



**SPECIAL
BOARD OF DIRECTORS
SAN LORENZO VALLEY WATER DISTRICT
MINUTES
January 23, 2019**

MISSION STATEMENT: Our Mission is to provide our customers and future generations with reliable, safe and high quality water at an equitable price; to create and maintain outstanding service and community relations; to manage and protect the environmental health of the aquifers and watersheds; and to ensure the fiscal vitality of the San Lorenzo Valley Water District.

Wednesday, January 23, 2019 at 5:30 p.m., Highlands Park Senior Center, 8500 Hwy. 9, Ben Lomond, CA 95005.

MINUTES

1. Convene Meeting 5:37 p.m.
Roll Call: Dir. Fultz and Pres. Henry - no quorum, continued as a Community Meeting

BROWN ACT & ETHICS TRAINING

Presentation by D. Timoney, SDRMA Chief Risk Officer.

BROWN ACT

Presented by

Dennis Timoney, ARM
SDRMA Chief Risk Officer

Currently there are 508 members participating in the Property/Liability Program and 442 members participating in the Workers Compensation Program.

Dennis supervises the Claims Management and Loss Prevention Programs for SDRMA.

BROWN ACT

This is the minimum standard, any Board can agree to more.

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." Transparency.

"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 regularly scheduled meeting is the Board's job.

BROWN ACT

Broad coverage

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

Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates or takes action on an item of business outside of a noticed meeting.

They include meetings held from remote locations by teleconference.

Communication must be in the open.

Public Records Act requests extends to emails + texts.

BROWN ACT

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. *Minutes must be action minutes at the minimum.*

The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Beginning in 2020 the website, agendas & minutes must be ADA compliant.

BROWN ACT

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

Brown Act Minimum

20 minutes total Oral Communication

3 minutes per speaker

Cannot yield speaking time to another
speak once per item

BROWN ACT

What is a “legislative body” of a local agency?

A “legislative body” includes:

The Governing Body of a local agency or other local body created by state or federal statute. This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A “local agency” is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.

Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.

BROWN ACT

Newly-elected members of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office. Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

A new member becomes a member as soon as the election is certified by the elections department.

A new member cannot vote or speak until sworn in.

BROWN ACT

Standing committees of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body. Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act.

For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act.

*Standing committees must have a fixed time, place + location.
These committees are for recommendations only and have
no legislative standing.*

BROWN ACT

A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.

Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency.

Also called an *Ad Hoc Committee*. It's a temporary advisory committee for limited purpose.

BROWN ACT

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- Regular Meetings” are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72- hour posting requirements.
- “Special Meetings” are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act’s notice requirements for special meetings and are subject to 24-hour posting requirements.

BROWN ACT

- “Emergency meetings” are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.
- “Adjourned Meetings” are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.

BROWN ACT

The Brown Act creates six exceptions to the meeting definition:

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

*Board members can travel in pairs.
3 Board members can meet as long as they are not talking about District.*

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Don't discuss District business.

BROWN ACT

Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction.

Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency. Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction.

BROWN ACT

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).

Social or Ceremonial Events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

BROWN ACT

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that “[a] majority of the members of a legislative body shall not, outside a meeting ... use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

BROWN ACT

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following: Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;

Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

BROWN ACT

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.

The agenda must state the meeting time and place and must contain “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session

BROWN ACT

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials.

Notice requirements for special meetings

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.

BROWN ACT

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda.

However, there are three specific situations in which a legislative body can act on an item not on the agenda;

When a majority decides there is an “emergency situation” (as defined for emergency meetings);

When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action “came to the attention of the local agency subsequent to the agenda being posted.”

This

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provision if the legislative body or the staff knew about the need to take

BROWN ACT

This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

BROWN ACT

The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting.

Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.

BROWN ACT

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.

This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body

BROWN ACT

Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting.

Except for privileged documents, those materials are public records and must be made available upon request without delay. A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.

A writing distributed during a meeting must be made public:
At the meeting if prepared by the local agency or a member of its legislative body; or After the meeting if prepared by some other person.

BROWN ACT

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body.

Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements

*Personal meeting notes are not a public document.
The public cannot complain about staff.*

BROWN ACT

Closed Sessions

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption. An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings

BROWN ACT

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.

The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session

BROWN ACT

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held. In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.

BROWN ACT

Closed Sessions
Real Estate Negotiations;
Labor Negotiations;
Public Employment;

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.” The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.

BROWN ACT

The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception. That authority may be delegated to a subsidiary appointed body.

BROWN ACT

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality. It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.

Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.

BROWN ACT

Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written “cure or correct” demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendaized items are acted on by the governing body during a meeting.

BROWN ACT

The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

BROWN ACT

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust