

C. OPEN MEETINGS AND RECORDS: QUICK REFERENCE GUIDE

Underlying Policy

The public is entitled to meaningful access to governmental deliberations and records. Thus, all governing bodies and standing committees of local public agencies must conduct their business in noticed, open and agendaized meetings, giving the public the right to attend, observe and comment. The Board may discuss and act on a few limited matters in closed session, but if a closed session is not expressly authorized by law, all discussions among a majority of the Board must occur in public. All documents that relate to the public's business are generally subject to inspection upon demand, by any person at any time, except for some limited exceptions.

Potential Violations Of Open Meeting Rules

1. Face-to-face or teleconference communications: Any gathering of a Board majority, except discussions of general interest at conferences or social gatherings (without discussion of Board business.)
2. Serial communications: Chains of communications in which a Board majority ultimately discusses, deliberates or takes action on any item within the Board's jurisdiction. Actual concurrence is unnecessary for a violation. Staff may answer questions or provide information to Board members, so long as staff does not convey Board members' views to other Board members such that serial communications occurs among a majority of the Board.
3. Written communications: Any medium can be a "meeting." Letters, emails, text messages, phone conferences, etc. Caveat: Never email a majority of the Board on any subject within the Board's jurisdiction, other than emails related to scheduling or similar non-substantive administrative matters. Exception: The Board's attorney can send a one-way privileged communication to the entire Board, but Board members should never discuss the attorney's advice among a majority outside of a noticed meeting.
4. At a meeting, non-agendaized matters may not be discussed, unless a need for immediate action arose since the agenda posting. To take up, 2/3 vote of those present (or unanimous vote if less than 2/3 of the Board is present) is required.

Closed Sessions:

Confidentiality: All Board members must maintain the confidentiality of all matters discussed in closed session absent the Board's waiver of confidentiality.

Common Permitted Closed Session Topics:

- Personnel matters, such as hiring, firing, complaints, evaluation of performance, labor negotiations; but generally not compensation
- Pending or threatened litigation, or considering whether to initiate litigation
- Purchase or sale of specific investments
- Instructions to labor negotiators

Public Records

1. In general, any document you create or receive relating to the Board's business is a public record that must be disclosed to any person who requests the document for any reason, unless the document is subject to an exception.

Note: The California Supreme Court is presently considering the extent to which records of agency business conducted by public officials on their private servers (e.g., Yahoo, GMail) constitute "public records" that are available for inspection by the public.

2. Common Exceptions:

- Documents subject to the attorney-client privilege
- Confidential member records
- Certain types of records regarding alternative investments
- On the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Remedies/Penalties

Open Meeting Violations: Criminal misdemeanor for knowing violations, civil injunction/declaratory relief, voiding actions, attorneys' fees and costs against agency.

Open Records Violations: If a requestor needs court intervention to obtain withheld records, the requestor is entitled to reasonable attorneys' fees.