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Understanding the Basics of the Brown Act

The Ralph M. Brown Act ("Brown Act"), commonly referred to as the open meeting law, was adopted in 1959 with the intention of ensuring transparency in the decision-making process of public agencies, including cities, counties, and special districts. Among other things, the Brown Act regulates meetings of legislative bodies by prescribing rules regarding open meetings, conduct during open meetings, and that all members of the public be allowed to attend and participate.

Understanding the Ralph M. Brown Act

The Brown Act's open meeting requirements state that meetings of the legislative body must be open to the public and that all persons must be allowed to attend. While the term "legislative body" is broadly defined to include governing bodies (e.g., County Board of Supervisors and City Council), standing committees that have continuing subject matter jurisdiction and have a fixed meeting schedule (e.g., planning commissions), and advisory or decision - making commissions that that are created by formal action, it does not include a group of employees who are each delegated separate responsibilities.

A meeting is defined broadly as a congregation of the majority of the members of the legislative body to hear, discuss, or take action on any item within its subject matter jurisdiction. The subject matter jurisdiction varies depending on the type of body; for instance, the subject matter jurisdiction of a planning commission is all items that relate to the jurisdiction's general plan and zoning codes or other matters that may be delegated to that body by the city council.

The Brown Act also regulates the conduct at the open meetings by, among other things, requiring the legislative body to post an agenda before all scheduled meetings (72 hours for regular meetings and 24 hours for special meetings), decisions be done by a quorum (simple majority) of the members of the legislative body, and that members of the public be given an opportunity to address the legislative body on any item of interest to the public within the subject matter jurisdiction of the legislative body. Generally, agendas are posted on agencies' websites and on bulletin boards at the location where the meeting is going to be held, and will include a time set aside for members of the public to address the legislative body with any comments that are not related to those items listed on the agenda but within the body's subject matter jurisdiction.

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Penalties for Brown Act Violations

Violations of the Brown Act may be prosecuted by the District Attorney as criminal misdemeanors and/or civilly by any interested person, including the district attorney. Criminal actions may be brought against individual members of the legislative body if those members intended to deprive the public of information that it is entitled to under the Brown Act.

In contrast, civil actions generally seek to prevent future violations, and invalidate actions taken by a legislative body that were in violation of the Brown Act. The most commonly used enforcement for alleged Brown Act violations is civil actions which must satisfy certain notice requirements before they can be filed.

Before filing a civil action to invalidate a decision allegedly made in violation of the Brown Act and within 90 days of the alleged violation or within 30 days if the action was taken during an open session but in violation of the agenda requirements, the person who believes that a Brown Act violation has occurred must serve the agency with a written "cure and correct" letter identifying the claimed violation. If the agency does not cure the alleged violation within 30 days, then a lawsuit may be filed within 15 days thereafter. The purpose of the cure provision is to afford the agency an opportunity to consider whether a violation has occurred and to weigh its options before a lawsuit is filed.

Permissible Exceptions for Closed Meetings

While generally legislative bodies must conduct their meetings openly, under certain circumstances the Brown Act allows closed sessions, which are portions of meetings conducted in private without the attendance of the public or press. These circumstances include meetings to discuss security threats, pending litigation with the agency's attorney, to instruct negotiators of real property transactions and who meet with employees.

To learn more about the Brown Act from our experienced California Public Law attorneys, reach out to Burke today.

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