Conducting the District’s Business
Let The Brown Act Be Your Guide

COLLEGE OF MARIN BOARD OF TRUSTEES
Presented By: Randy Parent
Overarching Principles

• Transparency in government

• Public access:

• Conducting the District’s business --within the context of a “Business Meeting”:

• *Time management – conducting effective meetings while complying with the Brown Act*
• **Presumption:** Government business is conducted in the open, subject to limited exceptions.

“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
Public Right to Access

• **Public Has the Right to:**
  – Attend
  – Record and broadcast
  – Inspect documents & recordings
  – Address board on items on the agenda
    ▪ “as such items are taken up”*
  – Address board on matters within its jurisdiction
  – Place items on the agenda

Education Code §72121.5
Public Access

• **What is a meeting?**
  – Congregation of a majority of governing body
  – Same time and “place”
  – To “hear, discuss or deliberate”
  – On any item within its subject matter jurisdiction.

• **What is not a meeting?**
  – Attendance of a majority at conferences/seminars, community meetings, social events
    ▪ If no discussion of district business
  – Individual contact with another person

* Gov. Code § 54952.2
Public Access: No Serial Meetings

- **No communication between board members that:**
  - Comes to include a majority through email, telephone, intermediaries, etc.
  - To hear, discuss or deliberate on any item within the subject matter jurisdiction of the district.

**Note:** Prohibited “serial meetings” *not* limited to communications to develop a “collective concurrence.”

[Gov. Code § 54952.2(b)]
Participating by Phone

- Agenda – notice of teleconference location
- Agenda posted at remote location
- Teleconference location open and accessible to public
- All votes must be taken by roll call
- Opportunity for public to address board directly at each teleconference location
Running Efficient (and Brown Act Compliant) Business Meetings

• **Four ways to take action:**
  - At a regular meeting
    - Public notice
  - At a special meeting
    - Notice to public and press
  - At an emergency meeting
    - Notice to press at least one hour prior
  - When immediate action is required
    - 2/3rds of members present, or if less than 2/3rds are present, a unanimous vote of those present.
Running Efficient (and Brown Act Compliant) Business Meetings

Limit on Special Meetings

- Governing boards prohibited from calling special meetings to approve “local education executive” contracts
- Existing local education executive contracts not abrogated
- New contracts and contract renewals must occur during a regularly scheduled meeting of the governing board

AB 1344 (2011)
Public Access to Documents

- Written information distributed less than 72 hours before meeting
- Written information distributed at the meeting
  - If prepared by the District
  - If prepared by some other person

Government Code 54957.5

Practice tip:
Notice of inspection should include statement as to where documents provided less than 72 hours prior to meeting may be inspected.
Public Access: Agenda is Key

• **Is The Meeting Properly Agendized?**
  – Timely posting
  – Accessible to public
  – Time and location of the meeting
  – Brief general description of each item
  – Commence in public session.
  – Includes opportunity for public comment before or during the boards consideration of the item
  – Opportunity for public to inspect records
Public Access: Agenda is Key

• **Agendas Should NOT:**
  – Use “place holders”
  – Misuse closed session
  – Require members of the public to provide identifying information
  – Prohibit public criticism
  – Open in closed session
  – Adjourn to closed session before giving public opportunity to comment on closed session agenda
Running Efficient (and Brown Act Compliant) Business Meetings

- **Regulating Public Comment**
  - May adopt reasonable, neutral, content-neutral regulations
  - May prohibit comments outside body’s jurisdiction
  - May control timing of when item request by public is placed on agenda
  - May prohibit disorderly conduct

**Practice Tip:** Public comment provides board with information to conduct its business. It is not a conversation with the public.
Running Efficient (and Brown Act Compliant) Business Meetings

• **Regulating Public Comment**
  
  – Use Agenda as tool to communicate:
    
    ▪ Notice of rules for public comment and comportment.
    
    ▪ How members of public may place items directly on the agenda, whom to contact, and deadline for doing so. [Ed. Code § 72121.5]
Running Efficient (and Brown Act Compliant) Business Meetings

• Disorderly Conduct During Meetings
  – May adopt rules permitting removal of individual who disrupts meeting
  – Willful interruption may clear the room
  – Media remains if did not participate in disruption
  – Procedure for re-admittance of non-disturbing individuals
Running Efficient (and Brown Act Compliant) Business Meetings

- **Regulating Public Comment: What to do if a member of the public...**
  - In public comment prior to closed session starts to speak on a confidential personnel matter, mentioning employee by name.
  - During general public comment period states that he/she is a district employee who is being subjected to a hostile work environment by his/her supervisor.
  - During general public comment speaks regarding his/her opposition to U.S. foreign policy.
  - Shouts for the above-speaker to sit down and shut up.
Running Efficient (and Brown Act Compliant) Business Meetings

• **Regulating Public Comment: What to do if a member of the public...**
  
  – During general public comment, requests the board to agendize discussion of the recent police shootings in Missouri.
  
  – During general public comment, speaks to whether the Board should retain a particular contractor (which is on the action agenda.)
  
  – During public comment on the contractor item, states that the district’s process violated state public bidding laws and that awarding the contract will violate conflicts of interest laws because it financially benefits a board member the speaker identifies by name.
Running Efficient (and Brown Act Compliant) Business Meetings

- **Time Management**
  - **Agenda Preparation/Prioritization**
    - Right of public to place items on a *future* agenda; not right to control *which* agenda
    - Board president discretion/authority to prioritize board member requests
    - Board president planning with College president
    - Consider timing of public hearings & items of high public interest
    - Consider timing of lengthy closed session items
      - Use continuation of closed session at end of meeting as safety valve
Running Efficient (and Brown Act Compliant) Business Meetings

• **Time Management**

  – **Permissible Communications With Administrators:**
    - Between administrators and individual members or group less than a quorum;
    - To convey information or answer questions; *if*
    - Staff does not communicate board members’ comments/positions or act as intermediaries.

  [Gov. Code § 54952.2(b)(2)]
Running Efficient (and Brown Act Compliant) Business Meetings

• **Time Management**
  – **Board Packets and Meeting Preparation**
    - Essential for efficient meetings
    - Proper handling
      - For your eyes only – some information is not public
      - District will arrange public access to public portion
      - Board Docs
Time Management

– Information Items and Staff Reports

- Purpose

- Board interaction with staff.

- How should public comment be agendized & utilized?
Running Efficient (and Brown Act Compliant) Business Meetings

Time Management

Board Member Reports

- Purpose

- Not best practice to…

Practice Tip:
To maximize efficiency & to avoid blurring board business and campaigning, keep board reports brief and to the point.