

OCSD Board Training

August 14, 2024





PRESENTATION TOPICS

- **Brown Act – Government Code 54950-54962**
- **FPRA – Government Code 81000-81016; California Code of Regulations Sections 18110-18997**

BROWN ACT DOING THE PEOPLE'S BUSINESS



- “. . . boards . . . exist to aid in the conduct of the **people's business**. It is the intent of the law that their **actions** be taken **openly** and that their **deliberations** be conducted **openly**.”
- The people of this State do not yield their sovereignty to the agencies which serve them. 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**. The **people insist on remaining informed** so that they may retain control over the instruments they have created.”

What are the major principles of the Brown Act?

- **Notice to the Public:** An agenda that describes each item of business must be posted **72 hours** before regular meetings.
- **Transparency:** A meeting occurs when a board majority gathers to hear or discuss District business.
- **Opportunity to be heard:** The public is entitled to speak at meetings to agenda items and other District business.

BROWN ACT



What is a Brown Act meeting?

A meeting is a gathering of a majority of members to hear, discuss, or act on any item related to District business. Under the Brown Act, a meeting does not have to include action; it can simply be the exchange of information.

BROWN ACT



What is NOT considered a Brown Act meeting?

- Meeting Exemptions Include:
 - Individual Contacts
 - Social & Ceremonial Gatherings & Seminars
 - Open, Publicized Community meetings
 - Meetings of another agency
 - Standing Committees as observers

- May Not Discuss District Business Among Themselves

BROWN ACT



Who's Covered

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■ “Legislative Body”

- District Board
- All advisory or decision-making bodies created by “formal action”
- Standing Committees
 - Regular schedule or continuing jurisdiction
- Board Members-Elect

BROWN ACT



Legislative Body Q & A

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What if.....

- Board Appoints a Sewer System Technical Committee?
- President appoints?
- General Manager appoints?

BROWN ACT



Meetings

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- Lawful Face-to-Face
- **Unlawful** Chain or Wagon Wheel (Serial) and Social Media
- Non-Meetings

BROWN ACT



Face-to-Face Meetings

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- Meetings must be within the District Limits
 - Key exception is the inspection of District land or facilities
- Teleconferencing is OK
 - AB 2449 or Traditional Brown Act

- Public Participation Rights

BROWN ACT



Teleconferencing Options

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Traditional Brown Act

- Requires advance noticing.
- Remote locations must be posted open to the public.
- Quorum only needs to be in the agency's jurisdiction.
- No limitation on the number of times a member can participate remotely.

BROWN ACT



Teleconferencing Options

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AB 2449

- Allows last-minute participation remotely.
- Only allowed for cause or emergency circumstances.
- Remote location can be from a private location.
- A quorum must be in one singular location.
- Limited number of remote appearances allowed.

BROWN ACT



Unlawful Serial Meetings



- Cannot develop “collective concurrence” among a majority outside a meeting
 - AG says collective concurrence means mere exchange of facts and substantive discussion
- Serial meetings are unlawful
 - Chain or Wagon Wheel
 - Phones, E-mail, social media

BROWN ACT



Use of Email

- Council Members must refrain from communicating with one another through email.
- **They should never use their personal email account** to conduct District business as the California Supreme Court has held that messages from personal email accounts by public officials and employees that relate to the public's business are considered "records" under the California Public Records Act.

BROWN ACT



Assembly Bill 992

- Amended Government Code Section 54952.2.
- Clarified how a public official may communicate on Internet-based social media platforms and outlines what kinds of communications are prohibited.
- Will remain in effect until January 1, 2026

BROWN ACT



Assembly Bill 992

- Permits social media interactions unrelated to official business.
- Members of a legislative body may not interact with posts of other members on topics within the subject matter jurisdiction of the legislative body.
- Applies to interactions between just two members.
 - “A member of the legislative body shall not respond directly to any communication on a...social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.”
- Brown Act normally permits less than a majority of a legislative body to communicate, but not on social media.

BROWN ACT



What does it mean to “interact” with a post?

If a member of your legislative body makes or shares a post on social media within the legislative body's subject matter jurisdiction, then you cannot.....

- Like
- Comment
- Share
- Tag
- Repost
- Use Digital Icons
- Use Emojis

BROWN ACT



Non-Meeting

Individual briefings by staff are okay:

- “Unidirectional”
- Don’t describe the views of any other members
- Don’t ask about other members' views

BROWN ACT



Meeting Q & A



- What if....
 - Teleconference from a Cabo beach cabana on your vacation?
 - GM briefs Board Members 1 by 1?
 - Board Member briefs other Board Members 1 by 1?
 - Board member calls all her colleagues and figures out their position, but no one explicitly commits their vote?

BROWN ACT



Agenda

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- 72 hours before Regular Meetings or notice 24 Hours before Special Meetings
 - Brief, general description (20 words)
 - Including closed sessions
- No discussion or action on other matters
 - added by majority for true emergencies or 2/3 vote decides need for immediate action that arose after agenda posting
- Scheduling and brief responses to public are OK

BROWN ACT



Closed Session Overview

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- Only allowed when expressly permitted by law.
- Agenda description is required.
- No minutes or tape recording required, but . .
- Public may comment before the session.
- Some actions must be reported out.
- Confidentiality required!

BROWN ACT



Permitted Closed Session

- Legal Advice on Pending Litigation
Lawyer must be present
- Instruct Real Estate Negotiators
Price and terms, not peripheral deal issues
- Employee Performance Evaluation & Complaints
24-hour notice of complaints to employee
- Labor Negotiations
Cannot set salaries in closed session.

BROWN ACT



Enforcement

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- Action can be voided after demand for cure
- Criminal prosecution
 - Misdemeanor
 - State of Mind is “intent to deprive the public of information” to which it is entitled
- Tape recorded closed sessions

BROWN ACT



QUESTIONS ON BROWN ACT?



OVERVIEW OF THE POLITICAL REFORM ACT



The Political Reform Act (PRA) is the **single most important conflict-of-interest law** in California. The Act's major provisions regulate political activities in campaign finance, lobbying registration and conflicts of interest.

Purpose of the Act

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- The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an **impartial manner, free from bias** caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subdivision (b).)



In terms of conflict of interest, the Act:



- Requires all public officials to **refrain from participating** in decisions in which they have a **financial interest**
- Requires designated officials to **file financial disclosure statements (700 Form)**
- Imposes limits on designated officials on the acceptance of gifts and honoraria
- Imposes post-employment restrictions



FPCC



The Fair Political Practices Commission (FPCC) is an independent California regulatory agency that administers and enforces compliance with the Political Reform Act. It issues written advice to individuals concerning their duties under the Act and provides fact sheets and other materials which are listed in the resources section of this course.

POLITICAL REFORM ACT



Fair Political Reform Act Conflict of Interest Summary

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- Prohibitions
- Disclosure
- Disqualification

POLITICAL REFORM ACT



Two Prohibitions



- Gifts over \$590

Any payment or other benefit provided that confers a personal benefit for which you do not provide goods or services of equal or greater value.



Two Prohibitions



■ Honoraria

Payments made for making speeches, publishing articles, or attending public or private conferences, conventions, meetings, social events or similar gatherings.



Gifts over \$590

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- From a Single Source
- In a Calendar Year

POLITICAL REFORM ACT



Gifts include

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- Meals
- Tickets
- Passes
- Discounts
- Travel

POLITICAL REFORM ACT



Gifts Do Not Include

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- Informational Materials
- Gifts From Family
- Inheritance
- Personalized Plaques
- Gifts if Equal Value is Exchanged
- Gifts returned within 30 days
- a single ticket to a fundraising event provided by fundraiser

POLITICAL REFORM ACT



Gifts Do Not Include

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- Home Hospitality if Host is Present
- Wedding Gifts
- Travel, Lodging, Admission, Meals in Connection with Speech



Disclosure

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- Gifts Totaling \$50 from Single Donor
- Identify Donor and any Intermediary
- Intermediaries Must Disclose Actual Source of Gifts



What's the Value of a Gift?

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- Fair Market Value
- Cost to Donor
- Reasonable Approximation Based on Value of Similar Things

POLITICAL REFORM ACT



Gifts Not Received If

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- Donate to Charity Without Tax Benefit
- Donate to Governmental Entity Without Tax Benefit
- Reimburse Donor for Value – within 30 days

POLITICAL REFORM ACT



Gift Q & A

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■ What if....

Director gives a speech to a professional organization. She receives from a sponsoring vendor roundtrip airfare (\$450), lodging (\$280), and coffee and Danish (\$15) at the speech.

Has she violated the gift limit?

BROWN ACT



Honoraria



- Payment for Speech, Article, Attendance
- Prohibited at Any Amount



Honoraria Does Not Include

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- Admission if Giving a Speech
- Food & Drink at a Conference, Convention, Social Event, etc.
- Transportation & Lodging for Speech
- Personalized Plaque or Trophy Under \$250
- Earned Income from Profession
- Payment from Family
- Campaign Contributions

POLITICAL REFORM ACT



Economic Interest in a Commission Decision



- Economic/Financial Interest in a Decision Triggers Disqualification



Economic Interest in a Decision



- Reasonably Foreseeable That Decision will have a material Financial Effect on your economic interests
- Financial Interest of Member or Immediate Family



Financial Interests

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- Investment of \$2000 in Business Entity
- Investment of \$2000 in Real Property
- Source of Income of \$500 or More
- Involvement in Business Entity:
Director, Officer, Partner, Trustee,
Employee, Manager



Financial Interest Q & A



What if....

A board member is going to vote to award a construction contract for a facility to a company that employs his sister's husband (brother-in-law) in a top executive position.

Can the board member vote on the decision to award the contract?

BROWN ACT



500 Foot Rule

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- There is a presumption that there is a conflict of interest if real property in which a public official has an economic interest, is located within 500 feet of the property which is the subject of the governmental decision.



Financial Interest Q & A



What if....

An agency is considering constructing a hiking trail on agency property on the opposite side of a creek that borders a board member's backyard.

Can the board member who owns the property vote on the decision to develop the trail?

BROWN ACT



Disqualification Process



Unless Absent from Hearing

- Disclose on the Record at the Meeting
- In Detail
- Recuse from Discussion and Vote
- Leave the Room



QUESTIONS PRA?

