

METROPOLITAN WATER DISTRICT

Brown Act Training Presentation

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Purpose of Brown Act

- ▶ Promote Government Transparency - Broad right of access to meetings of public bodies; exceptions to right of access narrowly construed
- ▶ Promote Public Participation - Public notice of items to be considered, public access to materials, and right of public to participate in decision making
- ▶ The courts rely heavily upon these purposes when interpreting the Brown Act and determining if violations have occurred

What Metropolitan Bodies are Covered by the Brown Act?

- ▶ Board of Directors - covered
 - ▶ Ad Hoc Committees - not covered
 - ▶ Regional Caucuses - not covered
- ▶ Standing Committees - covered
- ▶ Special Committees - covered

How Much Notice is Required for Public Meeting?

- ▶ Regular Meetings – 72 hours advance notice
- ▶ Special Meetings – 24 hours advance notice
- ▶ Emergency Meetings – 1 hour notice to media

What Must the Meeting Agenda Include?

- ▶ Must contain brief description of each item of business (20 word limit)
- ▶ Must inform the public about the subject matter under consideration and cannot be misleading or incomplete
- ▶ Closed session notice requirements
 - ▶ Protect confidentiality of subject to be discussed
 - ▶ Still must provide public a general idea of topic
 - ▶ Safe harbor provisions in Brown Act

Exceptions to Notice Requirement

- ▶ Briefly respond to public comment or request clarification
- ▶ Request staff to report back at next meeting
- ▶ Report on member's own activities or make announcement
- ▶ Consider an item upon determination by a vote of two-thirds of the members (or unanimous vote if less than two-thirds are present) that there is a need to take immediate action and that the need for the action came to the agency's attention after agenda was posted
- ▶ Consider an item that was included on a prior board agenda for a meeting occurring not more than 5 days before the current meeting and that was continued at the prior meeting

What Constitutes a Meeting

- ▶ Congregation of a majority at same time and location
 - ▶ Board of Directors - quorum defined as directors capable of voting a majority of the total number of voting shares
 - ▶ In theory, this can be less than a majority of the 38 members of the Board of Directors
 - ▶ Attorney General has made clear that one director from a member agency with multiple directors may vote all of the shares of that member agency in the absence of the other directors
 - ▶ Committees - quorum defined as majority of members regardless of voting shares

Exceptions to What Constitutes a Board of Directors Meeting

- ▶ Conferences and seminars open to the public
- ▶ Community meetings
- ▶ Noticed meeting of another public agency
- ▶ Social events or ceremonial occasions
- ▶ Noticed meeting of Standing Committee attended by non-committee Board members

Use of Social Media

- Members are permitted to use social media platforms such as Facebook and Twitter to engage in communications with the public regarding matters within MWD's jurisdiction:
 - Answer questions
 - Provide information
 - Solicit information
- Members are prohibited from using social media platforms to engage in communications with a majority of their colleagues regarding matters within MWD's jurisdiction, including through the use of emojis
- Members are prohibited from using social media platforms to:
 - Respond to a colleague's post
 - Share a communication posted by a colleague

Ribbon-Cutting Ceremony

A majority of the members of the Board attend a public ribbon-cutting ceremony at a new water project. One of the speakers, who is not a Board member, urges the Board to approve an item on the agenda for the Board's next meeting. Has a meeting occurred?

What if a majority of the Board members meet for dinner after the ceremony and one member explains why he thinks the speaker was wrong?

Serial Meetings

- ▶ Use of a series of communications to discuss, deliberate, or take action on item within District's jurisdiction.
 - ▶ Telephone calls, email, text communications, face to face meeting
 - ▶ Use of staff as intermediaries
 - ▶ Application of MWD weighted voting requirements to serial discussions among Board members
 - ▶ Election of Board officers
 - ▶ Discussion among delegation of member agencies or regional caucuses

Majority of Members Versus Majority Voting Shares

Before a standing committee meeting, a member of the committee communicates with fewer than a majority of members of the committee regarding an item on the committee's agenda. Has a serial meeting occurred at the committee level?

Before the Board meeting at which the committee's recommendation will be considered, the same member speaks about the same matter with members of the Board, who together with the members of the committee with whom he spoke, represent a majority of the voting shares of the Board. Has a serial meeting occurred at the Board level?

Serial Communications

A member of the Board texts several Board members in advance of a Board meeting to ask them how they plan to vote on an item on the Board's agenda and why. He subsequently expresses his views on the matter to other Board members by telephone but does not relay how the members plan to vote. In total, he communicates with less than a majority of the Board and less than a majority of the voting shares of the Board.

Unbeknownst to him, three of the Board members he contacts communicate with a total of five other Board members to discuss their position on the vote. Together, the members who have communicated about the item comprise a majority of the voting shares of the Board, but because some of the communications were one way, the members do not come to a collective concurrence regarding the vote. Has a serial meeting occurred?

Vote Counting

A member of the Board polls members comprising less than a majority of the voting shares of the Board about how they plan to vote on a matter but does not express his own view to those Board members or share his own view or the information he has gathered from other members. Instead, he uses the information to determine whether his vote is necessary for the item to pass. No other board members discuss the item outside of the noticed meeting. Has a meeting occurred?

What if the member polls members comprising a majority of the voting shares of the Board?

Electioneering

A member of the Board announces that the member intends to run for Board Chair. Before the meeting at which the Board will elect a new Chair, the candidate contacts less than a majority of members who together comprise 40% of the Board's voting shares, including one member from a large delegation, to rally supporters. As it turns out, the member with whom the candidate spoke is the only delegation member who participates in the Board meeting and casts all of the delegation's share of votes (approximately 15%). Has a serial meeting occurred?

What May be Discussed in Closed Sessions?

- ▶ Pending or threatened litigation
- ▶ Threats to public services
- ▶ Hiring/performance of individual employee (direct reports)
- ▶ Labor negotiations
- ▶ Real estate transactions

Closed Session Meeting?

During a closed session meeting to review the performance of one of the officers who report to the Board, one of the members raises a question about the officer's compensation. A conversation ensues about the level of the officer's compensation and whether it is appropriate in light of his performance. No action is taken. Does the personnel exception apply?

Public Reporting Following Closed Meeting

- ▶ Reconvene in open session and report actions taken in closed session
- ▶ Reporting requirements vary depending upon nature of closed session, e.g., settlement of litigation requires disclosure of parties involved, monetary amount, and substance of claim
- ▶ Disclosure of confidential information after closed session is prohibited

Closed Session Disclosure

After closed session, a member tells a reporter what the member said during a closed session discussion concerning a pending lawsuit. The member does not disclose what other directors said. Has the member violated the prohibition against disclosing the content of a closed session?

After closed session, a member takes an excerpt from a closed session PowerPoint presentation and makes it available to the public. When challenged, the member contends that the underlying information would be subject to a Public Records Act request and therefore is not confidential. Has the member violated the Brown Act?

Remedies for Disclosure of Confidential Information

- ▶ Injunctive relief to prevent further disclosure of confidential information
- ▶ Referral of member who discloses confidential information to grand jury
- ▶ Exclusion of member who discloses confidential information from future closed sessions concerning the same matter

Enforcement

- ▶ Knowing violation of Brown Act is a misdemeanor
- ▶ Private litigation to enforce compliance with the Brown Act
- ▶ Agency can cure violation by rescinding its action, re-noticing item, and ensuring that the public has the opportunity to provide input during the agency's deliberations