

Overview of the Ralph M. Brown Act

THE RALPH M. BROWN ACT
GOVERNMENT CODE SECTION 54950, ET SEQ.

The Ralph M. Brown Act was designed by the Legislature to ensure that the deliberations as well as the actions of local, public agencies are performed at meetings open to the public and free from any veil of secrecy.² In furtherance of this goal, the Brown Act generally requires that meetings of local agencies be open to the public and properly noticed.

I.
APPLICATION OF THE ACT

Section 54950 requires that all meetings of "legislative bodies" be open to the public. "Legislative body" is defined to include the city council as well as any commission, committee, or board, whether permanent or temporary, decision-making or advisory, created by a formal act of the city council. Advisory committees, however, composed solely of the members of the legislative body, which are less than a quorum of the legislative body, are not legislative bodies except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action of the legislative body are to be considered legislative bodies.³

"Legislative body" also means a board, commission, committee, or other multi-member body which governs a private corporation or entity which is created by the elected legislative body in order to exercise authority which may be lawfully delegated by the legislative body to a private corporation or entity or one which receives funds from a local agency and the membership of the governing body includes a member of the legislative body appointed to that governing body as a full voting member by the legislative body.⁴

Thus, for example, a planning commission, which is both an advisory body and a permanent commission of a City, is subject to the open meeting requirements. A committee, commission or board, permanent or temporary, even if advisory, created by the city council is subject to the open meeting requirements. Advisory committees which consist of less than a quorum of the legislative body are not legislative bodies unless created to be a standing committee of the legislative body with continuing subject matter jurisdiction or a meeting schedule fixed by the legislative body.⁵

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of the Brown Act and will be treated for purposes of enforcement as if they had assumed office.⁶

¹ The "Brown Act"; Government Code Sections 54950-54962. Unless otherwise noted, all statutory citations are to the Government Code.

² § 54950.

³ § 54952(b).

³ § 54952(b).

⁵ § 54952(a),(b) & (c).

⁶ § 54952.1.

II.
WHAT IS A MEETING?

A "meeting" includes any gathering of a majority of the members of a legislative body to hear, discuss, or deliberate upon any item which is within its subject matter jurisdiction. A meeting also includes any use of direct communication, personal intermediaries, or technological devices which are employed by a majority of the members of the legislative body to develop a collective concurrence on any action to be taken on an item by members of the legislative body. Individual contacts or conversations between a member of the legislative body and any other person are not considered a meeting. The attendance of a majority of members of a legislative body at a conference or similar gathering open to the public which involves a discussion of issues of general interest to the public is not subject to the Brown Act, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local agency. So, too, the attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern other than a concern of the local agency or at a purely social occasion is not subject to the Brown Act, provided a majority of members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature within the subject matter jurisdiction of the local agency. Attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency (e.g., planning commission), or at an open and noticed meeting of a legislative body of another local agency (e.g., County Board of Supervisors), is not subject to the Brown Act provided a majority of the members do not discuss amongst themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency. In addition, a majority may also observe an open and noticed meeting of a standing committee within their own agency, provided the members of the legislative body who are not members of the standing committee attend only as observers!

III.
WHEN IS ACTION TAKEN?

For the purposes of the Brown Act, "action taken"⁹ is defined as:

1. A collective decision by a majority of the members of a legislative body; or
2. A collective commitment or promise by a majority of the members to make a positive or negative decision; or
3. An actual vote by a majority of the members of the legislative body sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

⁷ This amendment overturns a 1996 Attorney General Opinion that concluded that a majority of a parent legislative body could not attend a meeting of one of its standing committees without violating the notice and agenda requirements applicable to the parent legislative body. (79 Ops. Cal. Atty. Gen. 69.)

⁸ § 54952.2.

⁹ § 54952.6.

The Brown Act imposes criminal penalties for "action taken" with wrongful intent to deprive the public of information to which it is entitled under the Brown Act.¹⁰

IV.
MEETINGS TO BE OPEN AND PUBLIC

All meeting⁵ of the legislative body of a local agency shall be open and public.¹¹ The legislative body, or any other body of the local agency, may use teleconferencing, i.e., any electronic audio or video connection, for any meeting or proceeding authorized by law.¹² Teleconferencing is subject to certain restrictions including the posting of agendas at video teleconferencing locations which specify all teleconference locations, public access to teleconference locations, public opportunity to speak at each teleconference location, and votes taken by roll call.¹³ At least a quorum of the members of the legislative body shall participate in the teleconference within the boundaries of the local agency.¹⁴ No legislative body shall take action by secret ballot, whether preliminary or final.¹⁵

V.
NOTICE REQUIREMENTS

1. REGULAR MEETINGS

Regular meetings of the legislative body, excluding advisory committees and standing committees, must be held at the time and place set by ordinance, resolution, or bylaws.¹⁶ Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting, are considered regular meetings of the legislative body.¹⁷ Regular and special meetings shall be held within the boundaries of the territory over which local agency exercises jurisdiction except to do any of the following:

- a. Comply with state or federal laws or a court order, or attend a judicial or administrative proceeding where the local agency is a party;
- b. Inspect real or personal property which cannot be conveniently brought within the territory of the local agency, provided that the topic of the meeting is limited to items directly related to the property;
- c. Participate in meetings of multi-agency significance outside the boundaries of a local agency's jurisdiction if such discussion takes place within one of the participating local agencies' jurisdiction and is noticed by all participating agencies as provided in the Brown Act;

¹⁰ § 54959.

¹¹ § 54953(a).

¹² § 54953(b).

¹³ *Id.*

¹⁴ § 54953(b).

¹⁵ § 54953(c).

¹⁶ § 54954(a).

¹⁷ § 54954(a).

- d. Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries;
- e. Meet outside the immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical solely to discuss a legislative or regulatory issue affecting the local agency over which the federal or state officials have jurisdiction;
- f. Meet outside the immediate jurisdiction if the meeting takes place in or nearby a facility owned by the local agency, provided the topic of the meeting is limited to items directly related to the facility;
- g. Visit the offices of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9 when to do so would reduce legal fees.

The meeting of a joint powers authority shall occur within the territory of at least one of its member agencies except when a joint powers agency has members throughout the state.¹⁸ In the case of fire, flood, earthquake or other emergency, if it is unsafe to meet in the designated place, the meetings shall be held for the duration of the emergency at an alternative place designated by the presiding officer of the legislative body or his designee in a notice to the local media who have requested notice by the most rapid means of communication available at the time.¹⁹

When a person requests mailing of a copy of the agenda or the agenda packet of any meeting of a legislative body, the legislative body or its designee shall mail such materials at the time the agenda is posted or upon distribution to a majority of the members of the legislative body, whichever occurs first. Such a request is valid for the calendar year in which it was filed and must be renewed following January 1 of each year. The legislative body may establish a fee which shall not exceed the cost of mailing the agenda or agenda packet.²⁰

2. SPECIAL MEETINGS

The Brown Act permits special meetings to be called at any time either by the presiding officer or a majority of the members of the legislative body. The meeting can be called by delivering written notice, personally or by any other means, to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. Notice must be received at least 24 hours before the time of the meeting set forth in the notice. The notice must also be posted 24 hours before the meeting in a location which is freely accessible to the public. The notice must include the time and place of the meeting and identify the business to be transacted or discussed. Only the business set forth in the notice may be considered at the meeting. Notice is not required for those members of the legislative body who have waived it or who will attend the meeting despite the absence of formal notice.²¹

¹⁸ §§ 54954(d) and 54961.

¹⁹ § 54954(e).

²⁰ § 54954.1.

²¹ § 54956.

3. ADJOURNED MEETINGS

Regular or special meetings may be adjourned to a specific date, time and place. Less than a quorum can adjourn a meeting. No notice is required, unless a meeting is adjourned to a new time and date because all of the members are absent, in which case the Clerk must give the same notice as is required for a special meeting.²²

The original 72-hour posting will be valid for taking action on agenda items at an adjourned meeting, if that adjourned meeting is held within five days of the regular meeting. If not, re-posting is required.²³ If a public hearing is continued to a time less than 24 hours after the hour of adjournment, the order of continuance must immediately be posted on or near the door of the chambers.²⁴

4. EMERGENCY MEETINGS

An exception to the 24-hour notice requirement for special meetings is allowed in the case of an emergency situation involving matters which require prompt action due to the disruption or threatened disruption of public facilities. The Brown Act defines an "emergency situation" as follows:

- a. A work stoppage or other activity which, by a determination of a majority of the city council, severely impairs public health or safety or both, and/or;
- b. A crippling disaster which, by a determination of a majority of the city council, severely impairs the public health or safety or both.

In these circumstances, the presiding officer, or his or her designee, must notify each newspaper of general circulation and radio or television station which has requested notice of special meetings by telephone one hour prior to the emergency meeting. No closed session is permitted during an emergency meeting. The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll call vote, and any action taken at the meeting must be posted in a public place for a minimum of ten days as soon after the meeting as is possible.²⁵

22 § 54955.

23 § 54954.2(b)(3).

24 § 54955.1.

25 § 54956.5.

VI.
AGENDA AND OTHER WRITINGS

1. AGENDA REQUIREMENTS

Section 54954.2 requires the preparation of a written agenda for each regular or adjourned regular meeting of a legislative body. The agenda must be posted at least 72 hours in advance of the meeting to which it relates. Each item of business to be "transacted or discussed," including items to be discussed in closed session, must be the subject of a "brief general description" which generally need not exceed 20 words.

2. APPLICATION

The agenda requirements apply to regular and adjourned regular meetings²⁶ of legislative bodies.²⁷ No action or discussion shall be taken on any item not appearing on the posted agenda except that members of the legislative body may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, members of the legislative body may ask a question for clarification, make a brief announcement, make a brief report on his activities, provide a reference to staff or other sources for factual information, or request staff to report back to the legislative body in a subsequent meeting concerning any matter. Furthermore, a member of the legislative body, or the body itself, may take action or direct staff to place a matter of business on a future agenda.²⁸

3. STATUTORY EXCEPTIONS

A legislative body, however, may only take action on items of business not appearing on the posted agenda under the conditions stated below:

a. Emergency Situation

Upon a determination by majority vote of the legislative body that an emergency situation exists as defined in Section 54956.5, i.e., work stoppage, crippling disaster, etc.²⁹

b. "Subsequent Need" Item

Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds are present by the unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted.³⁰

²⁶ § 54955(d)

²⁷ § 54952 and 54952.2

²⁸ § 54954.2

²⁹ § 54954.2(b)(1)

³⁰ § 54954.2(b)(1)

c. Hold Over Items

If the item was posted for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken and at the prior meeting the item was continued to the meeting in which action was being taken.³¹

Additionally, the California Attorney General has indicated that Section 54954.2 does not prohibit brief discussions of procedural or preliminary matters that are not substantive in nature, such as the time and place for future meetings, a decision to place a matter on a future agenda, or a direction to staff to gather information and return to a future meeting with a report.

4. AGENDA DESCRIPTION

Care must be taken to adequately and fully describe on each agenda the nature of each item of business to be transacted or discussed. However, the description generally need not exceed 20 words.³² In addition, as an introductory note on each agenda, it would be prudent to include a statement that copies of the staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the office of the City Clerk or some other specific office and are available for public information. A notation should be added to each agenda that a person who has a question concerning any of the agenda items may call the City Clerk or some other designated City officer to make an inquiry concerning the nature of the item described on the agenda. Each agenda must contain a clear statement of the time and place of that meeting.

5. POSTING

Each agenda must be posted in at least one location which is "freely accessible" to the public.³³ Care should be taken in selecting locations for posting to insure that they are in fact freely accessible.. For example, a bulletin board located inside the City Hall is not "freely accessible" since it is only available during business hours. Accordingly, consideration should be given to the placement of a bulletin board outside of the City Hall in an area where members of the public are permitted at all times. Such a bulletin board should be placed so that it is lighted in a reasonable manner. More than one location should be considered, such as fire stations, libraries, etc.

6. PROHIBITED ACTIONS

As a general rule, the legislative body cannot take action on any item which does not appear on the posted agenda. There are, however, statutory exceptions to this general rule as set forth under Heading VI, Section 3 above.

³¹ § 54954.2(b)(3).

³² § 54954.2.

³³ § 54954.2.

7. PUBLIC PARTICIPATION

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item. It is possible that an action could be taken on an item not appearing on the regular meeting agenda if authorized as a subsequent needs item under Section 54954.2. The public does not have the right to address the council if the public had the right to address a committee composed entirely of members of the city council on that topic before or during the time in which the committee heard the item and the item being considered is not substantially changed since it was last considered by the legislative body. The policy determinations to be made in terms of compliance with this provision are:

- a. At what point on the agenda will be public discussion be permitted?
- b. How much time should be permitted for each speaker?
- c. Should there be an overall time limit for all public participation on specific items.

It is our suggestion to comply with Section 54954.3(a)'s requirements that legislative bodies may either allow public comment on an agenda item at the time the item is called for discussion or at a predetermined time at the beginning of the meeting prior to the consideration of the matter by the council. Reasonable time limits may be imposed on both the total amount of time allowed for public participation on particular items and on the time permitted to each individual speaker. The State Attorney General's opinion is that a council rule imposing a five minute limit on speakers is valid.³⁴

It is suggested that, whenever possible, members of the public be encouraged to submit their comments or objections in written form so the same can be placed on an agenda and thereafter action can be taken upon the matters consistent with the Brown Act.

Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on that item.

The legislative body shall not prohibit public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body.³⁵

The Attorney General has opined that a city council may prohibit members of the public, who speak during the time permitted on the agenda for public expression, from commenting on matters that are not within the subject matter jurisdiction of the city council.³⁶

³⁴ Opinion No. 92-212, May 7, 1992.

³⁵ § 54954.3.

³⁶ Opinion No. 95-311, July 25, 1995.

8. WRITINGS

Writings which are public records or are 'distributed to a majority of members of a legislative body by any person in connection with a matter subject to discussion at a public meeting shall be made available for public inspection at the meeting if prepared by a local agency or a member of its legislative body, or after the meeting if prepared by some other person.³⁷

9. IDENTITY OF VICTIMS OF TORTIOUS SEXUAL CONDUCT

No notice, agenda, announcement, or report need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.³⁸

**VII.
PUBLIC CONDUCT AT CITY COUNCIL MEETINGS**

1. REGISTRATION

Subject only to exceptions in the Brown Act, all persons are permitted to attend any meeting of the legislative body.³⁹ No member of the public wishing to attend may be required to register his or her name, provide other information, complete a questionnaire, or otherwise fulfill any other requirement as a condition of his or her attendance at the meeting.⁴⁰ A person speaking to the agency, however, may be requested to identify himself or herself and provide his or her address. Whether such information may be required as a prerequisite to speaking is as of yet undecided by the courts.

2. RIGHT TO RECORD, PHOTOGRAPH, OR BROADCAST

Section 54953.5 of the Brown Act allows any person who attends a public meeting of a legislative body to record the proceedings with an audio or video tape recorder or a still or motion picture camera unless the legislative body makes a reasonable finding that such a . recording cannot continue without noise, illumination or obstruction of view that constitutes, or would constitute, a disruption of the proceedings. Any tape or film record of an open public meeting by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Record Act,⁴¹ but notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or audio tape recording shall be provided without charge on a video or tape player made available by the local agency. No legislative body shall prohibit or otherwise restrict the broadcast of its public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination or obstruction of view that would constitute a persistent disruption of the proceedings.

These provisions do not, however, permit secret recordings of "closed sessions."

³⁷ § 54957.5.

³⁸ §.54961.

³⁹ § 54953.

⁴⁰ § 54953.3.

⁴¹ Chapter 3.5, commencing with § 6250, of Division 7 of Title 1.

3. RULES OF DECORUM

The legislative body may adopt rules for decorum at meetings. Any conduct (such as yelling, clapping or demonstrations) which disrupts, disturbs, or otherwise impedes the orderly conduct of the meeting may be prohibited and the individuals engaged in such conduct may be removed from a meeting. Expressions of support or opposition to matters before the legislative body, even if rude or inconsiderate, are constitutionally protected under both the First Amendment to the United States Constitution and the California Constitution. It is only when the conduct of an individual substantially "disrupts, disturbs, or otherwise impedes" the conduct of a meeting that it can be prohibited and the person removed from the meeting.⁴²

4. DISORDERLY CONDUCT

Additionally, the legislative body may clear the room and continue the meeting only on listed agenda items if the meeting is "willfully interrupted" by a group so that the orderly conduct thereof is "unfeasible and order cannot be restored by the removal" of the disruptive individuals. The media may remain if it is not part of the disruptive group. The legislative body may adopt rules to readmit non-disruptive persons.

5. SPEAKER TIME LIMIT

A legislative body may regulate the total amount of time on particular issues and for each individual speaker, subject to the requirement of due process. See California Government Code Section 54954.3(b). See also 75 Cal. Op. Attorney General 89 (1992) (upholding time limit). Many cities place a time limit on comments by the public, unless it is otherwise prohibited by law, to ensure all members of the public have an opportunity to speak and the legislative body is able to complete its business. Time limits of one to five minutes are not unusual. The presiding officer should be responsible for enforcing the time limits.⁴³

VIII. CLOSED SESSIONS

The Brown Act provides certain exceptions to the requirement that meetings be open. These exceptions are termed "closed sessions." Closed sessions specifically authorized by the Brown Act include the following:

1. EXCEPTIONS TO OPEN MEETINGS a. Grand

Jury

The members of a legislative body may give testimony in private before a grand jury, either as individuals or as a group.⁴⁴

⁴² *White v. City of Norwalk* (9th Cir. 1990) 900 F.2^{od} 1421.

⁴³ Opinion No. 92-212, May 7, 1992.

⁴⁴ § 54953.1.

b. License Applications

Closed sessions may be used to determine whether an applicant for a license who has a criminal record is sufficiently rehabilitated to obtain the license.⁴⁵

c. Security of Public Buildings

Closed sessions may be held with the Attorney General, the District Attorney, the Sheriff, the Chief of Police or any of their deputies to discuss threats to the security of a public building or to the public's right of access to public services or public facilities.⁴⁶

d. Personnel

A closed session may be held to consider the appointment, employment, evaluation of performance, discipline or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee, unless the employee requests a public session. As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice will be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void. The legislative body also may exclude from that public or closed meeting during the examination of a witness any or all other witnesses in the matter being investigated by the legislative body.⁴⁷

For the purposes of the personnel exception, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of the legislative body, or other independent contractor. Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

A closed session may be held to consider the appointment of new employees, which includes interviewing of candidates, reviewing resumes, discussing qualifications, and arriving at a decision prior to the actual appointment. A duly-constituted committee formed to advise the city council thereon may also meet in closed session to the extent the committee has been

⁴⁵ § 54955.7.

⁴⁶ § 54957.

⁴⁷ *Id.*

delegated the duties that would otherwise be covered by the terms of Section 54957, e.g., to interview candidates.⁴⁸

In *San Diego Union v. City Council of the City of San Diego* (1983) 146 Cal.App.3d 947, a California Court of Appeal held that the personnel exception provided by Section 54957 does not permit the City Council to discuss and/or determine specific salary increases for City employees in closed session. According to the decision, the following procedures should occur when a city council evaluates the performance of officials it appoints:

Consistent with both the 'personnel exception' as to the evaluation of performance of a particular employee and the general mandate of the Brown Act, we envision the two step process of an executive session evaluating the performance of a public employee and a properly noticed, open session for setting that particular employee's salary as a facie matter not negatively affecting the review process. Common sense compels the conclusion that oblique references to discussions of salaries for specific individuals within executive sessions, evaluating the performance of that public employee would not violate the Brown Act so long as the specific discussions as to the amount of salary increase are reserved for a properly noticed, public meeting.⁴⁹

e. Labor Relations Matters

Section 54957.6 provides for closed sessions to permit the legislative body to review its position and instruct its designated representative(s) regarding the salaries, salary schedule, or compensation paid in the form of fringe benefits, of its represented or unrepresented employees. And, for represented employees, any other matter within the scope of representation can be reviewed during this closed session. However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives. Closed sessions for this purpose may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

f. Withdrawal of Funds

Section 54957.10 states that a legislative body may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship.

g. Real Property Negotiations

A legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local

⁴⁸ 80 Ops.Cal.Atty.Gen. 308 (1997).

⁴⁹ *San Diego Union* at 955-956.

agency to grant authority to its negotiator regarding the price and terms of payment. Prior to the closed session, the legislative body must announce in open session the property involved and the owner of the property involved.

h. Pending Litigation

Section 54956.9 provides for a closed session for purposes of discussing "pending litigation." Litigation includes any adjudicatory proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. Litigation is considered pending when any of the following exist:

- i) Litigation to which the local agency is a party has been initiated formally.
- ii) In the opinion of the legislative body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.
- iii) Based on existing facts and circumstances, the legislative body is meeting only to decide whether a closed session is authorized.
- iv) For purposes of paragraphs ii and iii, "existing facts and circumstances" shall consist only of one of the following:
 - (1) Facts and circumstances which might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff which facts and circumstances need not be disclosed.
 - (2) Facts and circumstances include, but are not limited to, an accident, disaster, incident, or transactional occurrence which might result in litigation against the agency and that are known to a potential plaintiff, which facts or circumstances shall be publicly stated on the agenda or announced.
 - (3) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection.

(4) A statement made by a person in an open public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open public meeting made on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous record or other record of the statement prior to the meeting which record shall be available for public inspection pursuant to Section 54957.5. The record so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which the threat of litigation is based, unless the identity of the person has been publicly disclosed.

(6) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act.

v) The legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to going into closed session to discuss litigation, the legislative body shall state on the agenda or publicly announce the subdivision of this section which authorizes the closed session.

If the session is closed due to formal litigation initiated against the local agency, the legislative body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the legislative body states that to do so would jeopardize the local agency's ability to effectuate service of process or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

A local agency shall be considered a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has a significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether activities outside the course and scope of the office or employment.

A local official may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed.⁵⁰

See litigation settlement reporting under Heading VIII, Section 3, Paragraph a, Subsection I of this paper.

Note: Under Section 54957.2 the legislative body may, but is not required to, designate someone to attend the closed sessions and keep minutes. Such a minute book, if made, is not subject to disclosure under the California Public Records Act. The city council may require that each legislative body whose member it appoints keep such a minute book.⁵¹

2. CLOSED SESSION AGENDA

Section 54954.5 is quoted herein in its entirety and provides as follows:

"§ 54954.5. Closed session item descriptions

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

- a. With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION Applicant(s): (Specify number of applicants.)

- b. With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation.)

Agency Negotiator: (Specify names of negotiators attending the closed session.) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

⁵⁰ 80 Ops.Atty.Gen.231 (1997).

⁵¹ § 54957.2.

Negotiating parties: (Specify name of party (not agent).)

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both.)

- c. With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL —
EXISTING LITIGATION

(Subdivision (a) of Section 54956.9.)

Name of Case: (Specify by reference to claimant's name, names of parties, case or claim numbers) or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations.)

CONFERENCE WITH LEGAL COUNSEL —
ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases.)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases.)

- d. With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961.)

Agency claimed against: (Specify name.)

- e. With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer.)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled.)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled.) PUBLIC

EMPLOYEE PERFORMANCE EVALUATION Title: (Specify

position title of employee being reviewed.) PUBLIC

EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal or release of a public employee. Discipline includes potential reduction of compensation.)

- f. With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session.) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

Or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations.)

- g. With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

- h. With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program or facility.)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee.)

- i. With respect to every item of business to be discussed in closed session pursuant to Section 54956.8.

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86)."

CLOSED SESSION PUBLIC REPORTS.

a. General Information

Section 54957.1 states that the legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon as follows:

i) Real Estate Negotiations

Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final as specified below:

- (1) If its own approval renders the agreement final, the legislative body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.
- (2) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person as soon as the other party or its agent has informed the local agency of its approval.

ii) **Appealing an Action or Participating as Amicus Curiae**

The legislative body must report the approval given to its legal counsel to defend, or seek or refrain from seeking, appellate review or relief. The legislative body must also report its decision to defend against an opposing party's request for an appellate review and its decision to join any litigation as an amicus curiae ("friend of the court"). The report must identify, if known, the adverse party or parties and the substance of the litigation.

For approvals given to initiate litigation or to intervene in an action, the announcement does not need to identify the action, the defendants, or other information regarding the case. The announcement, however, must specify that the direction to initiate or intervene in an action has been given.

The announcement also must indicate that once the action has been formally started, information regarding the action, the defendants, and other information regarding the case will be disclosed to any person upon inquiry. The one exception is if doing so would jeopardize the local agency's ability to serve one or more of the unserved parties or would jeopardize the local agency's ability to conclude settlement negotiations to its advantage.

iii) **Settlement of Pending Litigation**

The legislative body must report approval given to settle pending litigation, after the settlement is final, as specified below:

- (1) If the legislative body accepts a settlement offer signed by the opposing party, the legislative body must report its acceptance of the offer and identify the terms of the agreement in open session at the public meeting during which the closed session is held.
- (2) If the decision whether to accept the settlement offer rests with another party, the local agency must disclose the fact of that approval and identify the terms of the agreement as soon as the settlement becomes final and upon inquiry by any person.

iv) **Settlement of Claims of a Joint Powers Authority (JPA) Formed for Insurance Pooling Purposes**

The legislative body must report settlement of claims relating to the JPA if the local agency is a member of the JPA. The disclosure of the claims must include: the name of the claimant, the name of the

local agency claimed against, the substance of the claim, and any settlement approved for payment and agreed to by claimant.⁵²

v) **Action Regarding Employees**

Any action taken in closed session to appoint, employ, dismiss, accept the resignation of, or which otherwise affect the employment status of a public employee is to be reported in open session at the public meeting in which the closed session was held. Any report to the public shall identify the title of the position.⁵³

If a legislative body has decided to dismiss an employee or not to renew his or her contract, this information is not to be released until the public meeting following the exhaustion of administrative remedies, if any. The report of a dismissal or non-renewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.⁵⁴

If the legislative body makes disclosures regarding an employee or a former employee in an effort to comply with this section, the legislative body will be immune from a legal action for that disclosure.⁵⁵

vi) **Approval of Labor Agreements**

Once all parties to labor negotiations have reached an agreement regarding the contract and approved the contract, the legislative body is to report this information in a public meeting. The report is to identify the contract approved and the other party or parties to the negotiation.

4. MANNER OF REPORTING

Reports that are required to be made pursuant to this section⁵⁶ may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings if the requestor is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents which were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body, or his or her

⁵² § 54957.1.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

designee, orally summarizes the substance of the amendments for the benefit of the document requestor or any person present and requesting the information. This documentation shall be available to any person on the next business day following the meeting in which the action referred to is taken, or in the case of substantial amendments, when any necessary typing is complete.

No action for injury to reputation, liberty or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.⁵⁷

IX. REMEDIES/PENALTIES

1. MISDEMEANOR

Any member of a legislative body who attends a meeting of that body where action is taken in violation of the Brown Act, and intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor.⁵⁸

2. ACTION TO PREVENT VIOLATIONS

The District Attorney or any interested person may bring an action by mandamus, injunction or declaratory relief to stop or prevent violations or threatened violations of the Brown Act by members of the legislative body or to determine whether the actions or threatened actions come under purview of the Brown Act or to determine the validity of any rule or action by the legislative body to penalize or otherwise discourage an expression of one or more of its members, or to compel the legislative body to tape record its closed session.⁵⁹

3. TAPING CLOSED SESSIONS

The court may, upon a judgment of violation of certain sections pertaining to closed sessions,⁶⁰ order the legislative body to tape record its closed sessions and to preserve the tape recordings as the court deems appropriate.⁶¹

The Brown Act sets forth, in Section 54960, the labeling of closed session tapes and the discovery procedures by the District Attorney or a plaintiff in certain types of civil actions . . . alleging violations that have occurred in a closed session. Nothing in this particular procedure shall permit discovery of communications which are protected by the attorney-client privilege.

⁵⁷ *Id.*

⁵⁸ § 54959.

⁵⁹ § 54960.

⁶⁰ §§ 54956.7, 54956.8, 54956.9, 54956.95, or 54957.6.

⁶¹ § 54960.

4. OPPORTUNITY TO CURE VIOLATIONS

No litigation may be commenced, however, unless or until the District Attorney or any interested party has filed with the legislative body a written demand to cure or correct the action alleged to have been taken in violation of certain sections of the Brown Act. The written demand shall be made within 90 days from the date the action was taken, unless the action was taken in an open session but in violation of Section 54954.2, in which case the demand shall be made within 30 days from the date the action was taken. Within 30 days of receipt of a written demand, the legislative body must cure or correct any defect in the action taken and inform the demanding party of the actions taken to cure or correct. The legislative body may, within this 30 day period, advise the demanding party that the action was validly taken and decline to take any corrective action. If the legislative body takes no action within the 30 day period, the inaction shall be deemed a decision not to cure or correct. Thereafter, the challenging party must, within 15 days upon receipt of written notice of the legislative body's decision to cure or correct, or if no action is taken, 15 days following the expiration of the 30-day period to cure or correct, whichever is earlier, commence the action or thereafter be barred from commencing the same.⁶²

The action taken by the legislative body in violation of Sections 54953, 54954.2, 54954.5, 54954.6 and 54956 cannot be found to be null and void if any of the following conditions exist:

- a. The action was taken in substantial compliance with provisions of the Brown Act.
- b. The action was in connection with the sale or issuance of notes, bonds, or other evidence of indebtedness or any contract, instrument or agreement thereto.
- c. The action taken gave rise to a contractual obligation including a contract by competitive bid other than compensation for services in the form of salary or fees for professional services upon which a party has in good faith and without notice of a challenge to the validity of the action detrimentally relied.
- d. The action was in connection with the collection of any tax.
- e. Any allegations of noncompliance with subdivision (a) of Section 54954.2, 54956, or 54956.5 because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to section 54954.2, or 24 hours prior to the meeting at which action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting was held pursuant to Section 54956.5.

⁶² § 54960.1.

If the court in any such action determines that the legislative body took the action which cured or corrected the defect, then the action must be dismissed with prejudice. The fact that a legislative body took subsequent action to cure or correct an action taken pursuant to this section shall not be evidence of a violation.

When the court finds that such an action of the legislative body has violated the Brown Act, it may award costs and attorney's fees to the party bringing the action. The court may also award costs and attorney's fees to a public entity where it has found that the public entity has prevailed in the case and that the law suit was "clearly frivolous and totally lacking in merit."⁶³

X.
PROHIBITION OF USE OF CERTAIN FACILITIES

No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person or persons on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.⁶⁴

XI.
NEW OR INCREASED TAXES OR ASSESSMENTS

Section 54954.6 deals with any new or increased general tax or assessment requiring a public meeting and a public hearing (with 45 days public notice). "New or increased assessment" does not include, among others, fees not exceeding the recoverable cost of providing services or an ongoing annual assessment at the same or a lower rate as the previous year. Moreover, any new or increased assessment that is subject to the notice and hearing provisions of Proposition 218, is not subject to the notice and hearing requirements of Section 54954.6.

XII.
CLOSING

Should you have any questions or concerns regarding issues under the Brown Act, please feel free to contact the City Attorney or City Clerk for clarification.

⁶³ § 54960.

⁶⁴ § 54961.