

THE BROWN ACT AND THE AGUA DULCE TOWN COUNCIL

As read by a layman

What Is The Ralph M. Brown Act?

The Brown Act is a state law which governs open meetings for local governmental bodies. The Brown Act ("Act") establishes rules designed to ensure that actions and deliberations are taken openly and with public access and input.

What Constitutes A Meeting Of The Town Council?

A meeting of the town council will occur when a majority of the members of the council meet at the same time and place to *hear, discuss, or deliberate* upon any matter which is under the subject matter jurisdiction of the town council. The jurisdiction of the town council is very broad, as defined in the charter and bylaws.

One might think that the Brown Act does not apply when the council is not making official decisions or recommendations. In fact, the Act will also apply whenever a majority of the council meet to simply *discuss, deliberate or acquire* information about a matter.

Not every gathering of a majority of council board members will necessarily constitute a meeting under the Act. Informal, social gatherings of board members are not meetings and council board members do not need to comply with the provisions of the Act in order to attend gatherings of that nature. However, even at these purely social occasions, a majority of the council may not gather together to discuss matters within the subject matter under the council's jurisdiction.

What Type Of Rules Will Govern The Conduct Of Council Meetings Under The Act?

Regular Meetings. The Act requires that the council hold their meetings at a regular time and place. The Charter or Bylaws should set the frequency of meetings. The council may, of course, choose to meet more often than the minimum.

Open Meetings. The Charter and Bylaws already provide that meetings of the council must be open to the public. The Brown Act also specifically requires that the meetings must be open not only to Agua Dulce residents, but to any member of the public. The council may not require attendees to sign in or identify themselves as a condition of attending a meeting. Discussion and deliberation of agenda items by the council must be done openly -- no secret ballots or secret deliberations are allowed.

The Act applies equally to the deliberations of a body and to its decision to take action. "Briefing sessions", "informal," "study," "discussion," "informational," "fact-finding," or "pre-council" gatherings of a quorum of the members of the council are meetings under the Act, and must be open. Activities such as receipt of an individual's mail or the review of a memorandum by an individual board member fall outside the purview of the Act.

Meetings do not commonly occur through written instruments; however, circulation of a proposal among board members for their review and signature is a meeting in violation of the Act when a majority of the Council signs the document.*

Again, the purpose of these requirements is to allow members of the public to hear and observe the proceedings.

Location of Meetings. The Brown Act provides that, unless specifically exempted, regular and special meetings must be held within the boundaries of the territory over which the legislative body has jurisdiction. This means that the council meetings should be conducted within the boundaries Agua Dulce.

Notice and Agenda Requirements.

Regular Meetings. The agenda for a regular meeting of the council must be posted *at least* 72 hours before the meeting. The agenda must list all items that will be discussed or acted upon by the council. That listing should be described in an informative way so that members of the council as well as members of the public understand the general nature of the agenda item and can make an informed decision whether to attend the meeting or not. General categories may be included on agendas, such as “General Announcements” or “Correspondence” or “Committee Reports.” However, if a committee of the council plans on making a particular recommendation to the council, that report should be listed specifically with a reference to the committee’s recommendation. The same would be true if the council is making a recommendation about a particular project or issue that it wants to formally communicate to the County. Those matters should be separately listed on the agenda with enough information to identify the project, such as the address, type of project, *etc.* The council will be limited to acting on (as well as discussing) only those matters which have been listed on the agenda, with limited exceptions which are described below.

Special Meetings. The agenda for a special meeting must be posted *at least 24 hours* prior to the meeting. Only matters that are on the agenda for that meeting may be discussed at that meeting.

Emergency Meetings. Emergency meetings may be called under certain specified circumstances defined in the Act without having to comply with either the 24-hour notice or posting requirements.

Exceptions to the Agenda Requirement. The general rule is that a matter may not be discussed or decided unless it is listed on the agenda. *This is very important*, but there are exceptions to this broad rule:

☞ council members may make very limited comments and *briefly* respond to statements made or questions posed by persons exercising their general public comment rights (*no action may be taken on matters brought up during general public comment*);

*The emergence of e-mail as a simple and effective means of communication has raised this issue in a fresh context. A violation of the Act would occur if a majority of the Council e-mailed each other regarding an issue under their jurisdiction, even if the e-mails were also posted on the Council’s Internet Web site, and a printed version of each e-mail was provided at the next public meeting of the Council. Even if a person had Internet access, the deliberations on a particular issue could be completed before an interested person had an opportunity to become involved.

- ☞ council members may make a *brief* announcement or a *brief* report on their own activities;
- ☞ the council may take action to place a specific matter on the agenda for a future meeting;
- ☞ the council may take action if, by two-thirds vote, it determines that there is a need to act immediately, that the council's consideration of the matter cannot await the next meeting of the council and that the need for immediate action arose after the posting of the agenda. *This should only occur in very rare occasions.*

What Rights Do Members Of The Public Have At Town Council Meetings?

Except when closed sessions are permitted, all meetings of the council must be held in public. Members of the public, not just Agua Dulce residents, are allowed to attend and participate by speaking about specific items on the agenda. Indeed, *before* the council takes action on any particular item on the agenda, members of the public have a right to testify or otherwise address the council board members about each item.

Agendas should also provide for an item designated "Public Comment" because the Act allows members of the public to comment on any item within the subject matter jurisdiction of the council that is not specifically listed on the agenda. That opportunity must exist at every regular meeting of the council. The council is allowed to adopt reasonable rules to govern the length of time for public comment on agenda and non-agenda items, on particular topics and individual speakers.*

Members of the public also have a right to criticize the policies or practices of the council during public comment, and have a right to videotape and audiotape the proceedings. The Act does allow the council to control disruptions and ask disruptive members to leave the meeting room. *However, this power must be exercised with caution.*

Members of the public also have a right to see materials that are distributed to the council at its meetings. The Act provides that materials distributed during a public meeting be made available for public inspection *at the meeting* if prepared by the council or the County. This means that if the council or, if applicable, staff at the County, prepare materials for distribution at the meetings, copies must be made available for the public. Otherwise, if materials are distributed by other individuals, such as Agua Dulce residents or members of the public, these must be retained and be made available after the meeting.

Are Committee Meetings Of The Council Subject To The Brown Act?

Committee meetings of the council may also be subject to the notice and agenda requirements of the Act.

Standing committees, which are committees that have a continuing jurisdiction over a particular subject matter, are subject to the Act, even if the committee comprises less than a

* So long as the council acts fairly with respect to the interest of the public and competing factions, it has great discretion in regulating the time and manner, as distinguished from the content, of comments by the public. However, the California Attorney General has opined that the council could prohibit a speaker from making comments that were outside their jurisdiction.

majority of board members or includes or is made up of only Agua Dulce residents. If the bylaws create standing committees, these are subject to the provisions of the Act.

Ad hoc, or temporary committees created by the council, are normally not subject to the Brown Act. Generally, a temporary committee is designed to address a specific issue for a limited time. As long as the committee is made up of *only* less than a majority of the council board members and the committee is of a temporary nature, the committee will not have to meet in public, nor comply with the other provisions of the Act. However, if you include *any* non-board member on a temporary committee, the Brown Act provisions will apply.

Standing committees, and temporary committees that are subject to the provisions of the Act, do not need to establish a regular time and place for their meetings.

When May The Council Can Hold A Meeting That Is Closed To The Public?

The need for a closed session is unlikely to arise. The Act provides for very specific and limited circumstances under which a closed session may be held. These exceptions have been construed narrowly; thus, if a specific statutory exception authorizing a closed session cannot be found, the matter must be conducted in public regardless of its sensitivity.

What you cannot do is use a closed session to discuss items because you might be uncomfortable discussing them in public or because you want to confer with legal counsel.

May A Majority Of Council Members Attend Other Public Meetings Without Having To Notice That Attendance As A Meeting?

A majority of council board members may attend meetings held by a person or organization as long as the council members do not discuss council business among themselves.

A majority of council members may attend meetings of its own committees without having to comply with the notice requirements for the council, as long as the council members attend *only* as observers. For example, if a majority of the council wanted to attend one of its standing committee's meetings, it may do so without having to comply with the Act. However, if any of the council members wish to participate by addressing the committee members, then the meeting would have to be noticed as both a meeting of the committee and the council itself.

What Should The Council Avoid To Prevent Inadvertent Violations Of The Act?

There are some common situations that you need to be particularly alert to, such as informal gatherings and "serial" meetings, including serial meetings that may be conducted through the use of electronic mail ("e-mail").

Informal Gatherings. Since council members are residents in the community, it is likely that they will have occasion to gather together informally at picnics, fund-raisers, or other community events. These gatherings by themselves, would not constitute a meeting under the Act. However, at these gatherings the council must guard against discussing matters

that are likely to come up at a regular meeting. Similarly, if the council decided to hold a lunch meeting or dinner meeting, at which matters within the jurisdiction of the council will be discussed, the lunch or dinner meeting would need to be noticed as a meeting of the council, and members of the public must be allowed to attend.

Serial Meetings. A serial meeting is a series of communications among a majority of the council that occurs outside the public forum. The Act prohibits this type of communication if it contributes to the development of an agreement of what action a body wants to take on a particular item. For example, for a 7-person council, a chain of communications between four members could result in a serial meeting in violation of the Act, either if one person contacts another three members; or, if, for example, member A contacts member B who contacts member C, *etc.*, until four or more of the council members have discussed and agreed to the action they want to take on a particular item. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues. For example, when a representative of member A meets with representatives of members B, C, and D to discuss an agenda item, the members have conducted a serial meeting through their representatives as intermediaries. You cannot use any person to poll a majority of the town council board members to gain a consensus on an item coming before the council.

The Act also prohibits the use of technical devices to assist a majority of the council in arriving at any decision. Therefore, you must always be aware of the number of board members it takes to constitute a quorum, and be cautious of communicating by telephone, fax, or e-mails with a majority of the members on matters coming before the council. However, communications to discuss times, dates and placement of matters on the agenda, and availability of board members to assess whether an upcoming meeting will have a quorum, may occur without violating the Act. Similarly, merely sending or receiving a written communication to or by a majority of the council members (including an e-mail), does not result in a serial meeting in violation of the Act if the communication becomes a public record and there is no *exchange* of these communications among board members on an issue coming before the council. A majority of board members should also refrain from circulating motions, proposals and similar documents among themselves for review and signature other than at a noticed public meeting.

Thanks to:

- City of Los Angeles, Office of the City Attorney, Neighborhood Council Advice Division
- State of California, Office of the Attorney General