



Palmdale Water District

THE BROWN ACT

Meeting Procedures and Conflicts of Interest for Public Officials

PRESENTED BY G. ROSS TRINDLE, III, GENERAL COUNSEL



ALESHIRE &
WYNDER, LLP
ATTORNEYS AT LAW

PART 1

BROWN ACT AND PUBLIC MEETING PROCEDURES

THE BROWN ACT:

AKA: The Open Meeting Laws

“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.”

(Gov. Code § 54953)



All District Business Must be Conducted at Open Meetings

- **The Brown Act requires all meetings of legislative bodies and advisory bodies to be open and public, including meetings of the Board of Directors / Commissions / any committee bodies**
- **A majority of the Board of Directors may not consult outside a properly noticed meeting open to public.**
- **Narrow Exceptions:**
 - Individual contacts between a member of the legislative body and any other person
 - Conference or similar gathering open to the public that addresses issues of general interest
 - Community meetings held by another organization
 - Other legislative body meetings
 - Standing Committees
 - Social or ceremonial events

What is a Meeting?

Definition: "Meeting" includes any gathering of a majority of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its subject matter jurisdiction*.



What is a Meeting?

Means of Communication: A meeting includes any use of *direct communication*, personal *intermediaries*, or *technological devices* which are employed by a majority of the members of the legislative body to *develop a collective concurrence* on action to be taken by members of the legislative body.

(Gov. Code § 54952.2)



- **A meeting is deemed to have taken place if a quorum of the legislative body receives information on, discusses, deliberates on any item on which the body may legally act.**

Social Media Restrictions (AB 992)



- A commissioner may not respond directly to any communication posted or shared by another commissioner regarding commission business on social media.
- This includes likes, thumbs up, emojis, sharing, or commenting
- Social media is any online platform that “is open and accessible to the public.” Includes traditional social media sites such as Facebook, Twitter, or Nextdoor, but also smaller forums such as a discussion section on a news website.

REMEMBER:

- Your emails and text messages may be subject to public disclosure under the Public Records Act.
- ***IT DOES NOT MATTER*** if you are messaging from a personal device or personal email account.



Agenda Requirements

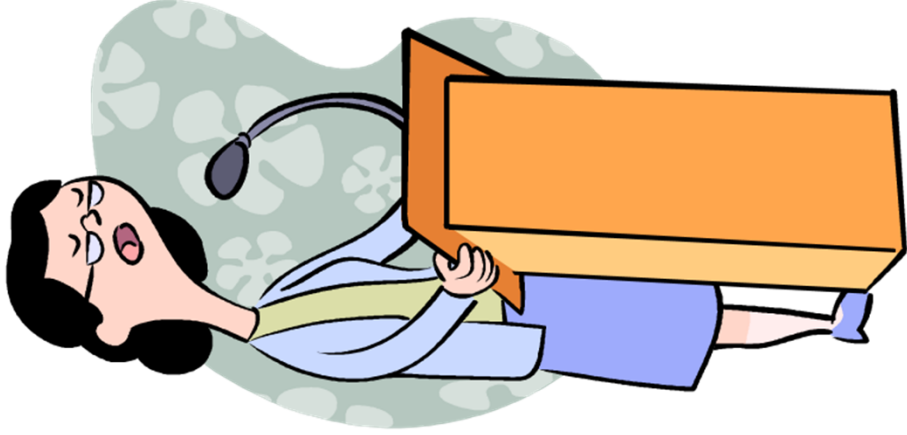
- A written agenda must be prepared for each meeting of the Commission and posted 72 hours before each regular meeting or adjourned regular meeting
- The agenda must include all matters to be transacted or discussed
- No action may be taken if an item is not on the agenda (unless it is a qualified emergency item)
- Each item on the agenda include a brief description, sufficient to inform the public of the nature of each item of business, which allows the public to determine whether to participate

Agenda Requirements: Exceptions

No discussion of any item not on agenda

... Except:

- Brief responses.
- Statements or questions.
- Questions for clarification.
- Reference to staff or other resources for factual information.
- Request staff to report at a subsequent meeting.

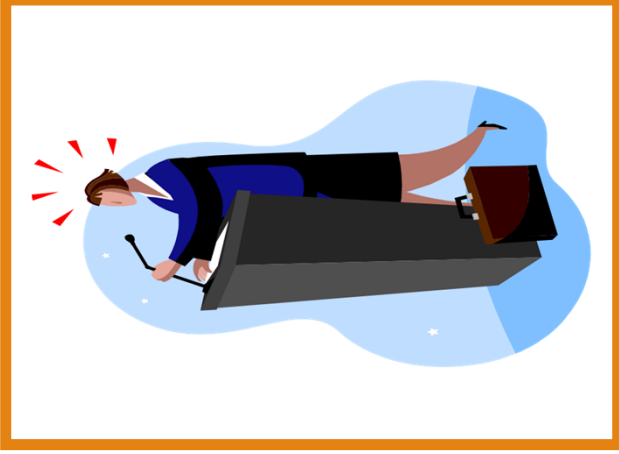


Public Participation in Meetings

- Anyone can attend open meetings.
- Can encourage, but NOT require names, questionnaires, or conditions to attendance (special exception under AB 361 for virtual attendance).
- Public may record proceedings by video, film or audiotape.
- If meeting is willfully interrupted or order cannot be restored by removing only the disrupting individuals, body may order room cleared.

Public Comment Period(s)

- Public has the right to talk about anything they want that's not on the agenda.
- Members of the public get to speak on each and every item on agenda before deliberations have been made



AB 361 and The Brown Act: Notice and Agenda

- ❖ Special exception to traditional teleconferencing rules during declared state of emergency.
- ❖ Adds additional requirements to the regular Brown Act notice and agenda requirements:
 - Must provide notice of the means by which members of the public may access the meeting and offer public comment
 - Agenda must identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option
- ❖ But note that you do **not** need to:
 - Post agendas at each teleconference location
 - Keep each teleconference location open to the public
 - Have at least a quorum of the members of the legislative body participate within the boundaries of the agency

CLOSED SESSIONS

FOUR GROUNDS FOR CLOSED SESSION:

- ❖ Pending/Anticipated Litigation.
- ❖ Real Property Negotiations.
- ❖ Labor Negotiations.
- ❖ Personnel Matters.



The Brown Act

PENALTIES: Failing to Comply

- Possible nullification of decision.
- Criminal Misdemeanor – for intentional violations (up to 6 months in jail/\$1000 fine).
- Injunction, Mandamus & Declaratory Relief.
- Challenger must demand corrective action within 90 days of action -- or 30 days if agenda issue.

DANGER
BROWN ACT
VIOLATIONS

PART 2

CONFLICTS OF INTEREST



Legal Framework

- **Political Reform Act of 1974** (Government Code Section 87100 *et seq.*) referred to as the “PRA,” which regulates all official actions of a public official including Conflicts of Interest.
 - The Fair Political Practices Commission FPPC has adopted detailed regulations implementing the PRA that are set forth in Title 2 of the California Code of Regulations at Sections 18700 *et seq.*
- **Conflicts of Interest in the Making of a Contract** (Government Code sections 1090–1097)

General Rule Under the PRA

■ ***No public official at any level of state or local government shall make, participate in making, or in any way use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.***

- ❖ Officials must refrain from participating in the decision-making process when it is:
 - 1) reasonably foreseeable
 - 2) that the decision will have a material financial effect on the Official's financial interest
 - 3) that is distinguishable from that of the public generally.

Recognizing Financial Interests

■ There are 5 categories of economic interests from which conflicts can arise:

- 1) Economic Interests in business entities
- 2) Economic Interests in sources of income to the public official
- 3) Economic Interests in sources of gifts to the public official
- 4) The personal financial effects rule
- 5) Economic Interests in real property



Analyzing Conflicts of Interest

- There are 4 steps that should be followed to determine if a public official has a conflict of interest which may prevent the official from participating in a decision.
 - **STEP 1:** Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?
 - **STEP 2:** Will the reasonably foreseeable financial effect be material?
 - **STEP 3:** Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?
 - **STEP 4:** Is the public official making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision?

Real Property Interests

Three specific categories of materiality based on the location of the real property interest, with differing standards and presumptions or tests for each.

- **500 feet or less:** presumed to be a conflict unless rebutted by clear and convincing evidence.
- **500 - 1,000:** No presumption—complicated set of factors!
- **Over 1,000 feet:** presumed *not* a conflict, unless evidence to the contrary.



Exceptions to Conflict Rule

- There are two exceptions to the PRA's general prohibition on participating in a decision when you have a conflict.
 - The “public generally” exception
 - The “legally required participation” exception

Disqualification versus Abstention

- Mere existence of a conflict does not imply wrongdoing unless you don't disqualify yourself when you should
- Abstention vs. Disqualification
 - Abstention = voluntary
 - Disqualification = legally required

If You Are Disqualified

- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave room (unless on consent)
- No voting *or discussing* the matter
- NOTE: You do not count towards a quorum!!
- May still participate as a private resident




PENALTIES

- The decision may be voidable
- Loss of office (+ disqualification for future)
- Misdemeanor (jail time and penalties)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys' fees
- Embarrassment (personal and political)



Common Law Bias

- Not a statutory rule but made through case law.
 - The common law is violated if a decision maker is tempted by his or her personal or pecuniary interests.
 - Applies to financial and non-financial interests.
 - Decisions must be fair and impartial.
 - Where a common law conflict of interest exists as to a particular transaction, the official is disqualified from taking any part in the discussion and vote regarding the particular matter.
- 

Conflicts of Interest in Making Contracts

- Gov. Code § 1090 prohibits a government officer or employee acting in their official capacity from making a contract, or participating in the making of a contract, in which he or she is financially interested.
- Financial interests would include:
 - Landlord or tenant of contract party
 - Attorney or agent of contracting party
 - Supplier of goods or services to the contracting party.
 - Officer or employee of a nonprofit corporation that is a contracting party.

Penalties for Making Contracts with a Conflict

- The contract will be void and unenforceable and the official will be subject to:
 - Criminal and civil penalties including fines, imprisonment, and forever disqualification from holding office
 - Potential disgorgement of any consideration received, or property acquired in the transaction
- Willful violation of Section 1090 may be punished as a felony.

QUESTIONS?

G. ROSS TRINDLE, III – GENERAL COUNSEL

YECENIA VARGAS – ASSISTANT GENERAL COUNSEL



**ALESHIRE &
WYNDER** LLP
ATTORNEYS AT LAW