limited circumstances under which the law allows the public’s business to be conducted privately in closed sessions.
- Allow the public to participate in meetings of public bodies through a public comment process.
- Allow inspection and copying of public records, except when non-disclosure is authorized by law.

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

Permissible Gatherings. Not every gathering of members of a public body outside a noticed meeting violates the law. For example, a violation would not occur if a majority of the members attend the same educational conference or attend a meeting not organized by the local agency as long as members do not discuss among themselves agency business except as part of the gathering. Nor is attendance at a social or ceremonial event in itself a violation. The basic rule to keep in mind is a majority of the members cannot gather and discuss agency business except at an open and properly noticed meeting.

Closed Sessions. The open meeting laws include provisions for private discussions under very limited circumstances. The reasons for holding the closed session must be noted on the agenda and different disclosure requirements apply to different types of closed sessions.

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, they or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Officials can also request staff to look into a matter or place a matter on the agenda for a subsequent meeting. Only under unexpected circumstances can matters that are not on the agenda be discussed or acted upon.

Taping or Recording of Meetings Is Allowed. Anyone attending a meeting may photograph or record it with an audio or video recorder unless the governing body makes a finding that the noise, illumination, or obstruction of view will disrupt the meeting. Any meeting 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 satisfy any other condition for attendance. If an attendance list is used, it must clearly state that signing the list is voluntary.

Nullification of Decision. Many 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.

Criminal Sanctions. Additionally, members of the board 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. Regulations of public participation beyond those allowed by applicable statutory and constitutional principles can be a civil rights violation.

Attorneys’ Fees and Costs. Attorneys’ fees and costs may be awarded to those who successfully challenge open meeting violations.
General Rules

- **Democracy in Action.** The public has a right to address the public body at any meeting. A public official’s role is to both hear and evaluate these communications.

- **The Public’s Right to be Heard.** Generally, every regular meeting agenda must provide an opportunity for the public to address the public body on any item within the body’s jurisdiction. If the issue of concern is one pending before the body, the opportunity must be provided before or during the body’s consideration of that issue.

**Key Things to Know ↔**

- **Agenda and Meeting Materials.** Copies of the agenda and other documents not exempt from disclosure distributed to the body must be available to the public. Any nonprofit materials prepared by the local agency must be available for public inspection at the meeting. Materials prepared and distributed by another person must be made available after the meeting.

- **Scope of Access.** The public has the right to see nonprofit 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. This can include documents, computer data, e-mails, faxes, and photographs.

- **Presumption and Exceptions.** Written materials are presumed to be a public record unless an exception applies. There are a number of exceptions. For example, personnel records are typically exempt from disclosure because their release may violate an employee’s privacy rights.

**Beyond Legal Minimums**

It is important to note that the requirements discussed in this pamphlet are legal minimums for local government transparency in decision-making. Local agencies can provide for greater transparency.

In thinking about how an agency might provide for greater transparency, questions local agency officials might ponder include the following:

1. How can the agency make public information more readily available and easily understandable by the public in order to promote public trust and confidence in the agency and demonstrate the agency’s commitment to transparency?

2. Are there kinds of information that are already publicly available in some form, but could be made available more conveniently to the public (for example, through voluntarily posting the information on the agency’s website or including links on the agency’s website to where information is available on other websites)?

3. What kinds of information might be of interest to a cross-section of the public relating to the agency’s operations and decision-making processes? Are there ways this information can be made available without individual members of the public having to ask for it?

Ongoing consideration of these kinds of questions enables a local agency’s officials to engage in collective discussion and decision-making about ways in which their agency can set its sights higher than the minimum requirements of the law.

**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.

**Resources for Further Information**

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


Local officials should also consult their agency counsel with questions.


**A Note on Civility in Public Discourse**

For communities to be able to work through difficult issues, it’s important that people be able to express differing opinions about what best serves the public’s interests in a respectful and civil manner.

This includes focusing on the merits of one’s position. Even if people disagree about what’s best for the community in this situation, it doesn’t mean that those holding different views are bad people. Treat others with the same respect as one would like to be treated. Questioning others’ motives or intelligence, being hostile, engaging in name-calling or making threats undermines one’s effectiveness.

No matter how passionate one is about an issue, the goal is to conduct oneself in a way that will add to one’s credibility and standing as a thoughtful member of the community.