THE BROWN ACT
The Ralph M. Brown Act, which is found beginning at section 54950 of the California Government Code, was enacted more than half a century ago in response to a series of articles in the *San Francisco Chronicle* detailing the way local agencies conducted secret meetings or caucuses.
Two key parts of the Brown Act have not changed since its adoption in 1953.

One is the Brown Act’s initial section, declaring the Legislature’s intent:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”
“The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”
The Brown Act’s other unchanged provision is a single sentence:

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body, except as otherwise provided in this chapter.”
BROAD COVERAGE:

• The Brown Act covers virtually every type of local government body, elected or appointed, decision-making or advisory.

• Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any medium of communication or device by which a majority of a legislative body develops “a collective concurrence as to action to be taken.”
BROAD COVERAGE:

Present communication technologies present Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue.
NARROW EXEMPTIONS:

• Courts, the Attorney General and prosecutors usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.
NARROW EXEMPTIONS:

• The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business.

• It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body don’t discuss issues related to their local agency’s business.
WHO IS COVERED?

- Legislative Bodies (GC 54952)

Governing Bodies:

A QUORUM IS REQUIRED TO CONDUCT BUSINESS IN PUBLIC MEETINGS.
WHO IS COVERED?

Commission, committee, board or other body of a local agency

(GC 54952)

• permanent or temporary
• created by charter, ordinance, resolution or formal action INCLUDES standing committees with continuing subject matter jurisdiction or a meeting schedule fixed by some formal action of legislative body

• NOT advisory committees (no power to bind) if less than a quorum of legislative body and no other members
YOU
WHAT MEETINGS ARE COVERED?

A “meeting” includes a gathering of a majority of the members of a legislative body to hear, discuss, or deliberate upon any item which is within its subject matter jurisdiction.
WHAT MEETINGS ARE COVERED?

A meeting also includes any use of direct communication, personal intermediaries, or technological devices which are employed by a majority of the members of the legislative body to develop a collective concurrence as to an action to be taken.

In other words, the members of the legislative body do not even have to be in one place for a Brown Act “meeting” to occur.
WHAT MEETINGS ARE COVERED?

The following events and occasions are NOT considered Brown Act meetings:

• individual contacts or conversations
• attendance by a quorum of members at:
  • a conference;
  • an open and publicized meeting of another body of the agency;
  • an open and publicized meeting of the legislative body of another agency;
  • an open and publicized meeting of another organization; or
  • a social or ceremonial occasion
WHAT MEETINGS ARE COVERED?

PROVIDED that a majority of the members do not discuss amongst themselves business of a specific nature that is within the subject matter jurisdiction of the agency other than as part of the scheduled meeting or program.
WHAT MEETINGS ARE COVERED?

The Serial Meeting

• A type of inadvertent meeting that officials need to be careful to avoid is the serial meeting. This type of meeting occurs in two ways:

• **Daisy-Chain:** Commissioner A contacts Commissioner B, and B contacts Commissioner C, and C contacts Commissioner D, and so on, until a quorum has been involved and a collective concurrence reached.
WHAT MEETINGS ARE COVERED?

The Serial Meeting cont.

• **Hub-and-Spoke:** An intermediary (the hub) contacts at least a quorum of the members of the legislative body (the spokes) to develop a collective concurrence (or communicate each member’s respective positions) on an action to be taken by the legislative body.
MEETING NOTICE, AGENDA AND PUBLIC PARTICIPATION REQUIREMENTS

Public must be informed of the time and place of meetings (GC 54954)

Three Kinds of Meetings:

REGULAR MEETING: ordinance or resolution at a specified time & place.
MEETING NOTICE, AGENDA AND PUBLIC PARTICIPATION REQUIREMENTS

SPECIAL MEETING (GC54956)
Set by presiding officer or majority of members; written notice to all members and to each local newspaper of general circulation and radio or tv station requesting notice in writing at least 24 hours before meeting is to be held.

• No right to public comment on general subject matter.
• Significantly shorter notice period.
• Action may be taken ONLY on agendized items.
EMERGENCY MEETING (GC 54956.5)

An emergency situation in which prompt action is necessary due to the disruption or threatened disruption of public facilities, may hold an emergency meeting without complying with either the 24 hour notice requirement or the 24 hour posting requirements.
GENERAL RULES FOR MEETINGS

• MUST provide time & place of regular meetings.

• MUST provide copy of agenda or agenda packet upon request to ANY PERSON, can charge fee not exceeding the cost of copying and mailing. (GC54954.1)

• Regular meetings & Special Meetings must be within boundaries of jurisdiction. (GC54954(b))
MUST NOTIFY PUBLIC OF ISSUES TO BE ADDRESSED BY POSTING AGENDA (GC 54954.2)

REGULAR MEETINGS: Agenda MUST be posted 72 hrs before regular meeting and include a brief description of each item of business including items to be discussed in closed session (see Safe Harbors language)

- POSTING MUST BE AVAILABLE 24/7 FOR FULL 72 HOURS.
- MUST GENERALLY DESCRIBE EACH ITEM OF BUSINESS
  brief general description of each item of business to be transacted or discussed...the general description need not exceed 20 words.
- ACTION MAY BE TAKEN ONLY ON AGENDIZED ITEMS.

respond to statements or questions posed by public during public comment; clarification, brief announcement or brief report.
ALL MEETINGS SHALL BE OPEN & PUBLIC (GC54953) (unless specific exception applies)

• Everyone can attend.
• Can’t require attendees to register or identify themselves in any way. (GC 54953.3)
• Anyone can record the meeting unless it causes a persistent disruption of the proceedings. (GC 54953.5)
• Agency recordings must be retained for 30 days.
• Must make recording available for viewing/listening pleasure for free.
PUBLIC RIGHT TO PARTICIPATE (GC 54954.3)

• Public has a right to directly address the legislative body:
  • On any item within the subject matter jurisdiction of the body (public comment) at regular meetings.

• NOTE: no right to public comment at special meetings!
PUBLIC RIGHT TO PARTICIPATE (GC 54954.3)

On agendized items BEFORE OR DURING consideration of that item.
PUBLIC RIGHT TO PARTICIPATE (GC 54954.3)

• Agency can only regulate TIME, PLACE & MANNER of comments

• Reasonable time limits okay (GC54954.3)

• CANNOT regulate content. (GC54954.3(c))
REMEDIES AND PENALTIES FOR VIOLATIONS

CRIMINAL PENALTIES

A member of a legislative body may be charged with a misdemeanor where:

• action is taken in violation of the Brown Act; and

• the member intends to deprive the public of information to which it is entitled under the Act.
REMEDIES AND PENALTIES FOR VIOLATIONS

CRIMINAL PENALTIES

Because “action taken” can include a collective concurrence or commitment by a legislative body, an actual vote does not need to occur to violate the first part of this test.

A member’s participation in the illegal meeting alone is sufficient regardless of the position taken on the action.
File Civil Lawsuit seeking injunctive/declaratory relief  GC 54960.1

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6 or 54956 is null and void under this section

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6 or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.
CONDUCTING ORDERLY MEETINGS

• CHAIRPERSON RUNS THE MEETING
• FOLLOW THE AGENDA
• LISTEN TO THE STAFF PRESENTATION
• ONLY ONE SPEAKER AT A TIME
• DISCUSSION CAN COME EITHER BEFORE OR AFTER A MOTION
• PUBLIC MUST BE ALLOWED TO COMMENT BEFORE OR DURING CONSIDERATION OF THAT ITEM
• MAKE CLEAR AND SPECIFIC MOTIONS
THE BROWN ACT