

# The Brown Act

May 27, 2022

College of the Desert

Citizen's Bond Oversight Committee

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PRESENTED BY:

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# Agenda

- Intent of the Brown Act
- General Rules and Terms Defined
- Brown Act rules for social media
- Public Meeting Procedures
- Closed Session – Safe Harbor Agendas



# Intent of the Brown Act

- Public agencies in this state exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and their deliberations be conducted openly.
  - Gov. Code, § 54950



The purposes of the Brown Act are to facilitate public participation in local government and to curb misuse of democratic process by secret legislation by public bodies.

# The “General Rule”

- 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 a local agency, except as otherwise provided in this chapter. (Gov. Code, § 54950.)
  - Committees and other “subsidiary bodies” of a legislative body of a local agency are subject to the Brown Act. (Gov. Code, § 54952(b).)
  - HOWEVER: **Standing committees** of a legislative body, irrespective of their composition, which have a **continuing subject matter jurisdiction**, or a meeting schedule fixed by resolution or other formal action of a legislative body, **are legislative bodies** for purposes of the Brown Act.

# Legislative Bodies



- The governing board of a school or community college district, ROP or JPA, etc.
  - Gov. Code § 54952(a)
- Commissions, committees, boards, or other bodies of a local agency, whether permanent or temporary, decision-making or advisory, ***created by resolution or some other formal action*** of a legislative body.
  - Gov. Code § 54952(b)
  -

# Other Legislative Bodies

- Committees appointed by the superintendent, president or chancellor without any formal action by the board, are not covered by the Act. However, the board must not in any way “instigate” the formation of the committee; the concept of “formal action” is broadly construed. Frazer v. Dixon Unified School District (1993) 18 Cal.App.4th 781, 792-793.
- The B.O.C. is a legislative body for the purposes of the Brown Act
  - Required Pursuant to Education Code section 15278.

## B.O.C. Duties (Bylaw 3.1, 3.2, 3.3)

- Inform the Public. The Committee shall inform the public concerning the District' s expenditure of bond proceeds.
- Review Expenditures. The Committee shall review expenditure reports produced by the District to ensure that (a) bond proceeds were expended only for the purposes set forth in the applicable ballot measure; and (b) no bond proceeds were used for any inappropriate teacher or administrative salaries or other operating expenses...
- Annual Report. The Committee shall present to the Board, in public session, an annual written report or reports which shall include the following:
  - (a) A statement indicating whether the District is in compliance with the requirements of Article XIII A, Section I(b)(3) of the California Constitution; and
  - (b) A summary of the Committee's proceedings and activities for the preceding year.

# Board/Superintendent/President Duties (Bylaw 3.4)

- Either the Board or the Superintendent/President, as the Board shall determine, shall have the following powers reserved to it, and the Committee shall have no jurisdiction over the following types of activities:
  - Approval of construction contracts.
  - Approval of construction change orders.
  - Appropriation of construction funds.
  - Handling of all legal matters.
  - Approval of construction plans and schedules
  - Approval of scheduled maintenance plans, and
  - Approval of the sale of bonds.



# What is a meeting?

- **“Meeting”** means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by section 54953, to **hear, discuss, deliberate, or take action** on any item that is within the subject matter jurisdiction of the legislative body.



Gov. Code, § 54952.2(a)



facebook

Comment

# What is a “Serial Meeting”?



- “A Majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

– Gov. Code, § 54952.2(b)(1)

# What is Not a “Serial Meeting”?

- An **employee or official** of a local agency may engage in **separate conversations or communications** outside of a meeting with members of a legislative body in order **to answer questions or provide information** regarding a matter within the jurisdiction of the agency, if that person does **not communicate the comments or position of any other member** to other members of the legislative body.

Gov. Code, § 54952.2(b)(2)

# Legislative Update on Social Media Use

- AB 992 was signed into law on September 18, 2020, became effective January 1, 2021 and amended Government Code section 54945.2.
- Certain communications involving a legislative body's members on an internet-based social media platform do not constitute meetings under the Brown Act.
- Under AB 992, a legislative body's members may engage in separate communications on an internet-based social media platform to:
  - “answer questions,”
  - “provide information to the public,” and/or
  - solicit public input on matters within the body's jurisdiction.



# Legislative Update on Social Media Use - Continued

- A majority of the legislative body **may not** “discuss among themselves” “business of a specific nature” within the body’s jurisdiction,” which encompasses:
  - “comments or use of digital icons that express reactions to communications,”
  - any communications posted or shared on social media between members of the legislative body
  - responses to the same communication on social media such as the use of emojis, the “like” button on Facebook or Instagram, and/or retweeting on Twitter
- Trustees also may not directly respond to a social media communication made, posted, or shared by any other member of the same legislative body regarding a matter within a legislative body’s subject matter jurisdiction.

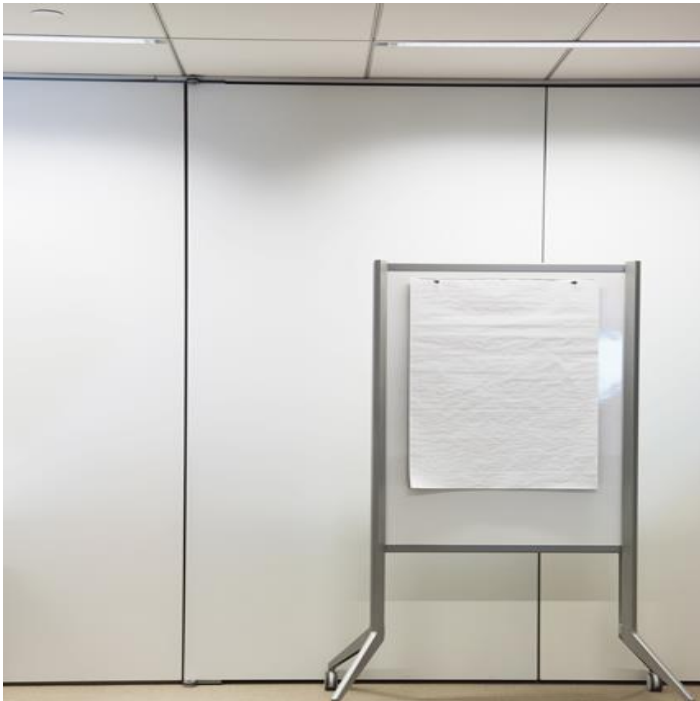


# Public Meeting Procedures



- Certain boards including community college district boards, and unified school district boards, must meet at least monthly and must, by rule, fix the time and place for their regular meetings.
  - Ed. Code §§ 1101, 35140, 35141, 35142, 35144 and 72000(c)(4); Gov. Code § 54954.
- The BOC is required to meet at least once a year including an annual organizational meeting, but may not meet more frequently than quarterly. (Bylaw 6.1)

# Notice of Meetings (Agenda)



- Regular Meetings

- An agenda must be conspicuously posted at least 72 hours prior to the time of regular meetings in a location freely accessible to members of the public.
  - Gov. Code, § 54954.2(a)
- Agenda descriptions must reasonably inform the public of the matters to be considered in sufficient detail for members of the public to determine whether to participate at the meeting.
- What about General Matters to allow Committee Members to comment?

# The Agenda — Posting, Revisions & Additions

- A. Where do you post the agenda? — An online posting of an agenda shall be posted on the primary Internet Web site homepage, that is accessible through a prominent, direct link to the current agenda.
- B. The Agenda Has Been Posted — But you forgot to add a few items, what options are available?
1. **Before 72 hours?** Revised Agenda;
  2. **Before 24 hours?** Schedule a Special Meeting;
  3. Amend the Agenda at the Meeting — requirements: Prior to discussing the item, there has to be:
    - a. Majority vote that an emergency situation exists; OR
    - b. Upon a two-thirds vote, there is a need to take immediate action and that the need for immediate action came to the attention of the agenda after the agenda had been posted.



# Meeting Material – The Agenda

- Any person may request that a copy of the agenda or the documents constituting the agenda packet be mailed to that person.
- If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to any person with a disability as required by the ADA, 42 USC §12132.
- Upon receipt of the written request, the legislative body, or its designee, shall cause the requested materials to be mailed at the time the agenda is posted, or upon distribution to all, or a majority of all, of the member of a legislative body, whichever occurs first.
  - Gov. Code § 54954.1

# Meeting Material – The Agenda

- The agenda shall include information regarding how, to whom, and when, a request for disability-related modification or accommodation, including auxiliary aids or services, may be made.
  - Gov. Code § 54954.2(a)(1).
- Any request to receive agenda materials is valid for the calendar year in which the request is filed, and must be renewed after January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet.
- The fee shall not exceed the cost of providing the service.
- Effective January 1, 2012 agendas must be posted online.

# Meeting Material – Public Records

- If a public record that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency is distributed less than 72-hours prior to that meeting, the writing shall be made available for public inspection pursuant to Section 54957.5(b)(2) at the time the writing is distributed to all, or a majority of all, of the members of the body.
  - Gov. Code § 54957.5(b)(1).
- The district must make any writing described above available for public inspection at a public office or location that the agency designates for this purpose.

# Meeting Material – Public Records

- Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency.
- The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.
- Documents prepared by the district must be made available for public inspection at the meeting; documents prepared by any other person must be made available after the meeting.

– Gov. Code § 54957.5(c).

# Public Participation



- Members of the public must be allowed to place matters directly related to district business on the agenda.
  - Educ. Code, § 72121.5
- Members of the public must be able to address the board regarding items on the ***agenda before or during the governing board's consideration*** of the item.
  - Gov. Code, § 54954.3
- Community College Districts and their subsidiary bodies ***must allow speakers to be heard as agenda items are taken up.***
  - Educ. Code, § 72121.5

# Public Participation

- Every regular meeting agenda shall provide an opportunity for members of the public to address the board on any ***item of interest*** to the public ***within the jurisdiction*** of the board.
- The board may adopt ***reasonable rules and regulations*** in order to ensure the proper functioning of the meeting. These include time limitations.



- “The legislative body . . . shall not prohibit ***public criticism*** of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”  
(Gov. Code, § 54954.3(c))

# Responses to Public

The Brown Act limits trustee's responses to public comments at any public meeting. Trustees and staff may only:

- Briefly respond to statements made or questions posed by persons making public comments;
- Ask clarifying questions or make brief announcements;
- Provide a reference to staff or other resources for factual information; and/or
- Request staff to report back or place a matter on the agenda for a future meeting.
  - Gov. Code, § 54954.2(a)

# Meeting Practices



- Minutes shall be taken recording all actions taken by the governing board. The minutes are public records.
  - Educ. Code, § 72000(d)
- No action may be taken by secret ballot.
  - Gov. Code, § 54953(c)(1)
- The board shall publicly report any action taken and the vote or abstention on that action **of each trustee present** for the action.
  - Gov. Code, § 54953(c)(2).
- Any person attending a public meeting has the right to record the meeting by still or motion picture camera, or by video or audio tape, absent a finding of persistent disruption.
  - Gov. Code, § 54953.5(a)



# Closed Session

Discuss existing or anticipated litigation

Consulting with labor negotiator


Discuss public safety threats

Consulting with real property negotiator

Student matters

Individual personnel matters

Most Commonly Utilized Closed Sessions



# “Safe Harbor” Agenda Descriptions

- The Act requires a brief, general description of each item of business to be transacted, including items to be discussed in closed session.

- Gov. Code, § 54954.2



- The Act provides “safe harbor” agenda descriptions that, when used, preclude a finding of a violation of closed session notice requirements.

- Gov. Code, § 54954.5

# ALL “Safe Harbor” Descriptions

- LICENSE/PERMIT DETERMINATION
  - Applicant(s): (Specify number of applicants)
- CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  - Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)
  - Agency Negotiator: (Specify names of negotiators attending the closed session)
  - Negotiating parties: (Specify name of party (not agent))
  - Under Negotiation: (Specify names of negotiators attending the closed session)
- CONFERENCE WITH LEGAL COUNSEL — EXISTING LITIGATION
  - Name of case: (Specify by reference to claimant’s name, names of parties, case or claim numbers); OR
  - Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

# ALL “Safe Harbor” Descriptions

- CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
  - Significant exposure to litigation pursuant to subdivision (b) or Section 54956.9: (Specify number of potential cases)
  - Initiation of litigation pursuant to subdivision (c) of Section 54956.9 (Specify number of potential cases)
- LIABILITY CLAIMS
  - Claimant: (Specify name unless unspecified pursuant to Section 54961)
  - Agency claimed against: (Specify name)
- THREAT TO PUBLIC SERVICES OR FACILITIES
  - Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)
- PUBLIC EMPLOYEE APPOINTMENT
  - Title: (Specify description of position to be filled)

# ALL “Safe Harbor” Descriptions

- PUBLIC EMPLOYMENT  
Title: (Specify description of position to be filled)
- PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: (Specify position title of employee being reviewed)
- PUBLIC EMPLOYEE DISCIPLINE, DISMISSAL, OR RELEASE  
(No additional information is required. “Discipline” includes potential reduction of compensation.)
- CONFERENCE WITH LABOR NEGOTIATORS
  - Agency designated representatives: (Specify names of designated representatives attending the closed session)
  - Employee organization: (Specify name of organization representing employee or employees in question); OR
  - Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

# ALL “Safe Harbor” Descriptions

- CASE REVIEW/PLANNING  
(No additional information is required.)
- REPORT INVOLVING TRADE SECRET
  - Discussion will concern: (Specify whether discussion will concern proposed new service, program or facility)
  - Estimated date of public disclosure: (Specify month and year)
- HEARINGS
  - Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)
- CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW
  - (No additional information is required.)

# ALL “Safe Harbor” Descriptions

- CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)
  - Discussion will concern: (Specify closed session description used by the joint powers agency)
  - Name of local agency representative on joint powers agency board: (Specify name)
  
- AUDIT BY BUREAU OF STATE AUDITS

# Who Can be in Closed Session?

- Nothing in the Brown Act limits who the Board may include in closed session.
- However, the general rule is that closed session access is permitted only to people who have “an official or essential role to play” in the closed meeting.

83 Ops.Cal.Atty.Gen. 221, 225 (2000)



# After Closed Session

- After closed session, the Board must reconvene in open session (prior to adjournment) and report any action taken in closed session, including the vote or abstention of every trustee present.
  - Gov. Code, § 54957.1
- The reports may be made either orally or in writing.
  - Gov. Code, § 54957.1(b)
- Any documents referred to in a report of final action must be made available to any person on the next business day following the meeting in which the action is taken or, in the case of substantial amendments, when any necessary rewriting is complete.
  - Gov. Code, § 54957.1(c)
- If an individual has made a standing request, or requests the documents within 24 hours of the agenda being posted, the documents must be provided when the closed session ends.
  - Gov. Code, § 54957.1(b)

Question & Answer  
Session

# Thank You

For questions or comments, please contact:

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