

Rancho Murieta CSD

Director Training on Brown Act & Board Guidelines

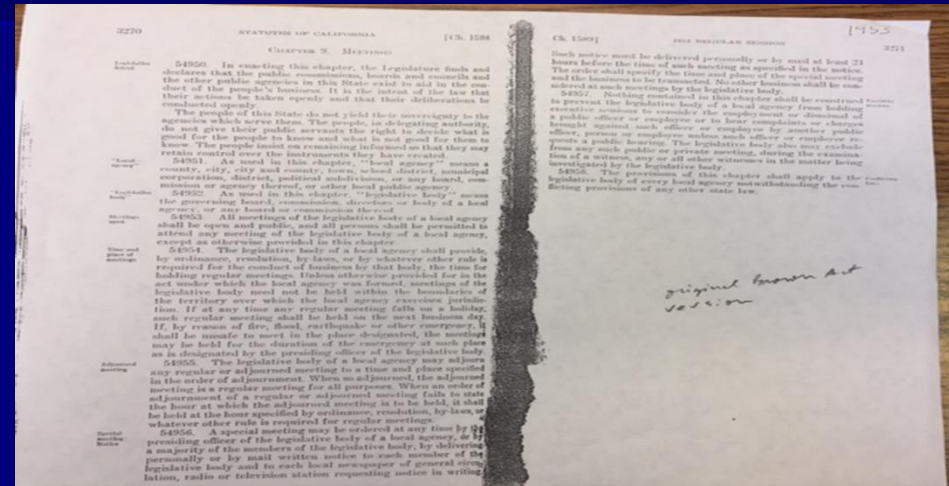
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January 8, 2018

Today's Plan

- Brown Act (open meeting law)
- Role of Board under CSD Law
- District Board Guidelines

Ralph M. Brown Act

- 1953 bill; started as 1½ pages.
- Now – many pages and 52 sections
- Compare Davis-Stirling Common Interest Development Act – 9 sections



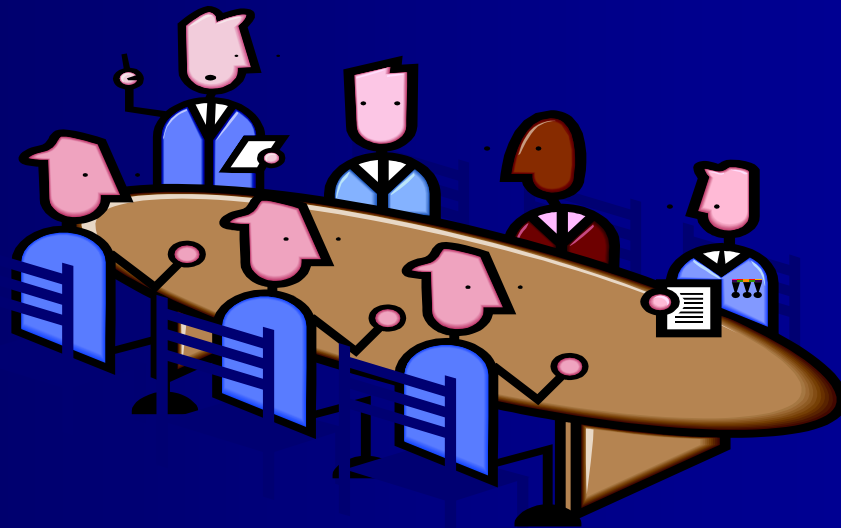
Why is the Brown Act important?

- It's the law
- It's good public policy
- Actions could be voided
- News media criticism
- Lose credibility with public
- Attorney's fees exposure
- Potential civil and criminal liability

General Principles

- “All meetings ... shall be open and public ..., except as otherwise provided.” (Govt. Code § 54953)
- Constitutional foundation:
“Meetings of public bodies ... shall be open to public scrutiny.” (Cal. Const. art. 1, § 3(b); Prop. 59, 2004))

Act applies to meetings of the
legislative body of a local
agency



What's a local agency?

Counties, cities,
special districts,
and other local
public agencies,
including joint
powers
authorities



What's a legislative body?

- City council, county board of supervisors, district board of directors or other governing board
- District committees, commissions, and boards with (1) one or more non-director member and (2) created by board action
 - E.g., Parks Committee

What's a legislative body (cont.)?

- Advisory committee of less than a quorum of the board?
 - Yes, if standing committee with continuing subject matter jurisdiction or fixed meeting schedule
 - No, if ad hoc committee without continuing subject matter jurisdiction or fixed meeting schedule

What's a legislative body (cont.)?

- Non-committee member director may attend standing committee meeting as an observer
 - May only observe and listen; cannot talk, participate, or sit on dais
- 2 x 2 meeting/committee
 - Legislative body subject to Brown Act if organized as a single advisory committee
 - Not subject to Act if joint meeting of two separate committees



A board votes to establish an advisory committee of five residents to advise the directors on financial issues as they arise. Is this committee covered by the Brown Act?

What's a meeting?

- Any
 - Congregation of a majority of the Board, or
 - Series of communications of any kind (e.g., phone, email, personal), directly or through intermediaries, involving a majority of the Board
- To discuss, deliberate, or take action on District business

Includes meetings, retreats, and workshops

What's a meeting (cont.)?

Serial meetings

- Act prohibits direct communication or use of personal intermediary or technological device to discuss, deliberate, or take action
- Avoid “daisy-chain” or “hub-and-scope” meetings

E-mail as a meeting



- Use of e-mail among a majority to discuss or develop collective concurrence is a meeting
- One-way e-mail to directors not a meeting
- Be careful clicking reply to all



The district has a Facebook page that allows for comments and district directors regularly post comments about district business. Does this scenario present a potential for violation of the Brown Act?

Not a meeting

- Individual contacts and discussions
- Discussions between two directors
- Staff briefing. District staff may have separate conversations with each director (or two at a time) in order to answer questions or provide information regarding District business, so long as staff does not communicate to a director the comments or position of any other director

Not a meeting (cont.)

Attendance of a majority of the directors at:

- Conference. Open public conference, so long as a majority of the directors do not discuss District business among themselves, other than as part of the scheduled program (e.g., CSDA or ACWA)
- Other Govt. Board. Open and noticed meeting of another local agency board, so long as a majority of the directors do not discuss District business among themselves, other than as part of the scheduled meeting (e.g., county board of supervisors)

Not a meeting (cont.)

Attendance of a majority of the directors at:

- Community meeting. Open and publicized meeting organized to address a topic of local community concern by a person or organization other than the District, so long as the directors do not discuss District business among themselves, other than as part of the scheduled program (e.g., RMA meeting if it's open and publicized)

Not a meeting (cont.)

Attendance of a majority of the directors at:

- Social Event. Purely social or ceremonial occasion, so long as a majority of the directors do not discuss District business among themselves (e.g., District holiday party, retirement dinner)
- Any other gathering where the directors do not hear, discuss, deliberate, or take action on District business



RM Country Club sponsors an open and public candidate debate during a campaign. Three of the five directors are up for reelection and all three attend. All are asked their views of a controversial upcoming project. Is this gathering permissible?



All five directors are members of the local country club. May all five directors attend a private, members-only social event at the club?

Meeting types

- Regular (e.g., monthly) board meeting
- Special board meeting
- Emergency meeting involving need for prompt action due to disruption or threatened disruption of public facilities

Regular meeting agenda

- Regular meeting time and place fixed by resolution, bylaw or rule
- Agenda contents
 - Time and location of meeting
 - “Brief general description of each item of business to be transacted or discussed”
 - Generally ≤ 20 words per agenda item
 - Requires fair notice of essential nature of the business to be considered
 - Directors need to plan ahead and inform staff about business items to be discussed

Agenda contents (cont.)

- Information about how to request a disability-related modification or accommodation
- Opportunity for public comment on agenda item before or during the Board's consideration of the item
- Opportunity for public comments on non-agenda items within District's jurisdiction
- Location of late agenda support documents

Agenda process

At least 72 hours before regular meeting:

- Prepare and post agenda in freely accessible location
- Post agenda on District website
- Mail agenda packet to public members who have requested it
- Provide agenda in appropriate alternative format to disabled persons if requested

Agenda web posting

Starting January 1, 2019 (AB 2257):

- Agenda notice must be posted on the District's primary website homepage through a prominent, direct link (not a contextual menu) to the agenda
- Agenda must be posted in an integrated agenda management platform, in an open format that meets specified requirements



The agenda for a regular Board meeting contains the following item of business: "Security Committee report." Is this description adequate?
What about "Consideration of Acme Company agreement?"



During the public comment period of a regular meeting, a resident urges the public to support impeachment of President Trump. May the presiding officer gavel the speaker out of order?

Special meeting

- May be called on 24-hours notice by President or majority of Board
 - Staff cannot call special meeting
- Special meeting notice/agenda content requirements similar to regular meeting agenda, except opportunity for public comment on non-agenda items not required

Special meeting

24 hours before meeting:

- Post notice in freely accessible location
- Post on District website
- Deliver (or e-mail) to each director and media who have requested notice
- Mail to public members who have requested it
- Provide in alternative format to disabled persons if requested

Agenda support documents are public records

- Documents must be made available as provided by the Public Records Act
 - Unless exempt under Act
- Agenda documents distributed to the Board within 72 hours of a meeting must be made available to public at the same time as directors and at a location identified on the agenda

Timing of availability of agenda support documents

- Part of regular agenda packet – upon request without delay
- After posting agenda – available to public at same time as directors (e.g., binder at District office)
- During meeting,
 - At meeting if prepared by staff
 - After meeting if prepared by non-staff



On Tuesday before the Wednesday Board meeting, the General Manager sends an email to the directors with supplemental information concerning an agenda item. Did the Manager violate the Brown Act? Must the email be provided to the public?

No action on non-agendized items; exceptions

No action or discussion on any item not appearing on the posted agenda, except:

- Director or staff may briefly respond to statements made or questions posed during public comment
- Director or staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities

No action or discussion on any item not appearing on the posted agenda, except (cont.):

- Director may provide a reference to staff, request staff to report back at a subsequent meeting on a matter, or ask staff to place a matter on a future agenda
- There is a need to take immediate action and the need came to the attention of District after agenda posting, as determined by Board 2/3 vote
- Emergency action following Board majority vote that an emergency situation exists

Meeting via teleconference



Director meeting participation via teleconference

- Regular meeting agenda or special meeting notice must identify teleconference location and invite public participation from that location
 - Absent director must plan ahead
- Agenda or notice must be posted at the teleconference location
- Teleconference location must be accessible to public
- Public may participate via teleconference location
- All votes by roll call



A director on vacation desires to participate in a board meeting and vote by cell phone from:

- Hotel room?
- Car while driving?
- Poolside at the hotel?

Is this okay?

Closed session meetings



- Disclose on agenda with specific entry
- Attendance limited to directors and essential staff
- Post-closed session report back for certain actions

Closed session types

- Conference with attorney for pending or anticipated litigation
- Employment related: performance evaluation; appointment; discipline; dismissal; to hear charges or complaints (with 24-hour notice to employee)
- Conference with labor negotiator
 - Cannot negotiate directly with employee in closed session

Closed session types (cont.)

- Conference with real property negotiator
- Consideration of self-insurance JPA liability claims
- Consultation with law enforcement concerning security threat



May the Board meet in closed session with RMA representatives to discuss the proposed purchase of real property?



The board is meeting in closed session to evaluate the manager's performance and to consider giving her a pay raise. May the manager attend the closed session?

Closed sessions are confidential

- Directors are prohibited from disclosing confidential information from closed session
- Some exceptions
 - Inquiry/complaint to district attorney or grand jury concerning a perceived violation of law
 - Expressing an opinion concerning the propriety or legality of action taken in closed session
 - Disclosing information that is not confidential information

Violation of closed session confidentiality

Remedies?

- For employee – use disciplinary process
- For director –
 - Counsel offender
 - Censure or reprimand (but, consider director's due process rights)
 - Report to grand jury or DA
 - Seek court injunction

Miscellaneous

- Act applies to newly elected officials who have not yet assumed office
- Cannot act by secret ballot
- Cannot require public to sign attendance list, but may request it
- Cannot prohibit public criticism of the district and its board
- Action minutes (or other public report of action) required

Enforcement



- Violation with intent is a misdemeanor
- Injunctive relief available to stop violations
- Interested person may file lawsuit to declare action taken null and void; however, must first give 90 day notice and opportunity to cure and correct
 - Use cure and correct opportunity
- Prevailing challenger entitled to attorney's fees

For more Brown Act information

Open & Public V

Available from League of California Cities
at <https://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>

Role of Board under CSD Law (Govt. Code § 61040)

- Board shall govern the district and establish policies for district operations.
- The implementation of those policies is the responsibility of the General Manager.
- Directors shall exercise their independent judgment on behalf of the interests of the entire district, including the residents, property owners, and the public as a whole.
 - District is broader than RMA

Principal director responsibilities

- Establish policies and regulations
- Adopt budget and oversee finances
- Provide resources as needed to carry out policies
- Determine mission and strategic goals and objectives
- Appoint and evaluate the General Manager and General Counsel

Role of director serving on JPA or community committee

- Director should be guided by section 61040 (exercise independent judgment on behalf of the interests of the entire District) and the policy direction of the Board
- However, director generally not bound by Board's policy position
- Board's remedy is to remove the director from the JPA or committee

Role and authority of individual director

- Same as any other resident
- May request information and ask questions
- Only authority is as member of Board or committee or as President or VP
 - President/VP authority outside of a meeting is very limited

RMCS D Board Guidelines

The image shows a screenshot of a web browser window displaying a PDF document. The browser's address bar shows the URL: <https://d5brfuzkqskyv.cloudfront.net/64c1aa1d-d0c0-4ae6-a2d1-1741a0f32fe4/8214c6cb-db07-43ee-a81e-a82efe146708/Chap%202%20amended%2006-2016.pdf?response-content-disposit>. The document cover features the Rancho Murieta Community Services District logo at the top, followed by the title "BOARD GUIDELINES" in large blue letters. Below this, the subtitle "GUIDELINES FOR CONDUCTING RANCHO MURIETA COMMUNITY SERVICES DISTRICT BUSINESS" is centered. At the bottom of the cover, it says "2016 Edition" and displays a silhouette of five men in suits standing in a row. The browser's taskbar at the bottom shows various application icons and the system clock indicating 11:37 AM on 4/4/2017.


Dragon's microphone is off, you can press its hotkey or click its icon to turn it on. Profile Tools Vocabulary Modes Audio Help

Correction... Transcribe... Richard P. Shanahan (v13) : Desktop Microphone: Telex USB Microphone

Codes Display Text Rancho Murieta Commu Microsoft Word - Chap 2

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Apps Getting Started Imported From Firefo Other bookmarks



BOARD GUIDELINES

GUIDELINES FOR CONDUCTING
RANCHO MURIETA COMMUNITY SERVICES DISTRICT
BUSINESS

2016 Edition



11:37 AM
4/4/2017

Guidelines - General

- Builds on/supplements Brown Act
- How to prepare Board and committee meeting agendas and prepare for meetings
 - Any director may place an item on the agenda; however, usually will first be referred to committee
- Requires recommended action and background agenda report
- Sets structure of Board meeting agenda
- Lists standing committees and responsibilities

Transacting agenda business item

- President announces item (usually by reading from agenda)
- Staff presentation and recommendation (including committee recommendation, if any)
- Preliminary director Q&A
- Request public comment

Transacting agenda business item (cont.)

- Motion process
 - Director makes motion
 - Another director seconds motion
 - President states motion
 - Discussion
 - Vote (action requires majority of full Board, i.e., 3 votes; not majority of quorum)
 - Abstention counts as a vote in favor of majority (unless abstaining due to conflict of interest), e.g., 2-1-1 vote passes motion

Simplified Rules of Order

- Robert's Rules of Order do not apply
 - Because complicated and inappropriate for small informal board
- Ordinarily, must consider and decide one motion (main motion) at a time
- Exceptions, known as secondary motions, may be made and must be decided before voting on main motion

Secondary motions

- Available secondary motions under District Guidelines:
 - Motion to amend - if approved and seconded, then consider main motion as amended
 - Motion to table - if seconded and approved, main motion cannot be further considered at that meeting
 - Motion to postpone to specified date/time - if seconded and approved, then reconsider main motion at specified date/time

Secondary motions (continued)

- Motion to refer to committee - if seconded and approved, then refer main motion to committee for further study and report back
- Motion to close debate and vote immediately (aka call the question) - if seconded and approved, then immediately vote on main motion
- Motion to adjourn - if seconded and approved, then the meeting immediately adjourns without further consideration of main motion

Rules of order; point of order

- Director may raise point of order at any time claiming proper procedures are not being followed
- Does not require second; no debate
- Maker may interrupt speaker
- President rules on point of order
- President ruling may be appealed by motion (with second) to full Board



After a lengthy Board debate on a pending motion, one of the directors declares "I move to refer this matter to the Finance Committee." Must the Chair then cease the debate and call for a vote on the secondary motion?

Director code of conduct and ethics

- Code of conduct
 - Directors may approach staff to obtain information
 - Complaints, safety concerns, and legal questions should be referred to General Manager
 - Exception: Director may contact General Counsel directly if matter involves General Manager or director uncertain about how to proceed

Director code of conduct and ethics (cont.)

- Code of conduct (cont.)
 - If approached by staff concerning District business, refer inquiry to the appropriate staff supervisor; respect chain of command
 - Exception: Director should contact General Counsel if receive allegations of wrongful conduct by General Manager or supervisor (e.g., sexual harassment)
- Ethics policy (see chapter 10)
 - Highlights significant legal requirements and limitations



May a director approach a District public works crew and ask them to work on a drainage problem near the director's house?

Ethics and conflicts

- Ethics policy (cont.) - references state conflict of interest laws; general rules (with exceptions):
 - Political Reform Act: Director cannot make, participate in, or use his or her position to influence a District decision in which the official has a financial interest
 - Govt. Code § 1090: District cannot approve a contract in which a director has a financial interest

Ethics and conflicts

- Potentially affected director (and spouse) financial interests to watch for:
 - Direct or indirect interest in a District contract
 - Investment interest in business of $\geq \$2,000$
 - Director, owner or manager in a business
 - Real property interest of $\geq \$2,000$
 - Employer or other source of income of $\geq \$500$ over last 12 months
 - Gifts to the official of $\geq \$460$ over last 12 months
 - Other personal finances

General Manager's role

- GM has broad authority and responsibility under CSD Law to:
 - Implement Board policies
 - Appoint, supervise, discipline and dismiss employees
 - Supervise facilities, services and finances
- Board communications should be through GM
- Individual director instructions or orders to GM not binding

Working with District staff

- Always start with General Manager
- If GM is unreachable, contact Director of Administration or District Secretary
- When discussing a matter with other staff:
 - Do not order or assign work to staff
 - Request information judiciously; don't overwhelm staff

Other

- General Counsel's Role
 - District is the client
 - General Counsel does not represent a director; no attorney-client privilege between them
- All District-related electronic communications to/from a director are public, even if on personal computer or gadget (except privileged materials)