

Appendix 1

**Key Provisions of Brown Act,
Better Government Ordinance
and Agenda Requirements**

Office of the County Counsel
651 Pine Street, 9th Floor
Martinez, CA 94553

Contra Costa County
Phone: (925) 335-1800
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Date: January 15, 2014

To: David W. Twa, County Administrator,
Attn: Tiffany Lennear, Chief Clerk of the Board of Supervisors,
County Boards, Commissions, and Committees and their Administrative
Officers and Secretaries

From: Sharon L. Anderson, County Counsel
By: Mary Ann McNett Mason, Assistant County Counsel

M.A.M.

Re: **Ralph M. Brown Act Amendment Requires Detailed Public Report of
Individual Votes**

For your information, we discuss a recent amendment to the Ralph M. Brown Act, the open meeting law, Statutes of 2013, Chapter 257, effective January 1, 2014. Government Code section 54953, subsection (c) (2) now provides:

“The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.”

Previously, the law prohibited public bodies from voting by secret ballot, but did not expressly require that individual votes be reported on open session items, unless the meeting involved a teleconference location.¹ Thus, some agencies would state in their minutes that an item passed, without specifying how the various board members voted. This made it hard for members of the public either not attending the meeting, or watching the meeting of a very large body, to know with certainty how individual members voted on any given item. Government Code section 54953 (c) (2) was added to improve public accountability by requiring agencies to clearly report the vote or abstention of each member present at the meeting.²

A. Specificity in Minutes/Record of Actions Now Required

To comply with this new public reporting requirement, each time a board, committee, or commission votes on an agenda item, the minutes or record of actions must

¹ Gov. Code, § 54953 (b) (2).

² Senate Floor, Bill Analysis, SB 751 (5/28/13); Assembly Committee on Appropriations, Bill Analysis, SB 751 (7/3/13).

state how each individual board or committee member voted. If the member did not vote, the minutes/record of actions must specify whether the member was absent or abstained. To do this, include the following information in the minutes/record of actions for every vote:

AYES: (list names of members voting aye)
NOES: (list names of members voting no)
ABSENT: (list names of members absent)
ABSTAIN: (list names of members who abstained)

A written record of the body's actions must be made available for public review. This is usually done by posting approved minutes or a record of actions.

If bodies pass resolutions or otherwise reflect their actions by annotating individual board orders, these documents must detail the vote in the form shown above. A simple statement of the number of votes pro and con on a resolution or an annotated board order will not suffice. Each board member's name and vote, absence, or abstention also must be listed on the resolutions or board orders.

B. Enhancing Transparency in Open Session

Sometimes when a vote taken in open session is not unanimous, it can be difficult for members of the public attending the meeting to follow. To enhance transparency in this circumstance, it is a good practice to publicly announce the vote immediately after it occurs. After a vote in open session that either is not unanimous or from which a member abstains, the chair may summarize the vote and action taken as follows:

"The motion passes 3-2, with Smith and Jones dissenting. Item x is approved." or

"The motion passes 4-0, with Smith abstaining. Item x is approved."

"The motion fails 3-2, with Smith, Jones, and Black voting against. Item x is not approved."

C. Report of Vote following Closed Session

Not all boards, committees, and commissions are authorized by the Brown Act to meet in closed session. Legal counsel must always be consulted before listing a closed session item on an agenda. When a closed session is authorized, and the body reports an

David W. Twa, County Administrator
Attn: Tiffany Lennear, Chief Clerk of the Board of Supervisors
January 15, 2014
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action taken in closed session in the minutes/record of actions or other written document, the same format described in Section A above must be used to describe the vote.³

In an oral report of action taken or direction given in a closed session, the vote or abstention of every member present for the closed session must be reported. This applies even if the vote is unanimous.⁴ For example, the chair or counsel may state:

“In closed session, the board voted unanimously to seek appellate review in the case of *Green v. Miller*.” or

“In closed session, the board voted 3-2, to seek appellate review in the case of *Green v. Miller*, with Smith, Jones, and Black voting aye, and White and Rose dissenting.” or

“In closed session, the board voted unanimously to seek appellate review in the case of *Green v. Miller*, with Black abstaining.

MAM/am

cc: Members, Board of Supervisors
County Administrator
Attn: Terry Speiker, Chief Assistant County Administrator
Julie Enea, Senior Deputy County Administrator
Department Heads
Steven Moawad, Senior Deputy District Attorney

³ Gov. Code, §§ 54953, 54957.1.

⁴ Gov. Code, § 54957.1.

Office of the County Counsel
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Contra Costa County
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Date: March 29, 2012

To: County Boards, Commissions and Committees and their
Administrative Officers and Secretaries

From: Sharon L. Anderson, County Counsel
By: Mary Ann McNett Mason, Assistant County Counsel *M. A. M.*

Re: Selected Brown Act and Better Government Ordinance Provisions

County advisory bodies are subject to both the Ralph M. Brown Act (Government Code, sections 54950 et. seq.) and the County's expanded open meeting law, the Better Government Ordinance (Contra Costa County Code, Chapter 25-2.) For your information, we provide this summary of the critical provisions of these open meeting laws.

A. Open Meetings. The Brown Act and Better Government Ordinance generally require that all County Board, commission and committee ("County body") meetings be open for public attendance, that all interested persons be permitted to attend and participate, and that meetings be held on noticed dates at fixed times and places and in accordance with posted agendas. Most county bodies provide for regular fixed times and places for meetings. Meetings generally must be held within the jurisdictional limits of the Board of Supervisors and at locations accessible to the public, including disabled persons. (Gov. Code, §§ 54950, 54954(a),(b), 54961; Ord. § 25-2.602.)

B. County Bodies Subject to Open Meeting Laws. The Brown Act applies to all "legislative bodies" of a local agency, i.e., the County. Legislative bodies include: 1) the governing body of the local agency, (e.g., the Board of Supervisors); 2) committees created by statute; 3) committees created by formal action of the Board, whether composed of lay persons or a combination of lay persons and board members; 4) standing committees composed solely of members of the Board which have a continuing subject matter jurisdiction (e.g., permanent subcommittees such as the "Internal Operations" committee); 5) standing committees created by a Board appointed committee and composed solely of members of that body (e.g., a Mental Health Commission subcommittee). (Gov. Code, § 54952 (a), (b).)

The Better Government Ordinance applies to all County bodies subject to the Brown Act *and* to all other Board or committee created County bodies, including temporary, ad hoc advisory committees composed solely of Board members or committee members and appointed to deal with a single topic for only one meeting or a small number of unscheduled meetings. (Ord. § 25-2.202(a), 25-2.204(a), 25-2.205.) County bodies that are not subject to the Brown Act nevertheless must comply with comparable provisions under the Ordinance. (Ord. § 25-2.202(a), 25-2.204(a), 25-2.205.) We caution that very few committees will be exempt from both the Act

and the Ordinance and that the safer course of action is to assume that both open meeting laws apply.

Bodies subject to the Brown Act and the Ordinance do not include advisory committees to a single individual which are formed by the unilateral action of that individual, e.g., a committee to assist the County Administrator or a single Supervisor and do not include committees made up entirely of County staff. (56 Ops.Cal.Atty.Gen. 14 (1973); Ord. § 25-2.202.) However, unless composed entirely of County staff, a permanent advisory committee created by the County Administrator or a department head must permit the public to attend its meetings upon request to the extent possible consistent with the facilities and the purpose of the gathering. Meetings of these committees need not be formally noticed or provide for public comment. (Ord. § 25-2.204 (d), (e).)

C. Definition of "Meeting". "Meetings" include:

* Any congregation of a majority of members of a County body at the same place and location (including teleconference locations) to hear, discuss, deliberate or take action on any item within the body's subject matter jurisdiction. (Gov. Code, 54952.2 (a).)

* Any serial use of communication, personal intermediaries, or technological devices through which a majority of the body's members discuss, deliberate, or take action on an item. (For example, for a five person body, such an illegal "serial" meeting could occur where committee member A e-mails committee member B about his position on a committee issue and B forwards A's e-mail to committee member C.) A mere series of e-mails or telephone calls by a majority of the body about one of its business items violates the Brown Act. (Gov. Code, § 54952.2 (b).)

D. Social and Ceremonial Occasions. Meetings generally do not include social or ceremonial occasions, provided that a majority of the members do not discuss among themselves business within the subject matter jurisdiction of the legislative body of the local agency. (Gov. Code, § 54952.2(c)(5).) However, when a County body, as a body, sponsors a social, recreational or ceremonial occasion, such as a holiday party, and a majority of the body is invited to attend, the occasion must be accessible to the public upon request, to the extent possible consistent with the facilities and the purpose of the gathering. The occasion need not be noticed formally, conducted at a particular location or provide for public comment. (Ord. § 25-2.204 (d)(2), (e).)

E. Regular Meetings- Agenda Posting Requirements and Related Provisions.

1. Enhanced Agenda Notice Requirement. Under the Brown Act, agendas must be posted at least 72 hours before each scheduled regular meeting. (Gov. Code, § 54954.2

(a.) However, the Better Government Ordinance extends this posting period an additional day. (Ord. § 25.2-206 (a).) Thus, at least 96 hours before each scheduled regular meeting, an agenda containing a brief general description of each item of business to be transacted at the public body's meeting, including items to be discussed in closed session, must be posted. The description generally need not exceed 20 words. The agenda must specify the time and location of the regular meeting.

The agenda must be physically posted in a location freely accessible to members of the public during the entire 96 hour period. (Gov. Code, § 54954.2(a); Ord. § 25.2-206 (a); 78 Ops.Cal.Atty.Gen.328 (1995).) In addition, certain bodies must *also* post their agendas on the their website, or arrange for posting on the County's website 96 hours in advance of the meeting. (Gov. Code, § 54951, 54954.2 (d); see attached memorandum, **Internet and Physical Agenda Posting Required for Certain Bodies.**)

If an item is not specified on the agenda, the County body may not act on or discuss that item, or add that item to the agenda as an urgency item, except as set forth below in subsections 3 and 4. (Gov. Code, § 54954.2 (a), (b); Ord. § 25.2-205.)

2. Deadline for Staff Materials. At least 96 hours in advance of a regular scheduled meeting, all staff reports and other materials prepared or forwarded by staff that provide background information and recommendations on agenda items must be made available to the public and to members of the body. (Ord. § 25-2.206 (a).) In the case of items that are placed on the agenda for a scheduled meeting at a prior meeting occurring not more than seven days before the scheduled meeting, supporting written staff materials may be made available 24 hours before the scheduled meeting. (Ord. § 25-2.206 (a).)

3. Exceptions to the Better Government Ordinance 96 hour agenda notice and staff material deadline. Under limited circumstances, the County body may waive the requirement that an agenda and supporting staff reports must be made available to the public and to members of the body at least 96 hours before the meeting. Upon a determination by *three-fourths* vote of the body that it is essential to waive the time limits *and* after receiving from staff a written explanation as to why the agenda and/or staff reports could not be made available 96 hours in advance, the body may waive the time limits. (Ord. § 25-2.206 (a).) *Notwithstanding a waiver of the Better Government Ordinance requirements, the 72 hour agenda notice requirements and exceptions thereto of the Brown Act continue to apply to all County bodies covered by the Act.*

4. Exceptions to Brown Act 72 hour agenda notice.

a. "Brief Response" to Public Comment; Reference to Staff. (Gov. Code, § 54954.2 (a).) A County body may engage in certain limited activities that are not discussion of

or action on, non-agenda items. If an item not on the agenda is raised by a member of the public during the "public comment" portion of the meeting, members of the County body may "briefly respond." Until a court has construed "briefly respond," we recommend that County bodies interpret the right to respond narrowly, and keep responses limited. On any matter, either in response to questions posed by members of the public or on their own initiative, members of County bodies may ask questions for clarification. In addition, subject to the body's rules or procedures, members of County bodies may provide a reference to staff or other resources for factual information, may request that staff report back at a subsequent meeting on a matter, or may request that staff place a matter on a future agenda. (Gov. Code, § 54954.2 (a).)

b. Limits on Discussion and Action on Non-Agenda Items. (Gov. Code, § 54954.2 (b). Discussion may occur and action may be taken on items which are not set forth on the posted agenda where, prior to discussion or action, the body publicly identifies the item and:

(1) The majority of members of the body vote and find that an emergency exists which involves a work stoppage or other activity which severely impairs public health, safety or both or a crippling disaster which severely impairs public health and safety or both, or

(2) Upon a determination by a two-thirds vote of the body (or, if less than two-thirds of the members are present, a unanimous vote of the members present) that there is a need to take immediate action and that the need for action *came to the attention of the local agency after the agenda was posted*, or

(3) The item was posted for a prior meeting, but action on the item was continued to the present meeting, which is not more than five calendar days after the meeting for which the item was posted. (Gov. Code, § 54954.2 (b).)

We caution that these exceptions will rarely apply in the case of County advisory bodies.

F. Special Meeting Notice Requirements. The Brown Act law requires that notice of a special meeting be provided by 24 hour advance written notice to each member of the public body (unless notice has been appropriately waived) and to each local newspaper, radio or television station which had requested notice in writing. Notice may be given by personal delivery or *by any other means* (i.e., facsimile or e-mail). In addition, the call and notice of the special meeting must be physically posted at least 24 hours prior to the meeting in a location that is freely accessible to members of the public. Bodies subject to the internet posting requirement must also simultaneously post the special meeting agenda on their website, or if they don't have a website, on the County's website. The notice must identify the time and place of the meeting and the business to be transacted. Only the business set forth in the notice may be transacted at the

meeting. (Gov. Code, § 54956.)

1. Public Input. The notice for the special meeting must provide an opportunity for public comment on the item which is the subject of the special meeting before the public body acts on that item. (Gov. Code, § 54956.)

G. Emergency Meeting Notice Requirements. The Brown Act allows the calling of emergency meetings in specified circumstances (work stoppages, crippling disasters, or other activities which will severely impair public health, safety or both, as determined by a majority of the public body) without complying with the special meeting 24 hour notice or 24 hour posting requirements. If telephone services are functioning, each newspaper and radio or television station that has filed a request for special notice must be noticed by telephone at least one hour prior to the emergency meeting. (Gov. Code, § 54956.5 (a) (1), (b).)

In the case of dire emergencies (crippling disaster, mass destruction, terrorist act, threatened terrorist act that poses immediate and significant peril as determined by a majority of the public body), even the one hour notice to media outlets is eliminated. If telephone services are functioning, telephone notice of the meeting must be given to the media outlets at or near the time that the chair notifies members of the body of the meeting. (Gov. Code, § 54956.5 (a) (2), (b).)

As to any emergency meeting, if telephone services are not functioning, as soon after the meeting as possible, newspapers and radio or television stations must be notified of the meeting, of its purpose, and of any action taken at it. In addition, as soon after the meeting as possible, the minutes of the emergency meeting must be posted for a minimum of 10 days in a public place. (Gov. Code, § 54956.5 (e).)

H. Public Input.

1. Provide Opportunity to Comment. Every agenda must provide an opportunity for members of the public to directly address the body on 1) items that are within the subject matter jurisdiction of the body, even if they are not on the agenda and 2) items on the agenda. The opportunity to comment on agenda items must be afforded *before or during* the body's consideration of the item. (Gov. Code, § 54954.3(a); Ord. § 25-2.205 (c).) To ensure that the public is not denied the opportunity to comment on specific agenda items, and to enhance the flow of the meeting, we suggest that the public comment period as to all items usually be scheduled for the beginning of the meeting.

If a member of the public addresses an item not appearing on the posted agenda, no response, discussion, or action on that item may occur except as set forth in section E,

subparts 3 and 4 above.

2. No Prohibition of Criticism. During a meeting, the County body may not abridge or prohibit public criticism of the County's policies, procedures, programs, or services, and may not abridge or prohibit public criticism of acts or omissions of the body. However, the body may apply its adopted rules of procedure concerning time per speaker. (Gov. Code, § 54954.3 (a); Ord. § 25-2.604.)

3. Overflow Capacity. If the number of spectators at a meeting of the Board of Supervisors, or of a permanent board or commission, or of a permanent subcommittee of the Board, exceeds the legal capacity of the meeting room, the public address system must broadcast into an adjacent area to permit the overflow audience to hear the meeting. If this is not possible, the meeting must be adjourned to a facility with sufficient capacity to accommodate the entire audience. (Ord. § 25-2.602.)

I. Teleconferencing. A body may hold meetings by "teleconference," that is, a meeting of a body whose members are in different locations, connected electronically through audio and/or video. During the teleconference, at least a quorum of the members of the body must participate from locations within the boundaries of the body. Teleconferencing may be used for all purposes in connection with a public meeting, including voting. All votes taken during a teleconferenced meeting must be by roll call. Each teleconference location must be identified in the agenda for the meeting, and each teleconference location must be accessible to the public. The agenda must permit members of the public to address the body directly at each teleconference location. Agendas must be posted at all teleconference locations. (Gov. Code, § 54953 (b).)

J. Record of Meetings. Each County body must keep a record of its meetings. Though the record need not be verbatim, i.e., a tape-recording, it must accurately reflect the agenda and the decisions made in the meeting. (Ord. § 25-2.205 (d).)

K. Assistance for Persons with Disabilities on Request. Upon request, agendas, agenda packets, and other writings distributed to the public body must be made available in appropriate alternative formats to persons with disabilities as required by the federal Americans with Disabilities Act. In addition, every public body agenda, including all subcommittee agendas, must include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aides or services, may be made by a person with a disability who requires a modification or accommodation to participate in a meeting. (Gov. Code, §§ 54954.1; 54954.2 (a); 54957.5 (b).)

L. Distributed Materials as Public Records. Except for certain writings exempt

from disclosure under the California Public Records Act, documents distributed to the County body by staff or any other person for consideration at a public meeting are public records. If presented during a meeting during discussion on an agenda item, such records must be immediately available for public inspection. If presented during a meeting prior to commencement of discussion on the agenda item to which the records relate, such non-exempt documents must be made available to the public for inspection before and during discussion on the agenda item. (Gov. Code, § 54957.5(a),(c); Ord. § 25-2.206 (c).)

Before a meeting, except for records that are exempt by law from disclosure, any county record that is intended for distribution to the body, even if not yet distributed to the body, must be available for public inspection and copying upon request. (Ord. § 25-2.206 (b).)

M. Provision of Agenda Materials Required.

1. Written Request for Packet. The Brown Act permits a member of the public to place a standing request that copies of the agenda or of the agenda packet be mailed to him. Such request must be made in writing and will apply for the entire calendar year in which it is filed. The body must mail the requested materials at the time the agenda is posted, or upon distribution to a majority of the members of the County body, whichever is first. Thus, if the agenda packet is mailed to members of the county body a week before the meeting, the packet must be mailed simultaneously to a requestor. (Gov. Code, § 54954.1.)

2. Materials Distributed Less Than 72 Hours Before Meeting. If a document related to an open session agenda item on a regular meeting agenda is distributed to a majority of the body less than 72 hours before the meeting, the document must be made available to the public at a specified location at the same time it is provided to the body. Each meeting agenda must specify the location where such documents will be available for public inspection. (Gov. Code, § 54957.5 (b) (2).) Inasmuch as the County's Better Government Ordinance requires that the agenda and supporting staff reports be made available to the public and members of the body at least 96 hours before a regular meeting, there should be few occasions on which a document is distributed less than 72 hours before a meeting.

Please note that these two State law requirements apply, even if a legislative body subject to the Better Government Ordinance acts by a three-fourths vote to waive ordinance requirements that the agenda and supporting staff reports must be made available to the public 96 hours in advance of the meeting. (Ord. § 25-2.206 (a).)

2. Fees for Provision of Packet. The County body may establish a fee for provision of agenda packets. (Gov. Code, § 54954.1.) However, the Better Government Ordinance imposes a limitation on fees for duplication of agendas and related materials. Bodies considering establishment of a fee for mailing of the agenda or agenda packet should be sure

such fee conforms to these limitations. While a body may charge actual mailing costs, a body may not charge for copying meeting agendas and related materials that are twenty or fewer pages per document. A fee of one cent per page may be charged for a copy of agendas and related materials that contain more than twenty pages per document. (Ord., §§ 25-2.206 (d); 25-4.610.)

N. Closed Sessions. There are a number of express grounds (to receive legal advice concerning threatened or pending litigation, etc.) authorizing adjournment of a County body from a public meeting to a closed session. However, this office envisions only the rarest of situations arising in which the public bodies that it advises other than the Board of Supervisors or legislative special district bodies would be permitted to go into closed session. For this reason, we suggest that if the County body feels a closed session may be justified the body should authorize its chairperson or staff to contact this office to discuss whether a closed session is appropriate, how it should be noticed, and how action taken should be reported out.

1. Agenda Notice Requirements. Regular meeting agendas and special meeting notices must include a brief, general description of the matters to be discussed in closed session. (Gov. Code, §§ 54954.2, 54956.) The Brown Act provides agenda descriptions for each of the various closed session topics. While the Act does not require use of these descriptions, their use provides a “safe harbor” against challenges to the adequacy of the notice. (Gov. Code, § 54954.5.)

2. Announcing and Reporting Out. Before conducting a closed session, the body must announce in open session the items to be discussed. Disclosure may be made by reference to the agenda item number or letter. (Gov. Code, § 54957.7(a).) After completing closed session, the public body must reconvene in open session and make a public report of certain specified actions. The content of the report depends upon the nature of the closed session. Generally, in addition to other matters, where action is taken the County body must report out the vote or abstention of every member present. (Gov. Code, §§ 54957.1.)

3. Closed Session Prohibited for Temporary Bodies. A County body subject to the Better Government Ordinance, but not otherwise subject to the Brown Act, (i.e., a temporary ad hoc committee composed solely of members of the county body) may not hold a closed session. It must conduct all meetings in open session. (Ord., § 25-2.205 (a).)

O. Procedure to Void Actions Taken in Violation of the Brown Act's Requirements. The Brown Act sets forth a procedure for invalidating actions of a covered public body taken in violation of that Act. (Gov. Code, § 54960.1.) The procedure provides that before any interested person may initiate legal action to obtain a judicial determination of whether the public body has violated the Act and that any action taken is null and void, the person must make a written demand on the public body to cure the alleged defect. If your body received such a demand, it

immediately should be brought to the attention of the County Counsel's Office.

Should the interested party file and succeed in litigation, the court can award costs and reasonable attorneys fees against the County body. (Gov. Code, § 54960.5.)

P. Criminal Penalty for Unlawful Meeting. Each member of a body who attends a meeting of that body where action is taken in violation of any provision of the Brown Act, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act, is guilty of a misdemeanor. (Gov. Code, § 54959.)

Conclusion. As can be seen from the foregoing, it is very important that your County body properly prepare agendas and provide required notice of its meetings. If these procedural matters are not done correctly, interested parties may use legal process to void actions taken at an improperly noticed meeting. If your body has any particular questions concerning these requirements, please have your chairperson or administrative staff contact this office for clarification.

MAM/am

attachment

cc: Members, Board of Supervisors, District Offices
County Administrator
Clerk of the Board
Thomas Kensok, Senior Deputy District Attorney
County Department Heads

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651 Pine Street, 9th Floor
Martinez, CA 94553

Contra Costa County
Phone: (925) 335-1800
Fax: (925) 646-1078

Date: February 21, 2012
To: County Boards, Commissions, and Committees
From: Sharon L. Anderson, County Counsel
By: Mary Ann McNett Mason, Assistant County Counsel *M. A. M.*
Re: **Internet and Physical Agenda Posting Required for Certain Bodies**

For your information, we summarize a recent amendment to the Ralph M. Brown Act, the open meeting law.

PHYSICAL AND INTERNET AGENDA POSTING REQUIRED

Effective January 1, 2012, State law requires that certain public bodies post regular and special meeting agendas on their websites. **This is not a substitute for physically posting the agenda. Agendas must be posted both on the website and on the building.** (Gov. Code, §§ 54954.2, 54956.) County bodies must post regular meeting agendas at least 96 hours before the regular meeting and must post special meeting agendas at least 24 hours before the special meeting. The same time limits apply to both physical and internet posting.

This new internet posting requirement applies to governing bodies of local agencies such as the Board of Supervisors or a joint powers agency governing board. Additionally, the new requirement applies to statutory bodies such as the County Planning Commission and Municipal Advisory Councils, and to certain bodies whose membership is compensated for service *and* includes a Supervisor or other member of a statutory body, such as the Internal Operations Committee. (Gov. Code, §§ 54951, 54954.2 (d), 54956 (c).) A comprehensive list of County bodies subject to the new internet posting requirement is attached. (See list, **Bodies That Must Post Agendas Physically and on Website.**)

If a listed body does *not* have its own website, it must arrange to have its agenda posted on the County's website 96 hours before regular meetings and 24 hours before special meetings. A body without a website must deliver a hard copy of its agenda to the Clerk of the Board, attention Arsenio Escadero, Senior Management Analyst, **at least one full business day** before the required posting deadline. Bodies that have websites should forward links for their websites to the Clerk of the Board who will create a master index of such websites on the County's website.

NO POSTING, NO MEETING

If a body on the attached list fails to timely post its agenda physically in a location

that is freely accessible to the public *and* on its website (or the County's website,) the body may not hold its meeting. (Gov. Code, §§ 54954.2 , 54956 .)

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MAM/am

attachment

cc: Members, Board of Supervisors

County Administrator

Attn: Terry Speiker, Chief Assistant County Administrator

Attn: Lara Delaney, Senior Management Analyst

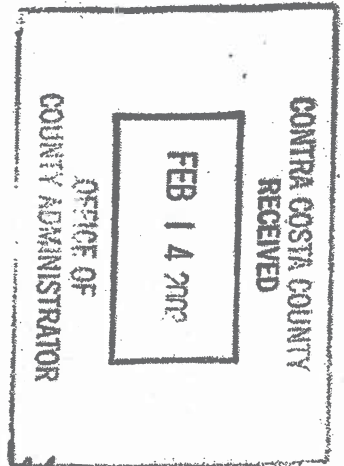
Department Heads and Fire Chiefs

Executive Director, Housing Authority

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**IMPORTANT
New Brown Act
Agenda Requirement**



Date: February 13, 2003

To: County Boards, Commissions and Committees and their
Administrative Officers and Secretaries

From: Silvano B. Marchesi, County Counsel
By: Mary Ann McNett Mason, Deputy County Counsel

M.A.M.

Re: Brown Act Requirements for Assistance for Persons with Disabilities

Effective January 1, 2003, the Brown Act contains requirements designed to ensure that public bodies foster participation by persons with disabilities. (Gov. Code, §§ 54954.1; 54954.2 (a); 54957.5 (b).)

I. New Agenda Requirement

The Brown Act now requires that every advisory body meeting agenda include information regarding how, to who, and when a request for disability-related modification or accommodation, including auxiliary aides or services, may be made by a person with disabilities. (Gov. Code, § 54954.2 (a).) To ensure that your advisory body meets this requirement, you should include the following statement *on the front page* of your agenda:

"The (insert name of advisory body, or subcommittee of advisory body) will provide reasonable accommodations for persons with disabilities planning to attend (insert name of advisory body or subcommittee) meetings who contact (insert name of chair or, if committee has staff, name of staff to committee) at least 24 hours before the meeting, at (insert telephone number for chair or staff person named above.)"

Be sure to include this statement on every meeting agenda, whether the agenda is for a meeting of the advisory body itself, or for a meeting of one of the body's subcommittees. To ensure that the statement is visible, you may want to print it in bold or italic type, or you may want to enlarge the type.

2. Provision of Documents for Persons With Disabilities on Request

The Brown Act now requires that, *upon request*, agendas, agenda packets, and other writings distributed to your advisory body be made available in appropriate alternative formats to persons with disabilities as required by the federal Americans with Disabilities Act. (Gov. Code, §§ 54954.1, 54954.2 (a), 54957.5 (b).) For example, a person with a vision problem may contact you and ask for an enlarged copy of the agenda packet. Please note that when responding to such a request, your advisory body may not charge a person with a disability any more than it would charge any other person for providing copies of the documents requested. (Gov. Code, § 54957.5 (c).)

A requestor may make a standing request that the agenda and agenda packets always be made available in an appropriate alternative format. Such request will be good for the entire calendar year in which it is made. (Gov. Code, § 54954.1.)

Please note that an advisory body is only required to provide a document in an appropriate alternative format when there is a request for such modification. Advisory bodies are not required to provide documents in alternative formats in the absence of a request.

3. What To Do if You Receive a Request for Either a Meeting Access Accommodation or a Document in an Alternative Format

If you are an advisory body chair, or staff to an advisory body, and you receive a request for an accommodation to attend a meeting, i.e., for an assistive listening device, a sign language assistant, or wheelchair access, or you receive a request for a document in an alternative format, i.e., large print or braille, you should do the following:

A. Do not ask the requestor about the nature of their disability. Inquire only about the nature of the accommodation needed.

B. Do not ask the requestor to put the request in writing. An oral request is sufficient. Make sure you understand the request.

C. For every request, complete the attached "Disability Access Request Form." Be sure to get a telephone number where you can contact the requestor. Tell the requestor that you will respond as soon as possible.

D. Immediately call Gina Martin, Chief Clerk, Clerk of the Board at 925-335-1900. Tell her about the access request, and fax a copy of the completed Disability Access Request Form to her at 925-335-1913. Ms. Martin has sources for provision of accommodations and will assist you in identifying an appropriate source for the accommodation.

E. Before the meeting, inform the requestor of the outcome of the request, i.e., that the advisory body will provide the requestor an audio tape of the agenda contents.

F. Complete the "outcome" section of the Disability Access Request Form.

4. What To Do if You Receive a Complaint about Your Response to a Request from a Person with a Disability

If you receive a complaint about your response to a request to assist a person with disabilities, immediately refer the matter to the Assistant Risk Manager/Liability, Sharon Hymes-Offord, at 925-335-1442 or to the County's Risk Manager, Ron Harvey, at 925-335-1443.

MAM/am

attachment

cc: Members, Board of Supervisors, District Offices
County Department Heads ✓
Clerk of the Board
Attn: Gina Martin, Chief Clerk,
Ron Harvey, Risk Manager
Jim Sepulveda, Senior Deputy District Attorney
Emma Kuevor, Affirmative Action Officer
Susan Skamsner, ADA Coordinator

DISABILITY ACCESS REQUEST FORM
INTAKE FORM

1. **DATE OF MEETING(S)** If more than one meeting or reoccurring meeting, please list specifics as to dates:

2. **NAME OF MEETING, EVENT AND/OR COMMITTEE** (include County department) _____
3. **CONTACT PERSON** _____
4. **TELEPHONE NUMBER OF CONTACT PERSON** _____
5. **LOCATION OF EVENT** (include room number or location) _____

ACCESS REQUEST

1. **Who made the request for access?** _____
Contact phone number and/or address _____
2. **What access accommodation was requested?** _____
3. **Did the requestor identify a disability?** _____
4. **What date was the request received and by what means (phone call, letter, etc.)?** _____

OUTCOME

1. **REQUEST GRANTED** _____ Describe access accommodation _____
Were any problems encountered? _____
Were accommodations successful? _____
Were there any comments/complaints from the person receiving the accommodation? _____
2. **Was request for access denied?** _____
Describe reason for denial or alternative offered _____
3. **Comments/complaints from person requesting access?** _____
4. **Suggestions for future accommodations** _____

BETTER GOVERNMENT ORDINANCE

Contra Costa County, California, Ordinance Code >> Title 2 - ADMINISTRATION >> Division 25 - BETTER GOVERNMENT ORDINANCE >> Chapter 25-2 - MEETINGS >>

Chapter 25-2 - MEETINGS

Sections:

Article 25-2.2. General

25-2.202 - Application to policy bodies—Definitions.

25-2.204 - Meetings to be open and public.

25-2.205 - Expansion of open meeting requirements.

25-2.206 - Agendas and related materials—Public records.

25-2.402 - Closed sessions—Pending litigation.

25-2.404 - Closed sessions—Employee salaries and benefits.

25-2.406 - Report of closed session actions.

25-2.602 - Barriers to attendance prohibited.

25-2.604 - Public testimony at regular and certain special meetings.

25-2.606 - Public comment by members of policy bodies.

25-2.202 - Application to policy bodies—Definitions.

- (a) For the purposes of this division a "policy body" means the board of supervisors, or any permanent or temporary board, committee or commission under the authority of the board of supervisors. Policy bodies do not include committees entirely made up of county staff.
- (b) A "delegated body" is any private entity which receives a grant of governmental authority, financial support or property, pursuant to action by the board of supervisors; and is governed by a multi-member body, which includes one or more members of a policy body.
- (c) "County" includes the county of Contra Costa and all special districts, agencies and authorities of which the board of supervisors is the governing body.
- (d) "Permanent advisory committee" means a permanent committee created by the county administrator, or a department head to advise the county administrator or a department head. "Permanent advisory committee" does not include a committee made up entirely of county staff.

(Ord. 95-6).

25-2.204 - Meetings to be open and public.

- (a) All meetings of any policy body which is not currently governed by the provisions of the Ralph M. Brown Act (Gov. Code Section 54950 et seq.) shall be held in accordance with Section 25-2.205 of this division.
- (b) The governing body of a "delegated body" shall conduct its meetings pursuant to Section 25-2.205 of this division when it deliberates either the expenditure of funds received from the county or any use of governmental authority delegated by the county.
- (c) To the extent not inconsistent with state or federal law, any contract between the county and a private entity that owns, operates or manages any real property in which the county has a legal interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, shall include a requirement that any meeting of the governing board of the entity to address any matter relating to the property, or its

government related activities on the property, be conducted as provided by Section 25-2.205, except that closed sessions may be conducted as provided for by Article 25-2.4.

- (d) The following are considered to be passive access gatherings which the public shall be permitted to attend:
 - (1) Meetings of permanent advisory committees;
 - (2) Social, recreational or ceremonial occasions sponsored by or for the policy body, to which a majority of the body has been invited.
- (e) Such "passive access" gatherings shall be accessible upon inquiry or request to the extent possible consistent with the facilities and the purpose of the gathering. Such gatherings need not be noticed formally, conducted in any particular space open to spectators or provide for comment by spectators.
- (f) Such passive access gatherings may exclude the public if their purpose is to discuss information which is privileged by a specific state or federal statute.

(Ord. 95-6).

25-2.205 - Expansion of open meeting requirements.

- (a) Policy bodies of the county which would not otherwise be subject to the Ralph M. Brown Act (Gov. Code Section 54950 et seq.) shall hold all meetings in open session. No closed sessions shall be allowed.
- (b) No issues which are not included in the agenda may be acted upon or deliberated by the policy body. No urgency items may be added to the agenda.
- (c) Public comment must be allowed on each agenda item and during a general comment period.
- (d) Records or recordings of the meetings must be kept in a manner which accurately reflects the agenda and decisions made at the meeting. These records do not necessarily need to be verbatim records.

(Ord. 95-6).

25-2.206 - Agendas and related materials—Public records.

- (a) Staff material, consisting of agendas of policy body meetings, staff reports and other material prepared or forwarded by staff which provide background information and recommendations regarding agenda items, when distributed to all or to a majority of the members of a policy body in connection with a matter subject to discussion or consideration at a public meeting shall be made available to the public. All such staff material must be distributed to the policy body and be made available to the public ninety-six hours before a scheduled meeting or twenty-four hours prior to a meeting when the agenda item has been added to the agenda at a previous meeting of the policy body not more than seven days prior to the scheduled meeting. However, the policy body may, by a three-fourths vote, waive these time limits when, in its judgment, it is essential to do so, providing that the county administrator, appropriate department head or staff member furnishes to the board of supervisors or other policy body a written explanation as to why the material could not be provided to the board or other policy body and the general public within the above time limits.
- (b) Records which are not exempt from disclosure and intended for distribution to the policy body shall be made available for public inspection and copying upon request whether or not actually distributed to or received by the body at the time of the request.
- (c) Records which are releasable and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to and during, their discussion.
- (d) A policy body of the county may charge a duplication fee in accordance with Section 25-4.610, for a copy of a public record prepared for consideration at a public meeting. Neither this section

nor the California Public Records Act (Gov. Code § 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by this section, whether or not distributed to a policy body.

(Ord. 95-6).

Article 25-2.4. Closed Sessions

25-2.402 - Closed sessions—Pending litigation.

- (a) A policy body covered by the Ralph M. Brown Act, based on advice of its legal counsel, may hold a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the county in that litigation.
- (b) Litigation shall be considered pending when any of the following circumstances exist:
 - (1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the county, an officer or employee of the county, or an agency of the county is a party, has been initiated formally;
 - (2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the county, or the policy body is meeting only to decide whether a closed session is authorized pursuant to that advice;
 - (3) Based on existing facts and circumstances, the policy body has decided to initiate or is deciding whether to initiate litigation.
- (c) Legal advice as to the potential risk of litigation of actions not yet taken, if provided by counsel at a meeting of a policy body, is to be conveyed openly as a matter of public record.
- (d) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.
- (e) Prior to holding a closed session pursuant to this section, the policy body shall disclose the justification for its closure either by entries in the appropriate categories on the agenda or, in the case of an item added to the agenda based on a finding of necessity and urgency, by an oral announcement specifying the same information.

(Ord. 95-6).

25-2.404 - Closed sessions—Employee salaries and benefits.

- (a) A policy body with authority concerning employee compensation and benefits may hold closed sessions with the county's designated representatives regarding the salaries, salary schedules or compensation paid in the form of fringe benefits to its represented and unrepresented employees. A policy body shall not discuss or negotiate compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations except as follows. The board of supervisors may, in closed session, discuss and provide direction to the county administrator or other negotiators representing the county regarding the salary and benefits of unrepresented management employees. The salary and benefits of members of the board of supervisors, the county administrator and department heads will be discussed and acted on separately by the board of supervisors in open session.
- (b) In addition to the closed sessions authorized by subdivision (a), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Government Code Section 3504.
- (c) Closed sessions shall be for the purpose of reviewing the county's position and instructing its designated representatives and may take place only prior to and during consultations and

discussions between the county's designated representatives and the representatives of employee organizations or the unrepresented employees.

(Ord. 95-6).

25-2.406 - Report of closed session actions.

- (a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion the disclosure of which is not prohibited by federal or state law. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information which a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.
- (b) A policy body shall publicly report any final action taken in closed session and the vote or abstention of every member present thereon, as follows:
 - (1) **Real Property Negotiations.** Direction or approval given to the policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with the other party to the negotiations, the county shall disclose the fact of that approval, the substance of the agreement and the policy body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the county of its approval.
 - (2) **Litigation.** Direction or approval given to the policy body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after the adverse parties have been served if, in the opinion of legal counsel, earlier disclosure would jeopardize the county's ability to effectuate service of process or to conclude existing settlement negotiations to its advantage, in a manner that identifies the adverse party or parties, any co-parties with the county, and the substance of the litigation, including the circumstances leading to the dispute.
 - (3) **Settlement.** Approval given to the policy body's legal counsel of a settlement of pending litigation as defined in Government Code Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding, shall be reported as soon as the settlement is final. If its own approval renders the settlement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with some other party to the litigation, the county shall disclose the fact of that approval, the substance of the agreement and the policy body's vote or votes thereon upon inquiry by any person, as soon as the settlement is final. The county shall neither solicit nor agree to any term in a final settlement which would preclude the release of the text and terms of the settlement itself and any related documentation communicated to or received from the adverse party or parties, or any other materials not originally constituting a confidential communication between the county and its counsel. The county shall oppose any request for confidentiality to which it is proposed the county would be a party.
 - (4) **Claim Payments.** Disposition reached as to claims discussed in closed session pursuant to Government Code Section 54956.95 shall be reported as soon as agreed upon by the claimant, in a manner that discloses the name of the claimant, the substance of the claim, and any monetary amount approved for payment.
 - (5) **Employee Actions.** Action taken by a policy body to appoint, employ, dismiss, transfer, accept the resignation of or otherwise modify the terms or duration of the employment

contract of a public employee in closed session pursuant to Government Code Section 54957, shall be reported immediately in a manner that names the employee and position affected and specifies any change in compensation, job description, assignment or other contract particulars and, in the case of dismissal for a violation of law or of the policy of the county, the reason for dismissal. "Dismissal" within the meaning of this division includes any termination of employment at the will of the employer rather than of the employee, however characterized, including a resignation tendered as an alternative to involuntary termination. The proposed terms of any separation agreement shall be disclosed, along with its final terms, immediately upon final approval by the policy body. Provided, that the report of a dismissal or the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

- (6) Collective Bargaining. Approval of a final agreement concluding labor negotiations pursuant to Government Code Section 54957.6 shall be reported as soon as it has been approved and ratified by all parties in a manner that describes the item approved, and identifies the other party or parties to negotiation. Such disclosure shall include all formal offers and counteroffer made over the term of the negotiations.
- (c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other affected documents that were finally approved or adopted by both sides after action in the closed session. These documents shall be provided to any person who requested such copies in a written request submitted within twenty-four hours of the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54944.1 or 54946.

(Ord. 95-6).

Article 25-2.6. Public Participation

25-2.602 - Barriers to attendance prohibited.

No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the number of spectators at a meeting of the board of supervisors, or a permanent board or commission, or a permanent sub-quorum committee of the board of supervisors, exceeds the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway. If there be no public address system, or if supplementary speakers are not available at the time, the meeting shall be adjourned to a facility with capacity to accommodate all citizens present and wishing to attend.

(Ord. 95-6).

25-2.604 - Public testimony at regular and certain special meetings.

A policy body shall not abridge or prohibit public criticism of the policies, procedures, programs or services of the county, or of any other aspect of its proposals or activities, or of the acts or omissions of the policy body, on any basis other than reasonable and uniformly applied time constraints provided in previously adopted rules.

(Ord. 95-6).

25-2.606 - Public comment by members of policy bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. This county shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of nonpublic discussions, communications or actions with the requirements of state or federal law or of this division. The release of factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive relief, a complaint to the grand jury seeking an accusation of misconduct, or both.

(Ord. 95-6).