



Legal Review

Finance and Administration
Committee Meeting

March 28, 2024



Agenda

- Brown Act
- Campaign Related Items
- Public Records Act

Purpose of the Review

- Provide the Board a review of some of the key legal requirements of the Brown Act, Public Records Act, and Campaign Related Items
- Inform the Board of recent changes in the law

Brown Act

Brown Act- General Provisions

- California’s “Open Meeting” Law (The Ralph M. Brown Act, Govt. Code 54950 *et seq.*)
- Intended to ensure the people’s business is conducted in public
 - Express exemptions for closed session items
 - Examples: Pending/Anticipated Litigation, Price & Terms of Real Estate Transactions, Personnel Appointments and Evaluations
- A “meeting” is any gathering of a majority of the members of a legislative body at the same time and location to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.
- Requires that agendas with a brief description of items be posted prior to a meeting of the Board
 - 72 hours- Regular Meetings including standing committees; 24 hours- Special Meetings
- Applies to all Board meetings, standing committee meetings and other legislatively created bodies, such as a Joint Powers Authority
- Applies to sitting Directors and Directors-elect

Brown Act- Timeline of Teleconferencing Rules

- Traditional Rules
- Governor's Executive Orders During COVID-19 Emergency
- AB 361
- AB 2449

Green= Still Applicable

Red= No Longer Applicable – Sunset January 1, 2024

Brown Act- Traditional Teleconferencing Rules

■ Traditional Teleconferencing Rules

- Identify teleconferencing location on agenda
- Each teleconferencing location must be open to public
- Agenda posted at each teleconferencing location
- Quorum of Board must participate within the boundaries of the District

■ Tips

- Provide detailed teleconferencing location to Board Secretary as early as possible to facilitate agenda posting
- Ensure proposed teleconference location is identifiable/accessible for members of the public
- Have a copy of the agenda posted and available at teleconferencing location

Brown Act-Post COVID Teleconferencing Rules

- Post COVID exceptions to traditional teleconferencing rules (AB2449) (Expires December 31, 2025)

A Board member may participate remotely under the post-COVID rule if a quorum is participating at single physical location identified on agenda, open to the public and within the boundaries of the District, under one of the following:

- “Just Cause”
 - Defined as: (a) a family childcare or caregiving need; (b) a contagious illness; (c) a need related to a physical or mental disability that is not otherwise accommodated; or (d) travel while on official District business
 - Must notify the Board at the earliest opportunity, including the start of the meeting
 - Limited to two (2) meetings per calendar year
 - Member must identify anyone over 18 years old in the room
 - Board Member attending remotely must participate via audio and visual technology

Brown Act- Post COVID Teleconferencing Rules (cont.)

- “Emergency Circumstances”
 - Defined as: a physical or family medical emergency that prevents the member from attending in person, the member can participate remotely by requesting approval to do so from the legislative body.
 - Limited to no more than three (3) consecutive months or 20% of the District’s regular meetings (only two meetings if the body meets less than 10 times per year)
 - Must make a request of the Board as soon as possible and the Board must approve (may be at the same meeting as an urgency item)
 - Member must provide a general description of why they need to appear remotely (do NOT need to disclose personal medical information)
 - Member must identify anyone over 18 years old in the room
 - Board Member attending remotely must participate via audio and visual technology.

What to Avoid under the Brown Act

- Avoid Serial Meetings – A to B to C
- Avoid Hub and Spoke Meetings – A to B, A to C
 - Can attend conferences, social or ceremonial events, events of other public agencies, but must avoid any discussion of items within the jurisdiction of the District among a quorum of the Board
- Avoid discussion of items not on the agenda

Brown Act- Social Media Rules (AB992)

- Prohibits use of internet based social media platforms to “discuss among themselves” business within the subject matter jurisdiction of the District among a quorum of the Board
 - “Discuss among themselves” means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.
 - A member of the Board shall NOT respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the Board.

TIP – Do not “like”, comment on, or “share” a Board Member post when it is about District business

General Brown Act Tips

- Let agenda guide discussions and ensure comments remain on topic
- “General Manager and Board Update” and “Public Comment” portions of agendas should be used judiciously
- Staff can be directed by the Board/committee to add items to a future agenda by making a motion and a second during the future agenda items/future meetings section of the agenda
- When in doubt always feel free to contact the General Counsel’s Office

Campaign Related Items

The Levine Act – No “pay to play” (Political Reform Act §84308)

- Prohibits an Official from soliciting, accepting or directing campaign contribution of \$250 or more from a participant (or their agent) having any a proceeding in front of the agency.
- Prohibits an Official from participating in the proceeding if he/she has accepted a campaign contribution from the participant within the past twelve months.
- Allows the Official to cure the conflict by returning the donation within thirty days of learning of the donation or proceeding.

The Levine Act – No “pay to play” (Political Reform Act §84308), Cont.

- “Official” includes elected officials, and those running for office.
- “Proceeding” includes a contract, license, permit, or other entitlement for use (except competitively bid, labor, and personal employment contracts)
- Applies to contributions made 12 months prior to the proceeding and 12 months following the decision.

Prohibition of “Mass Mailers” At Public Expense (Political Reform Act §§ 89001-89003)

- A mass mailing (200 or more) is prohibited under the Act if it meets the following:
 - **Delivery.** A tangible item, such as a newsletter or brochure, is delivered, by any means, including by transmission of a fax, to a person’s residence, place of employment or business, or post office box. (Does not include emails, phone messages, nontangibles);
 - **Item Features an Elected Officer.** The item sent either features an elected officer affiliated with the agency (by including the officer’s photo or signature, or singling out the officer by the manner his or her name or office is displayed) and
 - **Public Moneys.** Any of the costs of distribution are paid for with public moneys, or if public funds are not used for the actual distribution, in excess of \$50 in public moneys is used to design, produce, or print the item and the design, production, or printing.

*There are a number of exceptions under the Act, such as press releases and public meeting notices

Prohibited Public Agency Mass Mailings Within 60 Days Prior to Elections

Specific restrictions apply to items that would otherwise be exempt from the mass mailing prohibition if it falls within 60 days of an officer's election:

- Letterhead/Roster Listings
- Meeting or Event Announcements
- Business Cards

Prohibited Use of District Resources

- Government Code section 8314
 - *It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.*
 - Note- does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

Public Records Act

Public Records Act (Govt. Code 7920.000 *et seq.*)

- Background

- Enacted in 1968 and modeled after the Freedom of Information Act (FOIA)
- Purpose is to give the public access to information that enables them to monitor the functioning of their government
- Provides the right to inspect public records and obtain copies unless exempt from disclosure

Public Records Act- What is a Public Record?

- A “public record” is any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- Public records include emails, text messages and voicemails of elected officials if the content discusses District business, even if sent from a personal, non-District account or device, unless an exemption from disclosure applies
- Definitions are broad and intended to permit disclosure
- Does not require the agency to create a new documents or answer questions

TIP – Be thoughtful about what you put in writing, as you may be creating a public record

Public Records Act- Exemptions

■ Common Exemptions

- Customer names, home addresses, phone numbers and utility usage information
- Records the disclosure of which would constitute an unwarranted invasion of personal privacy
- Critical infrastructure information
- Records the public interest in nondisclosure substantially outweighs the public interest in disclosure
- Attorney-Client Privilege/ Work Product and Deliberative Process Privilege

Public Records Act- General PRA Procedure

1. Request is submitted through District's Public Records Act (PRA) Portal
2. Staff forwards request to applicable departments or individuals to see if District has records
3. The District must respond within 10 days of receiving request to inform the requester if the District has any records, lists exemptions from disclosure (if any), and provides an estimated date of when the records will be provided.
 - Extensive requests allows an extension of time to respond for up to fourteen (14) days.
 - Larger requests may be responded to on a "rolling basis"
4. Once staff gathers records, they are reviewed for exempt information and redactions are made, if needed.
5. If records are not included with the initial response letter in step 3 above, they are subsequently provided to the requester.

Resources

- Brown Act

- https://www.calcities.org/docs/default-source/advocacy/open-public-vi-revised-2024.pdf?sfvrsn=2f412f0d_3

- Public Records Act

- https://www.calcities.org/docs/default-source/city-attorneys/the-people's-business.pdf?sfvrsn=f827f33f_3

- Contribution Limits and Prohibitions

- <https://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html#:~:text=Section%2084308%20prohibits%20certain%20officials,within%20the%20preceding%2012%20months>

- Communications Sent Using Public Funds

- <https://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds.html#:~:text=Communications%20that%20Feature%20an%20Elected%20Official&text=With%20some%20exceptions%2C%20the%20law,reference%20of%20an%20elected%20official.>

- When in doubt seek the advice of the General Counsel's Office