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ASSOCIATION OF CHIEF BUSINESS OFFICIALS FALL CONFERENCE

The Brown Act: Staying on the Right Path

10/25/2011

PRESENTED BY:

Mary Dowell

The Brown Act: Staying on the Right Path

Association of Chief Business Officers Fall Conference | October 25, 2011

Presented by: *Mary Dowell*

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The Brown Act: Staying on the Right Path

ABCO Fall Conference – Oct. 25, 2011

Presented By:

Today's Agenda

- Brown Act – Public Meeting Law
 - Who is covered?
 - Meetings and agendas
 - Closed sessions
 - Remedies for violations of the Act

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Purpose of Statute

“The people in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”

- Ralph M. Brown Act, 1953

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Who is Covered by the Brown Act?

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Agencies and Legislative Bodies Subject to the Act

- Legislative bodies covered by the Act:
 - Governing body of local agency or other local body created by state or federal statute
 - Other bodies of local agencies created by charter, ordinance, resolution, or formal action of a legislative body
 - Example: boards of trustees and personnel commissions

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What is NOT a Legislative Body?

- Advisory committees composed solely of the members of the legislative body which are *less* than a quorum of the legislative body
- BUT there are exceptions...
 - Standing committee
 - Continuing subject matter jurisdiction
 - Meeting fixed by statute or rule

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Who is a Member of a Legislative Body?

- Any individual who is elected or appointed to sit on a legislative body and vote on and make decisions with other such individuals
- Applies to individuals who have not yet assumed elected office

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Meetings and Agendas

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What is a “Meeting?”

- Congregation of a majority of the members of the legislative body at the same time and place to hear, discuss or deliberate upon any item within its subject matter jurisdiction
 - No collective concurrence necessary. So be careful when you communicate with members!

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What is a "Meeting?"

A meeting may occur during:

- Informal sessions or conferences designed for discussion of public business, including retreats
- Telephone conversations (i.e. group telephone conference)
- Email

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What is NOT a "Meeting?"

- Attendance of majority of members at Conferences/seminars, community meetings, social events
 - No discussion of specific business

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What is NOT a "Meeting?"

- Contacts/conversations between administrators and individual board members or less than a quorum
 - No communication of other members' comments or position

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Types of Meetings

- Regular meetings
- Special meetings
- Emergency meetings

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What is a Regular Meeting?

- Meeting that is held at a time and place specified by ordinance, resolution, bylaws, or whatever other rule is required for the conducting of business by the legislative body
- Occurs at a regularly scheduled time
- Agenda must be posted at least 72 hours before the regular meeting
- Posting location must be freely accessible
- Agenda encompasses notice

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Agenda Content

- Date, time and location of meeting
- Brief general description of items
- Closed session items
- Public comment
- Disability access

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Items NOT on Agenda

- General rule – no action or discussion on an item that is not on the posted agenda
- BUT there are exceptions...
 - Brief response
 - Emergency
 - Immediate action
 - Item from agenda of prior meeting
 - If within 5 days

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What is a Special Meeting?

- Meeting that is called at *any* time by the presiding officer of the legislative body or by a majority of the members

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Special Meeting Posting Requirements

- Notice must be posted at least 24 hours before the meeting
- Notice must be delivered to members and press at least 24 hours before the meeting
- Date, time, and location of meeting
- Brief description of matter to be discussed
 - Only matters in notice may be discussed at meeting

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What is an Emergency Meeting?

- Emergency = a work stoppage, crippling activity or disaster, or other activity that severely impairs or threatens to impair the public's health and/or safety (e.g. earthquake, terrorist act, or sickout/blue flu labor action)

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Requirements

- No written notice required
- Notice to media
- Posting of minutes
- Limited closed sessions

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Conducting the Meeting

- Location of meetings
 - Within local agency's territory/district
 - Emergency location
 - Non-discriminatory

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Conducting the Meeting

- Adjournment of meetings – e.g. less than quorum of body attends
 - Notice of adjournment
- Continuance of hearing
 - Must be announced at meeting
 - Notice and posting requirements same as for adjournment

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Rights of the Public

- Public attendance at meetings
 - Registries, attendance lists may *not* be required but voluntary lists okay
 - Teleconference locations must be identified and held in a place accessible by public

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Rights of the Public

- Right to record meeting
- Right to broadcast meeting
- Right to inspect documents and recordings
 - Agendas and attached documents
 - Writings distributed at meetings
 - Tapes/films that record meetings

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Rights of the Public

- Disorderly conduct during meeting
 - Willful interruption may result in clearing of the meeting room
 - Establish procedure for re-admission of non-disturbing persons
 - Media may remain if did not participate in disruption

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Rights of the Public

- Public agenda documents provided to legislative body members less than 72 hours before a meeting must be provided to the public at the same time (Gov. Code § 54957.5)

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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

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Rights of the Public

- 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

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Closed Sessions

- Closed sessions are generally prohibited
- BUT there are several exceptions...

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Closed Sessions

- Common exceptions for closed session
 - Pending litigation
 - Personnel matters
 - Labor negotiations/relations
 - Real property transactions
 - Student discipline/complaints

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Pending Litigation Exception

- Pending litigation exception – legislative body confers with or receives advice from its legal counsel
 - Necessary to avoid prejudicing the position of the local agency in the litigation

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Personnel Matters Exception

- Closed sessions to consider appointment, employment, evaluation of performance, discipline/dismissal/release
- BUT, there are limitations depending on the type of personnel matter

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Personnel Matters Exception

- Includes high level managers
- But does *not* include board members or independent contractors (unless the latter is functioning as an officer or employee) or consultants (e.g. architects, law firms)

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Personnel Matters Exception

- Complaints or charges against employees
 - 24 hours written notice of right for open session
 - No notice = voids action taken
 - Hearing vs. deliberating on complaints/charges
- Written notice delivered 24 hours before session
- If employee does not request open session, it is heard in closed

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Personnel Matters Exception

- Performance evaluations – does *not* constitute hearing of complaints/charges
 - 24 hours notice *not* required
 - May take disciplinary action following review of adverse performance...BUT watch out for accusations made during closed session
 - Conservative approach - 24 hours notice that addresses performance evaluation *and* complaints/charges

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Personnel Matters Exception

- Compensation/salary setting
 - Only reduction resulting from discipline
- Probationary employees
 - Probation determination is not complaint/charge
- Specific employees only
 - Discussions that relate to broad classification of employees must be held in open session

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Labor Negotiations Exception

- The legislative body may meet with its designated representatives in closed session regarding compensation
 - But may not act on proposed compensation in closed session
 - Agency's representatives must be identified in an open and public session

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Labor Negotiations Exception

- Purpose of closed session meeting:
 - To review position and instruct the local agency's designated representative, or
 - To discuss any other matter related to represented employees within the scope of bargaining
- Closed session may also take place prior to and during consultations and discussions with employee representatives and unrepresented employees

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Closed Session Agenda Description
<ul style="list-style-type: none">• The format for describing closed session items vary and depend on the item• Section 54954.5 provides descriptions for the various closed session items<ul style="list-style-type: none">– No violation so long as the closed session items are described in “substantial compliance” with the section 54954.5 descriptions <p data-bbox="542 663 758 682">LCW LIEBERT CASSIDY WHITMORE</p>

Student Discipline Exception
<ul style="list-style-type: none">• Suspension, expulsion or other action• Closed session unless student requests open session within 48 hours of receiving notice of Board meeting• If discussion will involve any <u>other</u> student, that must be in closed session• Must act in open session<ul style="list-style-type: none">– Decision is public record <p data-bbox="542 1247 758 1266">LCW LIEBERT CASSIDY WHITMORE</p>

Closed Session Agenda Description
<ul style="list-style-type: none">• Pending litigation – state name of pending case<ul style="list-style-type: none">– If litigation is anticipated – state “potential action involving significant exposure to litigation pursuant to...”• Personnel matters – “Public employee discipline/dismissal/release”• Labor negotiations/relations – names of rep. and union• Student discipline – “Consideration of student discipline (suspension/expulsion/ other action) pursuant to Ed. Code § 72122.<ul style="list-style-type: none">– Student #1” <p data-bbox="542 1827 758 1845">LCW LIEBERT CASSIDY WHITMORE</p>

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Announcement Before Closed Session

- Before conducting a closed session, the legislative body must announce in open session the items to be discussed in closed session and state the general reasons for the closed session
 - Refer to agenda or make announcement orally
 - Make sure to cite statute for closed session

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Conducting Closed Session Meetings

- Closed session meetings should usually involve only the members of the legislative body of the local agency, plus any additional support staff required or any witnesses required
- Individuals not necessary to the meeting should be excluded

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Reporting After Closed Session

- After the closed session, the legislative body must reconvene into open session and report the actions taken in the closed session
- The nature of the report depends on the type of action taken

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Reporting After Closed Session

- Personnel decisions
 - Shall be reported at the public meeting during which the closed session is held
 - Identify the title of the position
 - Report of a dismissal or non-renewal of employment contract must be deferred until the first public meeting following the exhaustion of administrative remedies

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Reporting After Closed Session

- Labor negotiations
 - Report approval of final and ratified agreement
 - Report items approved and parties to the negotiation

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Confidentiality of Closed Session

- No disclosure of personal recollection of closed session discussions
 - Members of a legislative body are not permitted to disclose the contents of a closed session
 - Disclosure of the personal recollections of participating members cannot be compelled

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Confidentiality of Closed Session

- A person may not disclose confidential information that was acquired by being present in a closed session
- “Confidential Information” is a communication related to the basis for the legislative body to meet lawfully in closed session

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Confidentiality of Closed Session

- Exceptions to rule of non-disclosure
 - Employee provides information to a district attorney or grand jury concerning a perceived violation of the Act
 - Employee is expressing an opinion concerning the propriety or legality of actions taken by a legislative body

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Remedies for Violations of the Brown Act

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Remedies for Violations of the Act

- District attorney or other interested person may
 - Bring an action to prevent violations or threatened violations
 - Determine the applicability of the Act to actions or future actions
- Attorneys' fees and costs

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Remedies for Violations of the Act

- Correcting or curing an unlawful action – there are specific procedures the DA or interested person must take to nullify/void action
 - Written demand to cure
 - Opportunity for legislative body to cure
 - Interested party must have been prejudiced by the violation of the Act

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Questions?

Thank you.

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