The ABCs of Open Government Laws

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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.

Consequences of Non-Compliance with Open Meeting Requirements

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 body 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.

Example

If two members of a five-member public body consult outside of a public meeting (which is not to or of itself a violation) about a matter of agency business and then one of those individuals consults with a third member on the same issue, a majority of the body has consulted on that 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 the body’s members in a way that reveals the members’ positions to one another.

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.

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

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 California’s open government laws. California’s constitution by adopting Proposition 59 in 2004. The public that some 83 percent of voters supported adding it to California’s open government laws. The underlying philosophy of the open government laws is to increase government transparency and accountability.

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.

ABCs of Open Government Laws

A Conducting the Public’s Business in Public

General Rules

A “meeting” is any situation involving a majority of a public body in which agency business is transacted or discussed. In other words, a majority of the body cannot talk privately about a matter of agency business no matter how the communication occurs, whether by telephone or e-mail, or at a local coffee shop.

The public must be informed of 1) the time and place of and 2) the issues to be addressed at each meeting. In general, public officials may only discuss and act on items included on the posted agenda for a meeting. The agenda must be posted at least 72 hours in advance of a regular 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. And/or maintain e-mail lists to make agendas available.

Key Things to Know

Advisory Bodies. Advisory bodies formally created by the governing body are subject to the open meeting laws. In some cases, committees of less than a quorum of the public body are also subject to these laws.

Serial Meetings. Avoid unintentionally creating a “serial” meeting—a series of communications that result in a majority of the body’s members discussing, deliberating, or taking action on a matter of agency business.

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.
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**

- **Anonymous Speech Must Be Permitted.** Members of the public cannot be required to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card, or identify themselves “for the record,” but must respect a speaker’s desire for anonymity.

- **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. For example, some agencies impose a uniform time limit on each person providing public comments on an issue.

- **Dealing with Dissension.** The chair cannot stop speakers from expressing their opinions or their criticism of the body. If an individual or 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.

**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.

**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.

The Institute for Local Government promotes good government at the local level with practical, impartial, and easy-to-use resources for California communities.

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