

LCW LIEBERT CASSIDY WHITMORE

Brown Act Update For Human Resources Professionals

Association of Chief Human Resources Officers/Equal
Employment Officers (ACHRO/EEO) 2022 Fall Institute
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Brown Act Basics

LCW

Brown Act

- Guarantees the public's right to attend and participate in meetings of legislative bodies
- Requires public's business conducted in public
 - Narrow exceptions apply



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What is a Meeting?

- Congregation of a majority of board members of a legislative body
 - Same time and place
 - To "hear, discuss, or deliberate"
 - On any item within its subject matter jurisdiction
 - Regardless of reaching collective concurrence

Gov. Code, § 54952.2



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Types of Meetings

- Regular meetings
- Special meetings
- Emergency meetings
- Teleconference meetings



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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
- But it's not a town hall!
- Must permit public to place matters on agenda directly related to district business



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Limits on Public Comment

- May adopt reasonable regulations for public comment
 - Time limit for each speaker and total time
 - 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

2022 Teleconference Amendments

2022 Amendment to Teleconferencing Requirements

- Based on circumstances of trustee
- “Just cause”
 - Family childcare or caregiving need, contagious illness, disability, travel on district business
- “Emergency circumstances”
 - Physical or family emergency
- Quorum of board in person in single location

2022 Amendment to Teleconferencing Requirements

- Trustee must give general description of circumstances
 - Not required to disclose medical diagnoses or confidential info
 - Must disclose if someone over age 18 with them
- Can give notice as late as the beginning of the meeting
 - Think about that for a minute

2022 Amendment to Teleconferencing Requirements

- Must have two-way audio-visual or telephone platform
- Trustee must use audio ***and visual***
- Trustee cannot exceed
 - Three consecutive months
 - 20% of regular meetings
- Sunsets January 2026

Gov. Code, §§ 54953, 54954.2

Closed Sessions

Closed Sessions

- Closed sessions are generally prohibited
- Common exceptions for closed session
 - Pending litigation
 - Personnel matters
 - Labor negotiations/relations
 - Student discipline/complaints

Pending Litigation Exception

- Legislative body confers with legal counsel
- “Pending litigation” includes:
 - Ongoing litigation
 - Decisions to initiate litigation
 - Settlement discussions
 - Significant exposure to litigation

Personnel Matters Exceptions

- Closed session permitted for:
 - Public Employee Appointment
 - Public Employment
 - Public Employee Performance Evaluation
 - Public Employee Discipline/dismissal/release
 - Includes release of probationary & high-level employees
- NOT Compensation
 - Except a reduction due to discipline



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Personnel Matters Exceptions

- When Board is considering complaints/charges against employee
 - 24 hours' written notice of right to have heard in open
 - If employee doesn't request open session – in closed session
 - Board still deliberates and decides in closed
 - No notice = voids action taken
 - Notice delivered 24 hours before session



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Labor Negotiations Exception

- Purpose of closed session meeting:
 - To review position and instruct the district's representative, and
 - To discuss any other matter within the "scope of representation"
- Closed session may also take place prior to and during negotiations – to update the Board and receive direction

Best Practices – Negotiations

- "Whoever gets to the Board first, wins"
 - Different now in the age of social media
- Develop proposals based on direction from Board
- What about when new subjects of bargaining come up during negotiations?

Best Practices – Reopeners

- Audit your bargaining agreements
- Where are you getting grievances?
- Where are your managers finding themselves boxed in?
- What provisions have caused you heartache?

Reporting After Closed Session

- Generally after closed session, board must report in open session
 - Action taken in closed session
 - Vote or abstention of every member
- The nature of the report depends on the type of action taken

"That's HR's Job"



Oral Summary

- Before Board acts on
 - Salaries, salary schedules, or compensation paid in the form of fringe benefits
 - Of "local agency executive"
 - Includes executive officers, assistant officers, and deputies, and anyone on a contract
- Board must provide an oral summary
 - Of the recommendation for final action
 - In open session

Gov. Code, § 54953 subd. (c)(3)



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What About Impasse?

- Board provides authority
 - Mediation and renewed negotiations
- Keep the Board informed – the union will put on a full court press
- Ultimately the Board is the entity that imposes after exhausting impasse procedures
 - Or not – depending on their political will

Consequences

Legal Consequences

- Violations of the Brown Act can lead to civil suits against the city to:
 - Prevent or stop violations
 - Undo action
- Willful violation is a misdemeanor (Gov. Code, § 54959)
- You can cure and correct mistakes

Benefits of Following the Brown Act

- Way to instill values to staff and community
- Opportunity to provide efficient and excellent service to the district and students
- Transparency and professionalism builds trust and respect

Questions?



Thank You!

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28