

**Pine Cove Water District
Resolution #485
Policy regarding Brown Act Compliance**

Whereas it is the policy of the Pine Cove Water District to adhere in all respects to the Ralph M. Brown Act, the Board of Directors adopts the following summary of the principal features of the Act as a formal resolution.

Purpose of the Act

Legislative bodies shall conduct the people's business in public, and take their actions openly.

General Requirements

- Meetings must be open
- Meeting agendas must sufficiently describe the business to be conducted at the meeting
- Meetings must be properly noticed and posted in a public place.
- The public must have a meaningful opportunity to comment on matters on the agenda.
- Limited statutory exceptions for legislative body to meet in "Closed Sessions."

Public Bodies Covered by the Act

"Legislative Bodies" subject to the Brown Act:

Governing bodies of counties, cities, school districts and special districts
Public agency boards, commissions, and committees created by the governing body:

Examples:

- Planning Commissions
- Mental Health Boards
- Standing Committees which have a continuing subject matter jurisdiction
- Redevelopment Agencies
- Advisory Boards and Commissions
- LAFCO
- Commissions on Aging
- Equal Rights Commissions
- Parks and Recreation Commissions

NOTE: The Brown Act applies to newly elected officers, even prior to their assuming office.

“Legislative Body” is not:

- An “ad hoc” advisory committee consisting solely of less than a quorum of the governing body which was constituted for a specific purpose and will be disbanded when the purpose has been completed
- Individual members of the governing body
- Staff members

Action Taken:

- A collective decision by a majority of members, a promise to make a decision, or an actual vote.

What is a meeting under the Brown Act?

A “meeting” is any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, deliberate or take action on any matter within the subject matter jurisdiction of the body or the local agency.

Any discussion of “business” outside a public meeting by a majority of the Legislative Body members whenever and wherever, even during a recess, is prohibited under the Brown Act. A majority of the members are prohibited from using a series of communications of any kind, directly or through intermediaries to discuss, deliberate or take action on any matter within the agency’s jurisdiction, whether or not a collective concurrence is reached by the members. Be careful of Serial Telephone Calls.

Conference Calls

An employee or official of a local agency, is not prohibited from engaging in separate conversations or communications with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

Brown Act does not apply to:

Individual contacts between members of the Legislative Body and any other person. Conferences open to the public that involve a discussion of issues of general interest. Open and publicized meetings organized by a person/organization other than the public agency to address a topic of local concern. Purely social or ceremonial occasions. Attendance by a majority of the Legislative Body at other noticed meetings of other local bodies.

Three Types of Meetings

Regular Meetings

- The time and place of regular meetings are established by the body by formal action.
- Any item of business may be discussed at a regular meeting so long as the item is on the agenda or properly added to the agenda.
- A regular meeting may be adjourned from time to time.
- Requires posting of agenda (72 hours in advance).

Special Meetings

- May only discuss the items listed on the agenda.
- May not add items.
- Requires special notice to newspaper of general circulation or television or radio stations that have requested notice (24 hours in advance).

Emergency Meetings

- Crippling matter, work stoppage, or other activity which severely impairs public health or safety.
- Requires special notice to newspaper of general circulation or television or radio stations that have requested notice (24 hours notice in advance).
- “Dire” emergency such as crippling disaster or terrorist act (1 hour notice in advance).
- No Closed Session.
- Must post minutes for 10 days after meeting.

Meeting Requirements

All meetings of a Legislative Body of a local agency shall be open and public. Must allow audio and video tape recordings of meetings by public and by the media, unless recording cannot be done without disruption of the meeting. No secret ballots.

Must mail notice of meeting to persons who file a written request (good for one year and may charge a fee). Must have a “public” meeting to adopt new or increased general tax or assessment.

May use teleconferencing for receipt of public comment or testimony. If utilizing teleconferencing must:

- Identify each teleconference location in notice and agenda.
- Each location must be accessible to the public.
- Agenda must provide public at each location opportunity to address Legislative Body.
- Must conduct roll call vote.
- Special exceptions for health authorities.

Regular or Special Meetings of the Legislative Body must Be Held Within the Jurisdiction of the Local Agency

Exceptions:

- To inspect real property.
- To participate in interagency meetings.
- To comply with court order.
- No meeting facility in the jurisdiction.
- Meetings in and relating to an agency facility outside of jurisdiction.
- To meet with the agency attorney in closed session on pending litigation if it would reduce legal fees.
- To meet with state or federal officials when a local meeting would be impractical. Meetings must be held in locations that are accessible to the public. No meeting may be held in a facility that prohibits admittance of any person on the basis of race, religious creed, color, national origin, ancestry or sex. No meeting may be held in a location where members of the public must make a payment or purchase to attend.

Required Notices for Public Meetings

Regular Meetings

- Agendas must be posted 72 hours prior to the meeting.
- Agendas must specify the time and place of the meeting.
- Agendas must be posted in a location that is freely accessible to the public and at any teleconference site.

Agenda must be mailed to any person requesting notice annually in writing.

NOTE: May charge a fee for copying and mailing not to exceed direct or actual cost.

Special Meeting

- Notice must be posted 24 hours prior to the meeting.
- Notice must be given to every member of the Legislative Body personally at least 24 hours prior to the meeting.
- Notice must be given to media outlets who have requested notification.

Agenda Descriptions and Requirements

Must include a brief description of every item to be discussed, which generally need not exceed 20 words (20-word description is a GUIDELINE).

Closed Sessions MUST be listed on the agenda. Agenda must include a time for public comment, structured so that public comment is permitted before or during the body's consideration of a matter on the agenda. Special meetings must also include public comment but only on items on the special meeting agenda. Documents submitted to a majority of a legislative body less than 72 hours prior to a

public meeting must be made available for public inspection at a public counter as soon as distributed to the body.

Matters Not on the Agenda

General Rule = No discussion, No Action

- Agency may respond (briefly) to statements made or questions posed by members of the public under public comment.
- Agency may ask questions for clarification, provide a reference to staff, or ask staff to report back or schedule an item for a later meeting.
- Agency members may make brief report on his or her activities (agency member reports).

Adding Items to an Agenda

Only permitted at "Regular" Meetings

Requires a two-thirds vote of board members present, or unanimous vote if less than two-thirds of body present.

Legislative Body must make two findings before adding to agenda:

- There is a need to take immediate action; AND
- The need to take action came to the attention of the local agency after the posting of the agenda.

NOTE: An item may also be added if a true emergency exists.

Public's Right to Comment During Meeting

Local agency cannot require member of public to register his or her name or divulge other information as a condition of attendance, or place any other condition on attendance. Public comment is appropriate on any matter within the subject matter jurisdiction of the local agency. Public comment of matters not on the agenda shall be provided either before or after the regular agenda. Local agency cannot prohibit public criticism of the policies, procedures, programs or services of the agency or of the acts or omissions of the Legislative Body .

Local agency board may adopt reasonable regulations or take action, including:

- Limiting the total amount of time allocated for public comment on particular issues and for each individual speaker (up to 3-5 minutes).
- Removal of unreasonably disruptive speakers or persons from the meeting.

Public's Right to Writings and Documents or Agendas

All materials distributed to the Legislative Body, except privileged items, are public record. Writings and documents distributed to the Legislative Body:

- Must be available for inspection and copying "without delay."

If writings or documents related to an agenda item are distributed to a majority of the legislative body less than 72-hours before the meeting, the writing shall be made available at a designated public location identified on the agenda. Copying fees may be charged by agency (limited to direct or actual costs). Agendas, and/or agenda packet documents, must be mailed to any member of the public who makes a request in writing. The request is good for the calendar year which the request is filed and may be renewed after January 1st of each year. Agency may change actual costs of mailing.

Closed Sessions

Agency may not conduct a Closed Session unless one is expressly allowed by statute.

Permitted Closed Session Matters:

Real estate negotiations. (Must specify street address or parcel number of property under discussion.)

Labor negotiations. (Must identify the agency's designated representative.)

Personnel matters: Appointment, Employment, Evaluation of Performance, Discipline or Dismissal of a Public Employee.

Pending Litigation

- Existing litigation after it is formally initiated.
- Significant exposure to litigation based on existing facts and circumstances, which facts or circumstances shall be publicly stated on the agenda or announced, unless the potential plaintiff does not yet know about it; including a meeting to determine if Closed Session is authorized based on a significant exposure to litigation.
- Anticipated litigation based on existing facts and circumstances, the local agency has decided to initiate or is deciding whether to initiate litigation.
- Threat to public services or facilities.
- Joint Powers Agency liability claims.
- License/permit determinations.
- Multi-Jurisdictional drug enforcement matters.
- Hospitals (medical quality hearings) – records of health plans and health plan trade secrets.
- Review of final draft audit report from the Bureau of State Audits.
- Hearing on local agency employee application for early withdrawal of funds in deferred compensation plans.

Closed Session agenda must state a description of the matter to be discussed in Closed Session.

Agency must report out after the closed session, either orally or in writing, at the same meeting the action taken by the legislative body in closed session, including:

- The action taken;
- The vote of the agency members; and
- Other specifics of actions taken during Closed Session.

NOTE: An agency member shall not disclose confidential information that has been acquired by the agency in an official Closed Session.

Violation of the Brown Act

Criminal Penalty

Each member of a Legislative Body who attends a meeting where action is taken in violation of the Act with the wrongful intent to deprive the public of information to which it is entitled is guilty of a misdemeanor. Civil Actions Any interested person may bring an action to enjoin violation of the Brown Act. Any interested person may sue to declare an action taken by the Legislative Body in violation of the Brown Act void.

- Person must first request agency cure or correct the alleged violation (requests must be made with 90 days of action by agency).
- Agency has 30 days after notice of violation to cure or correct alleged violation.
- Most actions in violation of the Brown Act may be cured. Actions most likely will not be declared VOID by the courts if:
 - Agency actions are in substantial compliance with open meeting requirement.
 - Action was in connection with the issuance of notes or bonds.
 - Action on a contract and the other party has, in good faith and without notice of the challenge, detrimentally relied.

NOTE: Courts may award attorney's fees and costs to a successful plaintiff.

Resolution #485, Policy regarding Brown Act Compliance:

Approved:

Tom McCullough, President
Board of Directors

I hereby attest and certify that the foregoing Resolution was duly passed and adopted by the Board of Directors of the Pine Cove Water District at a legal meeting held on the 8th day of May, 2013, by the following vote:

Ayes:

Noes:

Absent:

Becky Smith, District Secretary

In Witness Hereof, I have hereunto set my hand and affixed the official seal of the Pine Cove Water District.

Becky Smith, District Secretary