

**DEL MAR UNION SCHOOL DISTRICT
CITIZENS' OVERSIGHT COMMITTEE
(MEASURE MM)**

SUMMARY OF THE RALPH M. BROWN ACT

I. What is the Ralph M. Brown Act?

The Ralph M. Brown Act (“Brown Act”) governs “meetings”, and certain other functions conducted by the legislative bodies of various local political agencies, and, pursuant to the Policy and Regulations adopted by the Board of Trustees (“Board”) of the Del Mar Union School District (“District”) includes the Citizens’ Oversight Committee established by the District Board (“COC”). (Government Code § 54950¹, *et seq.*)

A. What is the Basic Intent of the Brown Act?

To ensure that the actions of public agencies will be taken openly and that their deliberations are conducted openly, since such agencies exist to aid in the conduct of people’s business. (§ 54950)

B. What is the Essential Legal Provision of the Brown Act?

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of the local agency, except as otherwise provided in this chapter.” (§ 54953(a))

II. What Constitutes a “Meeting” for Purposes of the Brown Act?

A. Statutory definition: “Meeting” includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate on any issue under the subject matter jurisdiction of the body. (§ 54952.2(a)) A legislative body need not take any *action* at a gathering in order for the gathering to be defined as a “meeting,” since the mere receiving of information/facts preliminary to legislative body’s ultimate decision on an issue and/or discussion of the member’s views on any issue to be acted on by the committee can be considered a “meeting.”

B. What types of “Meetings” are subject to the Brown Act?

- 1. Regular Meetings** - A regular meeting is a regularly scheduled meeting of the legislative body. This will include regular meetings of the COC.
- 2. Special Meetings** - A special meeting is in addition to the regularly scheduled meetings, but is conducted for a specific purpose and usually limited to one or two items that require the attention of the legislative

¹All code references are to the Government Code unless otherwise noted.

body prior to the next regularly scheduled meeting. A special meeting may be called by the presiding officer or a majority of the legislative body at any time. A special meeting of the COC might be called where some action or decision on a very short time frame is required. The COC would not be expected to normally call or conduct special meetings.

3. **Adjourned Meetings** - A regular or special meeting can be adjourned to be continued to another time and place in the future. This might occur where the COC needs to continue the business of a regular meeting to another time or place.
4. **Emergency Meetings** - Emergency meetings can be called only when prompt action is needed due to an emergency situation, defined as either:
 - (a) Work stoppage or other activity which severely impairs public health, safety, or both; or
 - (b) A crippling disaster which severely impairs public health, safety, or both. (§ 54956.5)

Except for the 24-hour notice requirement, the special meeting provisions apply to emergency meetings. In general, the COC will not have a reason to conduct an emergency meeting.

5. **Closed Session Meetings** - Closed session meetings are meetings which are exempted from having to be discussed and deliberated in public.
 - a. Examples: Litigation, Real Estate Negotiations, Labor Negotiations, Personnel Matters, Security.

The COC will probably not have a need to conduct closed sessions as part of its meetings.

C. What types of gatherings are not “Meetings” under the Brown Act?

1. **Conferences Open to the Public**: The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to other legislative bodies.
2. **Community Meetings**: The attendance of a majority of members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the legislative body. This might include, for example, a community meeting on issues of concern to the ABC community.
3. **Other Legislative Body Meetings**: The attendance of a majority of members of a legislative body at an open and noticed meeting of another

body of the local agency, or at an open and noticed meeting of a legislative body of another local agency. This would include attendance by COC members at a meeting, for example, of the District Board or the Santa Clarita City Council.

4. **Social Events**: The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion. (§ 54952.2(c)) This would include sporting events or a ceremony held for the opening of a new or renovated school campus.
5. **Individual Contacts**: Individual contacts or conversations between a member of a legislative body and any other person, so long as a series of individual contacts does not lead to a “collective concurrence.” This would include contacts between elected officials and constituents or voters. This allows members of the COC to meet with, or discuss with, members of the public concerning matters under the purview of the COC.
6. **Standing Committees**: The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the body who are not members of the standing committee attend only as observers. (Id.) This might apply if the COC were to form a standing committee to review or consider a particular matter.

In each of the foregoing cases, the general prohibition against a majority of the members of the legislative body (in this case the COC) discussing among themselves, directly or indirectly, matters under the jurisdiction or review of the COC would continue to apply. In attending or participating in the foregoing activities, members of the COC should be mindful of this restriction.

III. **Attendance at a “Meeting”.**

A. **Where can COC meetings occur?**

Regular and special meetings must be held within the boundaries of the territory over which the local agency exercises jurisdiction, with some specific exceptions not relevant to the COC. Legislative bodies must set the time and place for their regular meetings by ordinance, resolution, bylaws or similar formal rule for conducting business. The setting of the time and place for regular meetings of the COC will be addressed at the organizational meeting of the COC. The COC does have the authority to call and conduct meetings at any of the District’s campuses.

B. **Who can attend a COC meeting?**

Any member of the public may attend the meeting.

C. How can the meeting be attended?

Most often, meetings are attended in person. However, teleconferencing is also permissible, so long as the meeting is made available to the public at all of the teleconference locations, notice of the locations are provided and at least a quorum of the members participate from locations within the local agency's jurisdiction. (§§ 54953(b)(4), (b)(1))

D. When can the public address the COC?

Usually, the agenda identifies a "Public Comments" section where any member of the public may address the committee on any issue listed on the agenda for that meeting. Section 54954.3(a) requires that such public input occur either before or during the legislative body's consideration of the issue to be commented on. The legislative committee may adopt reasonable regulations, including time limits, on public comments. (§ 54954.3(b)) We suggest that the COC agendas include a specific item to allow for public comments. The limitations on time for speakers will be discussed with the COC at the organizational meeting of the COC.

IV. What Actions are Prohibited under the Brown Act?

- A. "Serial Meetings"** - Serial meetings include a series of meetings where two or more members of a legislative body use direct communication, personal intermediaries, or technological devices to reach a collective concurrence over time of a majority of the legislative body as to an action to be taken on a matter. Such a chain of communications between members constitutes a "meeting," and are prohibited. (§ 54952.2(b)) This type of communication can include e-mail, telephone calls or written correspondence.
- B. No Secret Votes or Ballots** - Members of a legislative body may not vote on an action item by secret vote or secret ballot, since this violates the Brown Act's mandate to have its deliberations open to the public. A balloting process may be used, provided that the ballots are available for public review and inspection.
- C. E-mail Communications:** Members of a legislative body exercise caution in using e-mail to communicate with any member on issues to be addressed at the legislative body's meetings, other than requesting that an issue be placed on the agenda. (§ 54952.2) E-mail is very susceptible to redistribution and can result in a Serial Meeting occurring even when not so intended.
- D. Items Not on the Agenda:** A legislative body generally cannot undertake any discussion or action on a matter which does not appear on the posted agenda. The agenda requirement does not apply, however, when a member of a legislative body or a staff member asks a question for clarification, makes a brief announcement, or makes a brief report on his or her own activities. Also, any

member of a legislative body, or the body as a whole, may request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda. Finally, if a member of the public raises a matter which has not yet come before a legislative body, the body may “briefly respond.”

1. Exceptions: There are three (3) exceptions to the general rule:

(a) Emergency Situation: Upon a determination that an emergency situation exists. This likely will not occur in the case of the COC.

(b) Immediate Need Arising after Posting of Agenda: Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the legislative body subsequent to the agenda being posted. This situation would only be applicable where the COC needs to take an action, or render a decision on a matter prior to the next COC meeting.

(c) Continued Matter: The matter was posted for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the matter, and at the prior meeting the legislative body continued the matter to the meeting at which action is being taken.

V. What are the Notice & Agenda Requirements under the Brown Act?

- A. Purpose** - The purpose of the agenda and notice requirements is to inform interested members of the public about the matters under consideration at the meeting so that they can determine whether to attend and/or participate in the meeting. The descriptions of the items to be discussed generally need not exceed 20 words, but where necessary, a legislative body is free to provide more detail. (§ 54954.2)
- B. Notice of Hearing for Regular Meetings** - Legislative bodies must give mailed notice of every regular meeting to any person who has filed a written request for that notice. (§ 54954.1) Requests for notice are valid for one year from the date on which they were filed. (Id.) Legislative bodies may establish a reasonable annual fee for sending these notices based on the estimated costs of providing service. (Id.)
- C. Posting of the Agenda for Regular Meeting** - At least 72 hours prior to conducting a regular meeting, the legislative body must post an agenda for the meeting in an area freely accessible to the public. (§ 54954.2(a)) The agenda must specify the time and location of the meeting and contain a brief general description of each item to be discussed at the meeting, including items to be

discussed in closed session. (Id.) The COC agenda's will be posted in compliance with the law by the District and will be posted at the District's normal Board meeting posting location(s).

- D. Notice & Agenda Requirements for Adjourned Meeting** - If the meeting is adjourned for less than five (5) calendar days, a new agenda need not be posted so long as a new item of business is not introduced at the continued meeting. (§ 54954.2(b)(3)) A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the place where the meeting was held. (§ 54955)
- E. Notice & Agenda Requirements for Special Meetings** - At least 24 hours prior to a special meeting, the legislative body must provide written notice of the meeting to all of the members of the body (who must receive such notice) and provide written notice to all media outlets who have requested such notification (by personal delivery or other means which ensures receipt). (§ 54956) The legislative body must also post such notice, indicating the time, place and business to be transacted at the meeting, and no other business can be considered. (Id.) Notice is required even if the meeting is conducted in closed session, and even if no action is taken. (Id.)
- F. Agenda Requirements** – In addition to other requirements discussed in this summary, the agenda should contain the location of whether agendas and other documents distributed to the COC less than 72 hours prior to a regular meeting will be made available (§ 54957.5) and a statement explaining how individuals with disabilities can attend the COC meeting pursuant to the Americans with Disabilities Act (§ 54953.2).

VI. Records & Recordings of Meetings.

The public has the right to review agendas and other writings distributed to the legislative body. Pursuant to recently enacted legislation, there are updated requirements for when and how certain documents must be made available to the public. (SB 343, Statutes of 2008, Chapter 298, became effective on July 1, 2008). To ensure that action is only taken on documents available to the public, writings must be made available to the public at the meeting if they were prepared by the local agency or a member of the legislative body, or after the meeting if the documents were prepared by any other person. (§ 54957.5) Except for privileged documents, these materials must be available to the public, and a fee may be charged for the reproduction costs of such records. (Id.) Agendas and other documents distributed to the COC less than 72 hours prior to a regular meeting must, at the same time, be made available concurrently to the public. (Id.) The District must designate a public office or other location at which such documents will be available for public inspection, and that the District specify the address of that office or location on the agenda for all COC meetings (this requirement is for all regular and special meetings). (Id.) The District may, but is not required, to make these documents available on the COC's website, in a manner that makes it clear that the documents relate to an agenda item for an upcoming COC meeting.

(Id.) The District staff will arrange for copies of documents submitted to the COC to be available at meetings of the COC.

Any tape or film record of an open and public meeting made by or at the direction of the local agency must also be made available to the public, and must be kept for 30 days after which time it may be erased or destroyed. The public may use audio or video tape recorders or still or motion picture cameras at the meeting, absent a reasonable finding by the legislative body that the recorders or cameras would persistently disrupt the proceedings. (§ 54953.5(a)) The District staff may use a tape recorder to assist in the preparation of the minutes of the COC meetings. Under the requirements of law, the COC minutes must be posted on the COC website. Minutes of the COC will be subject to approval of the COC.

VII. Remedies to Violations of the Brown Act.

Violations of the Brown Act may result in a misdemeanor criminal conviction. The Brown Act specifies three types of actions that a member of the public may take against the legislative body, after a written demand to “cure or correct” is either ignored or if the invalid action is not corrected:

- A. Invalidation Action** - To invalidate a legislative body’s action that violates the basic open meeting provision (§ 54953), notice and agenda requirements for regular and special meetings and closed sessions (§§ 54954.2, 54954.5) and special meetings (§ 54956).
- B. Civil Action** - To ask the court to (1) stop or prevent violations or threatened violations of the Brown Act; (2) determine the applicability of the Brown Act to actions or threatened actions; (3) determine whether any rule or action to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or (4) compel the legislative body to tape record its closed sessions.
- C. Criminal Complaint** - If there is an overt act plus the intent to deprive the public of information.

The foregoing information has been prepared by Atkinson, Andelson, Loya, Ruud & Romo, A Professional Law Corporation as an overview of the subjects discussed and should not be construed as individual legal advice. The applicability of the legal matters discussed may differ substantially in individual situations. In the event that you perceive that you are in a conflict situation, you should consult with appropriate legal counsel.