

# **Rancho Murieta CSD**

## **Director Training on Brown Act, Board Guidelines, etc.**

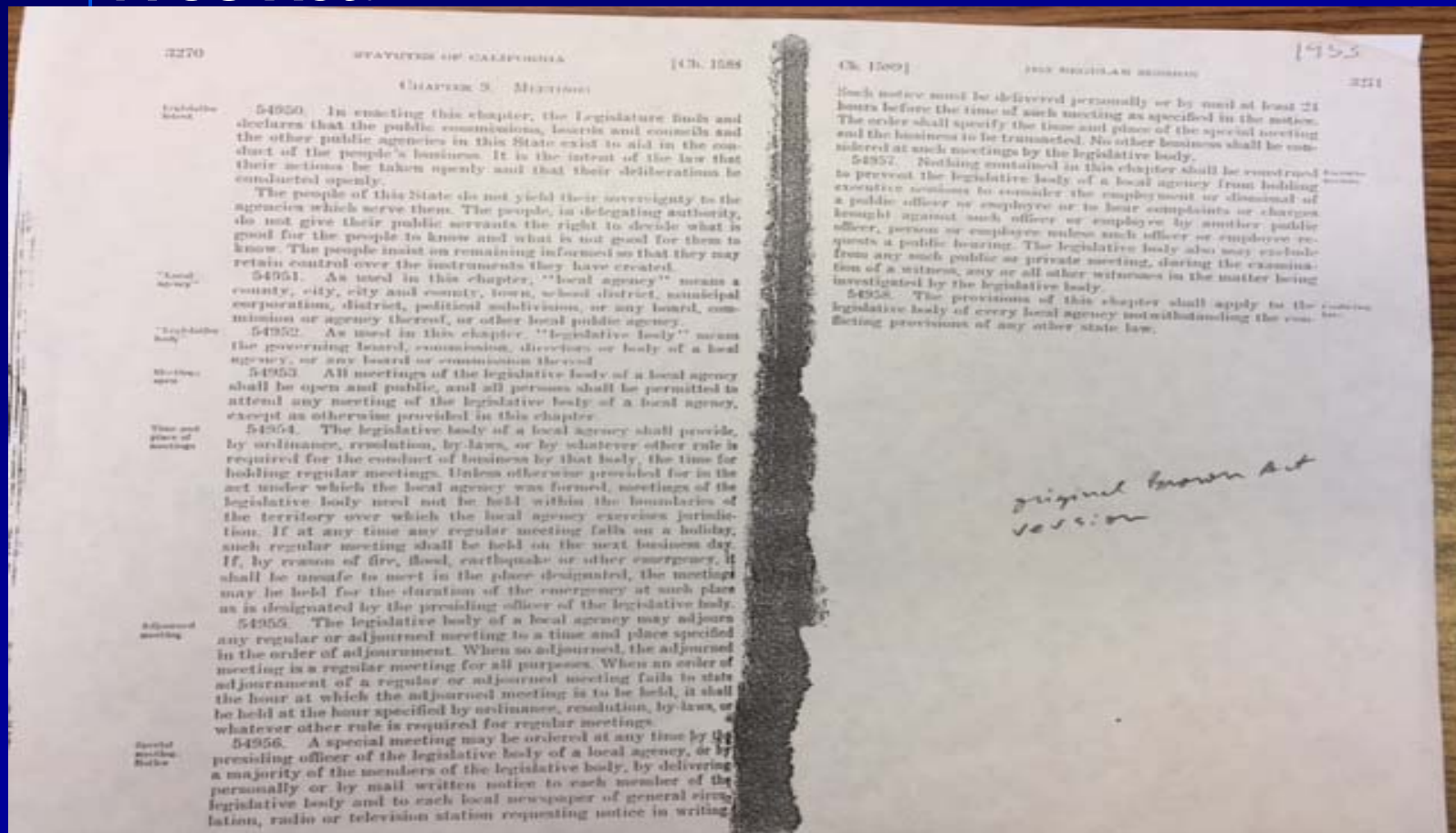
**Richard P. Shanahan  
Bartkiewicz, Kronick & Shanahan  
April 6, 2017**

# Today's Plan

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

# Ralph M. Brown Act

1953 Act:



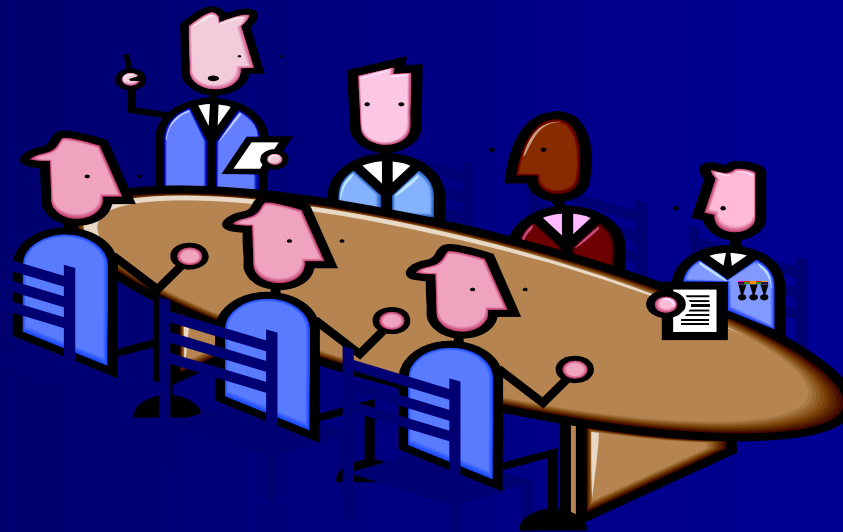
# Why is the Brown Act important?

- 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
- Some private corporation boards



# 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.)?

- 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
- Non-committee member director may attend standing committee meeting as an observer
  - May only observe and listen; cannot talk, participate, or sit on dais



A member of the legislative body informally establishes an advisory committee of five residents to advise her 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
- Any series of communications of any kind, directly or through intermediaries, involving a majority of the Board
- To discuss, deliberate, or take action on District business
- Includes meetings, retreats and workshops
- “Action taken” means vote or collective decision, commitment or promise by a majority of the directors

# 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 agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of agency business. Members of the agency board participate regularly. Does this scenario present a potential for violation of the Brown Act?

# Not a meeting

- Individual contacts and discussions
- 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



Chamber of commerce sponsors an open and public candidate debate during a campaign. Three of the five board members are up for reelection and all three attend. All are asked their views of a controversial upcoming project. May the three incumbents answer the question?



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  $\leq 20$  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: "Improvements Committee report." Is this description adequate? What about "Consideration of Shanahan Consulting Services agreement?"



During the public comment period of a regular meeting, a resident urges the public to support and vote for a candidate competing for election to the Board. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

# 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
- Action following Board 2/3 vote that there is a need to take immediate action and that the need came to the attention of District after agenda posting
- 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 her car while driving from Los Angeles to Las Vegas. May she?

# 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 (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



Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the board in closed session?



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 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 agency 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)

- “The board of directors shall govern [the] district. The board of directors shall establish policies for the operation of the district. The board of directors shall provide for the implementation of those policies which is the responsibility of the district’s 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.”

# 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

# RMCS D Board Guidelines


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## BOARD GUIDELINES

GUIDELINES FOR CONDUCTING  
RANCHO MURIETA COMMUNITY SERVICES DISTRICT  
BUSINESS

2016 Edition



# 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 not applicable
  - Complicated; 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 (from RMCSD 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 call for the question." Must the Chair then cease the debate and call for a vote on the pending motion? May the Chair do so?

# Director code of conduct and ethics

- Code of conduct (see chapter 9)
  - Focus on policy formulation and evaluation
  - 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 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?

# Director code of conduct and ethics (cont.)

- 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

# Director code of conduct and ethics (cont.)

- 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's role is 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 acting GM or District Secretary
- When discussing a matter with other staff:
  - Do not order or assign work to staff
  - Do not accept information or status as final and definitive
  - Request information judiciously; don't overwhelm staff