

Burning Brown Act Issues You Need to Understand

Mt. San Antonio College | November 12, 2022

Presented by: Meredith Karasch



LIEBERT CASSIDY WHITMORE

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Open Meeting Requirements



Brown Act

- Guarantees the Public's Right to Attend and Participate in Meetings of Legislative Bodies
- Requires that Public Agency Actions "*Be Taken Openly and that Their Deliberations Be Conducted Openly*"
 - Narrow Exceptions Apply



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Your Role

- Set the Mission of the District and represent all constituents
- Participate in meetings professionally
 - Come to each meeting prepared by reviewing the agenda and the information prepared by staff
 - Give meaningful consideration to each agenda item
 - Listen and discuss differences of opinion respectfully
 - Follow the Brown Act and procedures
- Your opportunity to build trust and respect



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Board Acts as a Whole

- BP 2715, “Recognize and actively communicate that authority rests with the Board only in a legally constituted meeting, not with individual members.”
- When acting as Board members, trustees speak and act on behalf of the district, not as individuals.
- Board members use care not to misrepresent their individual opinions or actions as those of the Board.



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What is a Meeting Covered by the Act?

- Congregation of a majority of Board members of a legislative body
 - Same time and place
 - To “hear, discuss, or deliberate”
 - On any item within its subject matter jurisdiction
 - Regardless of reaching collective concurrence

Gov. Code, § 54952.2



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What does “hear, discuss, or deliberate” mean?

- Court found that a school district board violated the Brown Act when it “participated in discussions relating to District business, and that they were undeniably engaged in ‘collective acquisition and exchange of facts’ relating to decisions they were charged with making in the course of their official duties.”
- “collective agreement or commitment” is not required.

Frazer v. Dixon Unified School Dist. (1993) 18 Cal.App.4th 781, 796



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What is a “Meeting?”

A meeting may occur during:

- Informal sessions
- Conferences for discussion of public business
 - Including retreats
- Telephone conversations (i.e., group telephone conference)
- Email
- Video/virtual conference



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Be Careful – Serial Meetings Prohibited!

- No communication between Board members that
 - Includes a majority through email, telephone, intermediaries, etc.
 - To hear, discuss, or deliberate on any item within the subject matter jurisdiction of the district
- Cannot use individual contacts to bypass Brown Act

Gov. Code, § 54952.2 subd. (b)



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Serial meeting?

Grace, Millicent, and Alexander, three of the five members of the board of trustees, are participating in a video conference with other executive district staff regarding return-to-work protocols. Matthew listens, but does not say anything. At one point, the participants break into two breakout rooms to discuss different issues. Two board members go to one room and the other board member the other. The Chancellor serves as a liaison between the two meetings and shares ideas.

Is this a serial meeting?



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Emails

- The Chancellor emails a memo regarding an agenda item to all five board members before the next meeting. Trustee Megan emails Trustee Jaime to discuss the information in the memo. Jaime calls Trustee Remi to discuss the issue and they talk about what Megan said in the email.

Is this a serial meeting?



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Social Media and the Brown Act

AB 992 AMENDS: Section 54952.2 of Gov. Code

- Clarifies that the Brown Act does not prohibit Elected Officials from discussing with the public matters within the agency's jurisdiction on social media



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Public Participation



Agendas: Tools for a Well-Run Meeting

- Agenda items contain brief description
 - Enough to inform the public
 - “20-word” rule of thumb
- Provide focus to the Board & the public
- Help legislative bodies plan & prioritize
- Improve communication
- Build institutional memory



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Items NOT on Agenda

- General rule – Board may only discuss or act on item on the posted agenda
- BUT there are exceptions
 - Brief response
 - Emergency
 - Immediate action
 - Item from agenda of prior meeting
 - If within 5 calendar days



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Public Attendance at Meetings

- Registries or attendance lists may *not* be required
 - Voluntary lists are okay
- Teleconferenced meetings
 - Locations must be identified on agenda
 - Agenda posted at each location
 - Locations accessible by public
- Virtual meetings
 - Ensure proper control over virtual interface (muting, share screen, etc.)



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Public Right to Participate in Meetings

- Must permit the public to address items on the agenda *before* they are voted on
 - Tip: If agency begins with closed session must first have public comment
- But it's not a town hall!
- Must permit public to place matters on agenda directly related to district business



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Limits on Public Comment

- May adopt reasonable regulations for public comment
 - Time limit on particular issues and for each speaker
 - May not prohibit public criticism of the staff, policies, procedures, programs, services, or acts of the legislative body
 - May prohibit making comments outside of the body's jurisdiction



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Closed Sessions



Closed Sessions

- Closed sessions are generally prohibited
- Common exceptions for closed session
 - Pending litigation
 - Personnel matters
 - Labor negotiations/relations
 - Student discipline/complaints



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Pending Litigation Exception

- Legislative body confers with legal counsel
- “Pending litigation” includes:
 - Ongoing litigation
 - Decisions to initiate litigation
 - Settlement discussions
 - Significant exposure to litigation



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Personnel Matters Exception

- Closed session permitted for:
 - Appointment
 - Employment
 - Evaluation of performance
 - Discipline/dismissal/release
 - Includes release of probationary & high-level employees
 - Complaints/charges
 - NOT Compensation – except a reduction due to discipline



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Labor Negotiations Exception

- Purpose of closed session meeting:
 - To review position and instruct the district's representative, and
 - To discuss any other matter within the "scope of representation"
- Closed session may also take place prior to and during negotiations – to update the Board and receive direction



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Closed Session Agenda Description

- Format for describing closed session items varies depending on item
- Government Code § 54954.5 provides descriptions for various closed session items
 - No violation so long as the closed session items are described in "substantial compliance" with the section 54954.5 descriptions



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Reporting After Closed Session

- Generally after closed session, board must report in open session
 - Action taken in closed session
 - Vote or abstention of every member
- The nature of the report depends on the type of action taken



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Confidentiality

- What happens in closed session stays in closed session!
- Gov. Code § 54963 prohibits board members from disclosing information acquired in closed session
- Violations can lead to suits to prevent disclosure or referral to a grand jury.



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Benefits of following the Brown Act

- Way to instill values to staff and community
- Opportunity to provide efficient and excellent service to the District and students
- Transparency and professionalism builds trust and respect



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Thank You!

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