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Public Meeting Law (The Brown Act)

Section 1 **INTRODUCTION**

This workbook explores the Ralph M. Brown Act, commonly referred to as the “Brown Act.”¹ The Brown Act was authored by former State Assembly member Ralph M. Brown and passed by the California State Legislature in 1953. The Act is contained in California Government Code § 54950, *et seq.* It remains as a pivotal piece of legislation and continues to evolve and change.

This workbook serves as an easy-to-understand desktop reference for the Brown Act to assist the user in implementing and complying with the provisions of the Act. Appendix A is the entire text of the Ralph M. Brown Act.

Section 2 **OVERVIEW OF THE BROWN ACT**

The Brown Act was enacted as a response to curtail the then increasing utilization of secret and informal meetings by legislative bodies. The Act generally requires that meetings of legislative bodies of local public agencies be open and public. This default requirement is commonly referred to as the “open meeting requirement.” While there are exceptions to the open meeting requirement, such exceptions are construed narrowly and there is a presumption that the public’s business must be conducted in public.²

The original Act was a concise 686 word document. Today, it is a comprehensive document that covers dozens of pages. In brief, the Act provides the following guidance:

- Who is subject to the Act;
- How an action shall be taken by a legislative body;
- When open meetings are required;
- When closed sessions are permitted;
- How meetings are to be noticed;
- When meetings may be conducted;
- What information is required to be provided prior to a meeting;
- Adjournment and continuances of meetings;
- Consequences of failing to comply with the Act; and
- Enforcement of the Act.

WHAT IS COVERED BY THE BROWN ACT?

The Brown Act requires all meetings of a *legislative body* of a *local agency* to be open and public.³ This section discusses what constitutes a covered “local agency” and “legislative body” under the Act.

A. PUBLIC AGENCIES COVERED BY THE ACT

1. PUBLIC AGENCIES COVERED BY THE ACT

The following are examples of local agencies that are covered by the Brown Act:

- Counties (general law or chartered);
- Cities (general law or chartered);
- City and County (e.g. San Francisco);
- Towns;
- School Districts;
- Community College Districts;⁴
- Municipal Corporations;
- Districts (e.g. water districts, pollution control districts, etc.);
- Political subdivisions; or
- Any board, commission or other local agency (e.g. joint powers agencies, housing authorities,⁵ county board of education,⁶ and county or city planning commissions⁷).

Covered local agencies also include boards, commissions, and agencies *within* the above described local agencies.

2. PUBLIC AGENCIES NOT COVERED BY THE ACT

If an agency is not local in nature, or is part of a multi-member state body, the Brown Act does not likely apply.⁸ Whether or not an agency is local in nature depends on the following:

- Geographical coverage of the agency;
- Duties of the agency;
- Provisions concerning membership and appointment; and
- Existence of an oversight committee.⁹

For example, the Act does not apply to the following agencies:

- California Associations of Port Authorities;¹⁰
- Board or commission that is an adjunct to the judiciary;
- Meetings of judges of the Superior Court;
- County board of parole commissioners; and
- County central committees of political parties¹¹

B. LEGISLATIVE BODIES COVERED BY THE BROWN ACT

Legislative bodies covered by the Brown Act include governing bodies of local agencies, bodies of local agencies that are created by a legislative body, and bodies that govern private entities that are created by an elected legislative body.

1. GOVERNING BODY OF A LOCAL AGENCY

Legislative bodies covered by the Brown Act include governing bodies of local agencies.¹² Typical governing bodies include boards of trustees of community college districts and school districts.

2. OTHER BODIES OF LOCAL AGENCIES

Legislative bodies covered by the Brown Act also include commissions, committees, boards or other bodies of a local agency that are created by charter, ordinance, resolution or formal action of a legislative body. However, advisory committees composed solely of the members of the legislative body that are less than a quorum of the legislative body are *not* legislative bodies *with the exception of*:

- standing committees which have a continuing subject matter jurisdiction (e.g. budget or finance committee), or
- a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body (*e.g.* meets every second Tuesday of the month).¹³

The following are examples of advisory committees that are legislative bodies and are covered by the Act.

EXAMPLE

A board of trustees for the community college district has a standing finance committee that has the jurisdiction to approve or deny the funding of district projects of more than \$10,000, but less than \$50,000. Because this is a standing committee with continuing subject matter jurisdiction, it is subject to the Brown Act.

EXAMPLE

A school district board has a discipline appeal committee. Under the school district's rules, the committee meets every third Thursday of the month. The discipline appeal committee is charged with the responsibility of designating hearing officers and setting hearing dates for the appeals of employee discipline (e.g. suspension, demotion or termination). The committee has continuing subject matter jurisdiction and has a meeting schedule fixed by district's rules. Therefore, the committee is subject to the Brown Act.

The following are examples of committees that are *not* a legislative body and are not covered by the Act.

EXAMPLE

A community college district board of trustees has 11 members. The board, by formal action, creates an ad-hoc committee on off-campus facilities composed of three members. This committee meets on an as-needed basis to review lengthy reports from district staff on the condition of off-campus facilities. It then advises the entire board, in open session, on the content of those reports and provides recommendations on how the board should proceed in funding repairs and maintenance. This committee is not required to comply with the Brown Act because it is a committee that is composed of less than a quorum of the board, is not a standing committee, does not have continuing subject matter jurisdiction and does not have a fixed meeting schedule.

***Taxpayers for Livable Communities v. City of Malibu*¹⁴**

Two members of a five-member City Council and City staff hold meetings as needed to prepare the City's response to a draft land use plan prepared by the California Coastal Commission which will be released for public comment at the City Council meeting. Because the two City Council members are less than a quorum, the group does not have jurisdiction over the City's response to the plan, and its meetings are not on a fixed meeting schedule, the group is not subject to the Brown Act.

3. BODIES THAT GOVERN PRIVATE CORPORATIONS, LLCs OR OTHER SIMILAR ENTITIES

Legislative bodies covered by the Brown Act also include boards, commissions, committees, and other multimember bodies that govern:

- a private corporation or entity that is created by the elected legislative body to exercise lawfully delegated authority,¹⁵ or
- a private corporation or entity that receives funds from a local agency where the legislative body for the local agency appoints one of its members to the governing board of the entity as a voting member of the board (e.g. community college district auxiliary organizations).¹⁶

Generally, these entities are nonprofit corporations established to construct, operate, or maintain a public works project or public facility.¹⁷

The following is an example of a multimember body that governs a private corporation created by an elected legislative body and is subject to the Brown Act.

International Longshoreman's and Warehouseman's Union v. Los Angeles Export Terminal, Inc.¹⁸

A private corporation is formed to design, construct, and operate a facility for the export of coal on land leased from the city harbor commission. The corporation is a conglomerate of private companies and the city's harbor commission (the commission has a 15% stake in the corporation). By ordinance, the city council approved the shareholders agreement which formed the corporation. Because the corporation could not have been brought into existence without the approval of the city council, the corporation was created by an elected legislative body and meetings by its Board are subject to the Brown Act.

4. WHO IS A MEMBER OF A LEGISLATIVE BODY?

The Brown Act does not define a "member of a legislative body." It is likely that the common understanding of the term "member" applies. Following the common understanding of the term, any individual who is elected or appointed to sit on a legislative body and votes on and makes decisions with other such individuals is considered a "member."

The Brown Act also applies to any individual elected to serve as a member of a legislative body, but has not yet assumed the duties of his/her office.¹⁹ For example, a school board member elected in November, but does not take office until the following January 1, must comply with the Act upon his/her election in November.

EXAMPLE

School district staff and representatives of the solid waste haulers hold meetings at which ideas are exchanged regarding rates for collection services. Proposals formulated at these meetings are presented to the school board for formal approval at an open and noticed meeting. The staff members are *not* considered "members of a legislative body" under the Brown Act. They do not act as a subsidiary board or commission, or standing committee. Instead, their task is to meet with interested parties, compile information, consider alternatives, and formulate proposals for the board's consideration.

WHAT CONSTITUTES A MEETING?

The Brown Act requires “meetings” of legislative bodies of local public agencies to be open and public. A “meeting” under the Brown Act is a congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the legislative body or its local agency. This section discusses what types of meetings are covered and not covered under the Act.

A. MEETINGS COVERED BY THE ACT

The following “meetings” are covered by the Brown Act. This is not an all-inclusive list and there may be other meetings which may be covered by the Act.

- Discussions or receipt of information by the legislative body that takes place before a final decision is made, or a final vote is taken;²⁰
- Discussions that take place during meetings of a legislative body with district executive management;²¹
- Internal gatherings such as lunches or social gatherings if issues under the subject matter jurisdiction of the body are discussed or decided by the members of the body;²² and
- Any use of direct communication, personal intermediaries or technological devices (*e.g.* telephone conference or email) employed by a majority of the members of a legislative body to develop a collective concurrence as to the action to be taken on an item.²³

B. SERIAL MEETINGS

A serial meeting is covered by the Act. It involves communications by individual members of less-than-a-quorum group which ultimately involves a majority of the body’s members. This communication may involve several separate conversations between different members, or several separate conversations between members and a single person (*e.g.* attorney, agency staff member) for the purpose of discussing, deliberating or taking any action on any item of business.²⁴ Such communications can occur by direct communication, personal intermediaries or technological devices (*e.g.* telephone and email).

District staff may have separate individual conversations or communications with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency. These conversations may occur outside a meeting if the staff member does not communicate to members of the legislative body the comments or position of any other member or members of the body.

A majority of members of a legislative body may not use, outside a meeting, a series of communications of any kind, directly or through intermediaries, to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the legislative body, whether or not the members of the body reach a collective concurrence.

The following are examples of “meetings” that are covered by the Brown Act.

EXAMPLE

The school district board consists of five members. Member A discusses with the district’s outside counsel the termination of a district employee which is scheduled for discussion at the next board meeting. Specifically, they discuss the merits of the district’s decision to terminate the employee. Member A then suggests that Member B and C join in this discussion and the district’s outside counsel arranges a group telephone conference to discuss the merits of the termination. The group telephone conference is a “meeting” that is covered by the Brown Act because a majority of the members are engaged in communications that serve to obtain a collective commitment on the termination issue pending before the board.

EXAMPLE

The community college district’s board of trustees consists of seven members. On next week’s board agenda is a matter involving a decision on whether to approve a building contract. Member A is unsure about the name of a building contractor that submitted a bid on the contract and emails Members B, C, and D asking them if they know the name of the contractor. The email communication between Members A, B, C, and D involves discussion of an upcoming agenda item and is a serial meeting because it involves four out of seven board members (or more than a majority of the board members).

EXAMPLE

The entire academic senate attends a retreat. At one of the lunches during the retreat, the senate members discuss a grading policy that is scheduled to be heard at an upcoming senate meeting. Specifically, they discuss how the senate should rule on the policy. The luncheon at the retreat is a “meeting” that is covered by the Brown Act.

C. CIRCUMSTANCES THAT ARE NOT COVERED BY THE ACT

The following circumstances are *not* considered “meetings” under the Brown Act.

- Individual Contacts – Individual contacts or conversations between a member of a legislative body and any other person (provided that such contacts do not constitute serial meetings);²⁵
- Conferences and Seminars – Attendance of a majority of members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to

public agencies of the type represented by the legislative body (provided that a majority of the members do not discuss among themselves specific business within the subject matter jurisdiction of the local agency);²⁶

- Open Community Meetings – 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 by a person or organization other than the local agency (provided that a majority of the members do not discuss among themselves specific business within the legislative body’s jurisdiction);²⁷
- Other Legislative Body Meetings – Attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency or at an open and noticed meeting of a legislative body of another local agency (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 legislative body);²⁸
- Social and Ceremonial Events – Attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion (provided that a majority of the members do not discuss among themselves specific business within the board’s or council’s jurisdiction);²⁹
- Standing Committee Meetings – Attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body (provided that the members who are not members of the standing committee attend only as observers, do not address the committee by testifying, ask questions or provide information, or sit at the dais);³⁰ and
- Grand Jury Hearing – Testimony by members of a legislative body in private before a grand jury, either as individuals or as a body.³¹

D. TYPES OF MEETINGS

1. REGULAR MEETINGS

A regular meeting is a meeting of the legislative body of a local agency that is held at a time and place specified by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body.³²

2. SPECIAL MEETINGS

A special meeting is a meeting of the legislative body of a local agency that is called at any time by the presiding officer of the legislative body (*e.g.* Board President) or by a majority of the members.³³

3. EMERGENCY MEETINGS

An emergency meeting may be called under “emergency situations.” An emergency situation exists when a majority of the members of a legislative body determines a work stoppage, crippling activity or disaster, or other activity that severely impairs or threatens to impair the public health and/or safety (*e.g.* earthquake, terrorist act, or sickout/blue flu labor action).³⁴

4. TELECONFERENCED MEETINGS

A legislative body may use teleconferencing (by audio and/or visual electronic media) to conduct a meeting. Such meetings must comply with all requirements of the Brown Act. The legislative body must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public or parties appearing before the legislative body.

Section 5 NOTICE AND AGENDA REQUIREMENTS

The Brown Act provides requirements for noticing a meeting and the content of the meeting agenda. These requirements vary depending on the type of meeting (*e.g.* regular, special or emergency).

A. REGULAR MEETINGS

1. NOTICE AND LOCATION OF POSTING

The legislative body of a local agency must post its regular meeting agenda at least 72 hours before the meeting in a location that is freely accessible to the public.³⁵ The agency must also post the agenda on its Internet website, if it has one.³⁶ Weekend hours may be included, but the agenda must be accessible during the entire 72 hour period.³⁷ In lieu of posting a paper copy, the agenda may also be posted on a touch-screen kiosk that is accessible to the public without charge.³⁸

2. MAILING OF AGENDA

Upon written request, the legislative body must mail the agenda or agenda packet when the agenda is posted or distributed to the legislative body, whichever comes first. A request for notice by mail is valid for one year from the date it is filed unless a renewal request is filed. Failure of the legislative body to provide the agenda by mail does not constitute grounds for a court to invalidate the actions of the body for which the agenda was not received.³⁹

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The legislative body may establish a fee for mailing the agenda or agenda packet. The fee may not exceed the actual cost of providing the service.⁴⁰

3. REQUIRED AGENDA CONTENT

Agendas for regular meetings must contain the following:

- Time and Location – The agenda must specify the time and location of the meeting and a brief general description (*i.e.* generally not to exceed 20 words) of each item to be discussed, including items to be discussed in closed session.
- Closed Session Items – Closed session items must be placed on the agenda.⁴¹
- Public Comment – Every agenda shall provide an opportunity for “public comment” before or during the agency’s consideration of the item.⁴²

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Make sure you include an opportunity for public comment before closed session.⁴³

Below is a sample agenda for a regular meeting.

SAMPLE AGENDA OF REGULAR MEETING

MURRAY COMMUNITY COLLEGE DISTRICT	
Board of Trustees – Regular Meeting	
Wednesday, December 7, 2016, 6:00 p.m.	
Location: Murray Community College District Administration Building, Room 100 777 Happy Lane, Sunshine, CA 00001	
AGENDA	
1. Call to Order	
2. Pledge of Allegiance	
3. Roll Call and determination of quorum	
4. Public Comment	This is the opportunity for members of the public to address the District Board.
5. Approval of Minutes from November 9, 2016 meeting	
6. Open Session	
6.1	Dean of Student Activities – Participation in Annual Student Government Conference in Sacramento, CA.
6.2	Review accident report and damage claims.
6.3	Resolution to approve and authorize contract with IMQ Food Services in an amount not-to-exceed \$300,000.

7. Closed Session

- 7.1 Conference with Legal Counsel pursuant to Gov. Code § 54956.9(d)(2) – potential litigation (one potential case).
- 7.2 Public Employee Appointment – Appointment of Faculty

8. Adjournment

Disability Access

The Administration Building and Room 100 are wheelchair accessible. The following services are available when requests are made by 4:00 p.m. of the Friday before the Board meeting: American Sign Language interpreters or use of a reader during a meeting; large print agenda or minutes in alternative format; assistive listening devices. Please contact, Jeffrey Chadwick, Secretary to the Board, (310) 555-2000, if you need assistance in order to participate in a public meeting or if you need the agenda and public documents modified as required by Section 202 of the Americans with Disabilities Act.

4. DISCUSSION OF ITEMS NOT ON AGENDA

The general rule is that no action or discussion may be undertaken on any item that does not appear on the posted agenda.⁴⁴ However, the following are exceptions to this agenda posting requirement.

- Brief Responses – The legislative body and/or its staff may: (1) briefly respond to statements made or questions posed by the public, (2) ask questions for clarification, (3) make brief announcements or brief reports on his/her activities, (4) request for staff or other resources to provide factual information, and (5) request to place a matter on the agenda for a future meeting.⁴⁵

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Make sure statements, questions and responses are brief and do not entail lengthy discussion.

- Emergencies – The legislative body may discuss and act on an item not on the posted agenda that is deemed an “emergency” by a majority vote of the body. An emergency situation exists when a majority of the members of a legislative body determines a work stoppage, crippling activity or disaster, or other activity that severely impairs or threatens to impair the public health and/or safety (*e.g.* earthquake, terrorist act, or sickout/blue flu labor action).⁴⁶
- Immediate Action – The legislative body may discuss and act on an item not on the posted agenda if the body determines by a 2/3 vote of the body or a unanimous vote if less than 2/3 of the body is present, that there is need to take immediate action, and such need came to the attention of the *local agency* subsequent to the posting of the agenda (*i.e.* within 72 hours before the regular meeting).⁴⁷

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Note that the need for immediate action must come to the attention of the “local agency” (and not legislative body) after the posting of the agenda. Therefore, if staff has notice of the need to take immediate action prior to the posting of the agenda, but the legislative body does not have such notice, the legislative body may not discuss the matter.

- Item from Agenda of Prior Meeting – The legislative body may discuss and act on an item that was properly posted on the agenda for a prior meeting. However, the prior meeting must have occurred less than five calendar days to the date action is taken on the item and the item was continued to the meeting at which action will be taken.⁴⁸

5. PUBLIC COMMENT

Every agenda shall provide an opportunity for “public comment.” Public comment is an opportunity for members of the public to directly address the legislative body on any item of public interest that is within the body’s jurisdiction.⁴⁹

The following guidelines apply for public comment.

- The legislative body is not required to provide a public comment period for a meeting that addresses the same matters from a prior meeting (*e.g.* prior meeting was continued) that consists exclusively of all members of the legislative body, where a public comment period was provided at the prior meeting.⁵⁰

EXAMPLE

The school district board has five members. All five members are members of the district’s finance committee. At the finance committee meeting, there was discussion of financing the new football stadium lights. The agenda of the finance committee allowed for public comment. Discussion of the matter was continued to the following board meeting. There was no substantive change regarding the matter since the finance committee meeting. There is no need to provide a public comment period for the matter because one was already provided at the finance committee meeting and the matter did not substantially change since that meeting.

- Public Comment Before Closed Session – The legislative body must afford the public an opportunity to comment on closed-session items *prior to* the body’s adjournment into closed session.⁵¹ The agenda must allow for public comment before closed session if closed session is the first item on the agenda.

- Time Limit – The legislative body may adopt regulations which limit the total time allocated for public testimony on particular issues and for each individual speaker.⁵²
- Speaker Cards – As a means of regulating the total time allocated for public testimony on a particular issue and for each individual speaker a legislative body may require members of the public to fill out a speaker card or public comment card prior to addressing the legislative body. The legislative body may not prohibit a member of the public from speaking because he/she failed to accurately identify himself/herself on the speaker card.

EXAMPLE

The district board requires members of the public to fill out a speaker card prior to addressing the council during public comment. The speaker card asks for the speaker’s name so that the member of the public may be more easily identified when it is his/her turn to address the board. Wishing to remain anonymous, a member of the public writes “John Doe” as his name on the speaker card. The board may not prohibit the member of the public from speaking because it believes the “name” section of the speaker card is inaccurate or fictitious.

- No Prohibition on Content – The legislative body may not prohibit criticism of the staff,⁵³ or of the policies, procedures, programs or services of the agency, or the acts or omissions of the legislative body.⁵⁴ However, a legislative body may prohibit a speaker from making comments that are outside the body’s jurisdiction.⁵⁵
- The legislative body may not take action on items raised by the public during public comment *unless* the body determines by a 2/3 vote of the body or a unanimous vote if less than 2/3 of the body is present, that there is need to take immediate action, and such need came to the attention of the *local agency* subsequent to the posting of the agenda (*i.e.* within 72 hours before the regular meeting).⁵⁶
- The legislative body is not required to allow the public to comment on what items should be placed on the agenda.⁵⁷
- The legislative body may adopt rules of decorum which prohibit personal, impertinent, or profane remarks directed at any member of the legislative body.⁵⁸

EXAMPLE

The community college district has a policy that requires its board to hear employee concerns about other specific employees in closed session unless the target of the concern demands a public hearing. The district adopted the policy to prevent the public comment session from becoming a dispute

resolution forum where only one side of the dispute is presented. Ramon, a district employee, does not get along with his supervisor Mario and filed a grievance alleging that Mario engaged in retaliatory conduct. At the board meeting, Ramon sought to address the Board about his grievance and specifically his concerns regarding Mario. Upon commencement of the public comment session, Ramon informed the board that he sought to address the board regarding a complaint about another district employee. The board informed Ramon that it would move his employee-on-employee concern to closed session pursuant to district policy. Soon after, the board went into closed session and Ramon presented his concerns regarding Mario.

Below is a sample of regulations for a local agency regarding addressing the legislative body during a public comment session of a regular meeting.

SAMPLE LOCAL AGENCY RULES: ADDRESSING THE LEGISLATIVE BODY

Rules for Public Comment at Regular Meeting of the Sunshine School District Board of Trustees

The following rules apply to any person who wishes to address the Sunshine School District Board of Trustees at a regular meeting of the Board:

1. Complete a “Request to Address the Board” form and present it to the Clerk prior to the time you wish to address the Board. [Such form may request, but may not require, that the speaker include his/her address on the form.]
2. Wait for your name to be called by the Clerk.
3. When your name is called, stand up, and request and secure the permission of the Presiding Officer to approach the podium.
4. Speak clearly into the microphone at the podium.
5. State your name for the record.
6. You are limited to five minutes of comments on all agenda items unless further time is granted by the Board. The total amount of time for all public comments per agenda item shall be no more than 20 minutes unless further time is granted by the Board.
7. Preference to address the Board shall be given to those persons who notified the Clerk in advance of their desire to address the Board.

B. SPECIAL MEETINGS

In order to properly call a special meeting, the following procedures must be followed.

- At least 24 hours before the meeting, a notice that contains the time and place of the meeting must be posted in a location freely accessible to the public. The agency must also post the agenda on its Internet website, if it has one.⁵⁹
- The notice must be delivered (typically personally) at least 24 hours before the meeting to all members of the legislative body (unless waived in writing before the meeting or if the member actually appears at the meeting) and to any newspaper, radio or television station that has requested notice in writing.
- The notice must specify the matters to be transacted or discussed at the meeting. No other business may be considered by the legislative body.⁶⁰

LCW Practice Advisor

Notice the difference between a special and regular meeting. Unlike regular meetings, if a matter is not listed on the notice, there may *not* be any discussion or action on it.

SAMPLE NOTICE OF SPECIAL MEETING

Notice of Special Meeting of the Sunshine Valley Community College District Board of Trustees

Date: November 15, 2016
Time: 6:30 p.m.
Location: Sunshine Valley Community College District Administration Building, Room 100, 777 Happy Lane, Sunshine, California 00001

Please take notice that the District's Board of Trustees hereby calls a special meeting of the Board for Thursday, November 15, 2016 at 6:30 p.m., in Room 100 of the Sunshine Valley Community College District Administration Building, located at 777 Happy Lane, Sunshine, CA 00001.

The purpose of this meeting is to discuss and approve a contract with Acme Construction Company for the construction of the recreation building.

This Notice of the Date, Time and Location of the special meeting of the Sunshine Valley Community College District Board of Trustees is given this 14th day of November, 2016 at 12:00 p.m.

C. EMERGENCY MEETINGS

In order to properly call an emergency meeting, the following procedures must be followed.

- No Written Notice Required – Written notice is *not* required to call an emergency meeting.⁶¹
- Notice to Media – Any newspaper, radio or television station that has requested notice of special meetings in writing must be notified by the presiding officer of the legislative body or designee, by telephone at least *one hour* prior to the emergency meeting. If telephone services are inoperable before the meeting, notification shall be made as soon as possible after the meeting indicating the purpose of the meeting and any actions taken at the meeting.⁶²

LCW Practice Advisor

All telephone numbers provided in the most recent notice request by a newspaper, radio or television station should be exhausted.

- Posting of Minutes – In addition, the minutes of the meeting, a list of persons who the body notified or attempted to notify, a copy of the roll call vote and any actions taken at the meeting must be posted for at least 10 days in a public place as soon as possible after the meeting.⁶³
- Limited Closed Sessions – Legislative bodies may hold closed sessions during an emergency meeting if agreed to by 2/3 vote of the body or a unanimous vote if less than 2/3 of the body is present.⁶⁴

D. SPECIAL NOTICE REQUIREMENTS FOR ADOPTING A NEW TAX OR ASSESSMENT

There are specific guidelines for a legislative body to follow before adopting a new or increased general tax or assessment.

- Public Meeting Required – Before a legislative body of a local agency adopts a new or increased general tax or assessment, it must conduct at least one public meeting at which public testimony regarding the proposed new or increased general tax or assessment shall be allowed.
- After the public meeting, the legislative body may conduct the public hearing where it proposes to enact or increase the tax or assessment.
- Joint Notice for Public Hearing and Meeting – The legislative body shall provide at least 45 days “public notice” of the public hearing. The notice for the public meeting shall be provided in the same document and at the same time (*i.e.* joint notice).
- Joint Notice for Taxes – The joint notice for enactment or increase of taxes shall include, but is not limited to the following:

- the amount or rate of the tax or proposed tax increase;
 - the activity to be taxed, the method and frequency for collecting the tax;
 - the dates, times, and locations of the public meeting and public hearing; and
 - the phone number and address of the individual, office or organization that interested persons may contact to receive additional information about the tax.
- Joint Notice for Assessments – The joint notice for enactment or increase of assessments shall include, but is not limited to the following:
 - the estimated amount of the assessment or proposed increase per parcel;
 - a general description of the purpose or improvements that the assessment will fund;
 - the address to which property owners may mail a protest against an assessment; and
 - the phone number and address of an individual, office or organization that interested persons may contact to receive additional information about the assessment.⁶⁵
 - Public Notice – Newspaper and Mail Notice – Public notice is accomplished by conducting the following:
 - placing a display advertisement of at least one-eighth page in a newspaper of general circulation once a week for three successive weeks;⁶⁶ and
 - sending by first-class mail a copy of the notice to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes or assessments.
 - Timing of public meeting and hearing – The public meeting must take place at least 10 days after the first publication of the joint notice.
 - The public hearing must take place at least seven days after the public meeting.⁶⁷

Section 6 **CONDUCTING THE MEETING**

The Brown Act sets forth requirements regarding the location of a meeting, adjournment of a meeting and continuance of a hearing.

A. LOCATION OF MEETINGS

The legislative body of a local agency (except for advisory and standing committees) must provide, by ordinance, resolution, by-laws or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings.⁶⁸

1. REGULAR AND SPECIAL MEETINGS

Generally, regular and special meetings must be held within the local agency's territory. There are exceptions to this default rule. The following are instances where meetings do *not* have to be held within the local agency's territory:

- To comply with state or federal law or a court order, or attend a judicial or administrative proceeding to which the local agency is a party;
- To inspect real or personal property which cannot be conveniently brought within the boundaries of the agency's territory, provided that the topic of the meeting is limited to items directly related to the real or personal property;
- To participate in meetings or discussions of multi-agency significance that are outside the agency's territory. Any such meeting or discussion must take place within the jurisdiction of one of the participating agencies and be noticed by all participating agencies;
- To meet in the closest meeting facility if the agency has no meeting facility within the agency's territory or at the principal office of the local agency if that office is located outside the agency's territory;
- To meet 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 agency and over which the federal or state officials have jurisdiction;
- To meet in or nearby a facility owned by the agency, where the meeting is limited to discussion of items directly related to the facility; and
- To visit the office of the local agency's legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.⁶⁹

2. EMERGENCY LOCATION

If, by reason of fire, flood, earthquake or other emergency, it is unsafe to meet in the place designated, the meetings must be held for the duration of the emergency at the place designated by the presiding officer of the legislative body in a notice to the local media.⁷⁰

3. NON-DISCRIMINATORY LOCATION

Meetings of a legislative body of a local agency may not be held in any facility that prohibits the admittance of any person(s) on the basis of race, religious creed, color, national origin, ancestry or sex, or that is inaccessible to disabled persons, or where members of the public are required to pay for entry.⁷¹

B. ADJOURNMENT OF MEETINGS

The legislative body may adjourn any meeting. For instance, meetings may be adjourned if less than a quorum of the legislative body attends. If no member attends, the clerk or secretary may declare the meeting adjourned to a stated time and place. Written notice of the adjournment must be given in the same manner of notice as for special meetings. A copy of the notice of adjournment must be posted on or near the door of the place where the adjourned meeting was held within 24 hours after the time of the adjournment.⁷²

SAMPLE NOTICE OF ADJOURNMENT

Notice of Adjournment

The Sunshine Valley Community College District Board of Trustees Meeting of November 15, 2016 adjourned at 11:35 p.m., to Friday, November 18, 2016 at 6:00 p.m., in Conference Room 123 of the Building A to discuss the business of the Board and closed session items as posted in the agenda for the meeting of November 15, 2016.

Michael Schwartz, Board Clerk

C. CONTINUANCE OF HEARINGS

A hearing may be continued by order or notice of continuance. The time and place when and where the hearing resumes must be announced at the time of the continuance. Requirements for content and posting of the notice correspond to the requirements for adjournment of meetings. However, if the hearing is continued to a time less than 24 hours after the order of continuance was made, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order of continuance was made.⁷³

SAMPLE NOTICE OF CONTINUANCE OF HEARING

Notice of Continuance of Hearing

The Sunshine Valley Community College District Board of Trustees hearing regarding the appeal of employee, Alexander Buchanan, adjourned at 11:35 p.m. on November 15, 2016, and is continued to Friday, November 18, 2016 at 6:00 p.m., in the Conference Room 123 of the Building A.

Michael Schwartz, Board Clerk

Section 7 **RIGHTS OF THE PUBLIC**

The Brown Act provides the public with a variety of rights regarding their attendance and participation at meetings. A legislative body may also impose requirements which allow greater access to their meetings than prescribed by the minimal standards of the Act.⁷⁴

A. PUBLIC ATTENDANCE AT MEETINGS

Members of the public have a right to address the legislative body on items of interest to the public. In addition, the following conditions apply to public attendance at meetings.

- No member of the public may be required to register his/her name, provide other information, or complete a questionnaire as a condition of attendance at a meeting.
- Attendance lists, registries, questionnaires or other similar documents may be posted and/or circulated at a meeting. However, the document must clearly state that signing, registering, and completing the document is voluntary and that persons may attend the meeting without signing/completing the document.⁷⁵

B. PUBLIC PARTICIPATION BY TELECONFERENCING

A meeting by “teleconference” is connected by electronic means, through either audio or video, or both. If the legislative body of a local agency adopts the use of teleconferencing for a meeting, the following conditions apply:

- All votes taken during a teleconferenced meeting must be by roll call;
- The agenda must be posted at all teleconference locations;
- The meeting must be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body;

- Each teleconference location must be identified in the notice and agenda of the meeting or proceeding;
- Each teleconference location must be open and accessible to the public;
- During the teleconference, a minimum of a quorum of members must participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction;⁷⁶
- During a meeting of a health authority, it is permissible if at least 50% of the quorum are within the boundaries and the health authority provides a teleconference number and access code, if any, in the notice and agenda that allows any person to call in to participate in the meeting;⁷⁷ and
- The agenda must provide an opportunity for members of the public to address the legislative body directly at each teleconference location.⁷⁸

C. PUBLIC RIGHT TO RECORD MEETING

Members of the public in attendance at an open and public meeting have the right to record the proceedings of the meeting with an audio or video tape recorder or a still or motion picture camera *unless* the legislative body reasonably finds that such recording results in noise, illumination or obstruction of the view that constitutes, or would constitute, a persistent disruption of the proceedings.⁷⁹

D. PUBLIC RIGHT TO BROADCAST A MEETING

A legislative body may not prohibit or restrict a broadcast of its open and public meetings *unless* the legislative body reasonably finds that the broadcast cannot be accomplished without noise, illumination or obstruction of view that would constitute a persistent disruption of the proceedings.⁸⁰

E. PUBLIC RIGHT TO INSPECT DOCUMENTS AND RECORDINGS

The Brown Act provides the public with the right to inspect and make copies of certain writings associated with an open and public meeting. However, the legislative body of a local agency may charge fees that cover the direct costs of duplication of the writings.⁸¹

1. AGENDAS AND OTHER WRITINGS DISTRIBUTED TO THE LEGISLATIVE BODY

All agendas of public meetings and any other writings that are distributed to all, or a majority of the members of a legislative body in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable under the Public Records Act and must be available upon public request “without delay.” This rule does not apply to certain writings that are exempt from public disclosure under the Public Records Act. Those exempted writings are described in Gov. Code §§ 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or

6254.22.⁸² The second part of this workbook focuses on the Public Records Act and the exempted writings under the Act.

A local agency must make the agenda and writings described above available for public inspection at a designated public office or location. The local agency must also list the address of this office or location on the agendas for all meetings of the legislative body. The local agency may post the writing on the agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.⁸³

2. WRITINGS DISTRIBUTED AT MEETINGS

Writings distributed during a public meeting must be made available for public inspection at the meeting if prepared by the agency or a member of the body, or after the meeting if prepared by some other person.⁸⁴

3. TAPES OR FILMS THAT RECORD A MEETING

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to inspection pursuant to the Public Records Act, meaning that a member of the public may submit a request and view a copy of the recording of the meeting on a tape player provided by the agency at no charge. The recording of the meeting may be erased or destroyed 30 days after the recording.⁸⁵

F. DISORDERLY CONDUCT OF THE PUBLIC DURING MEETING

If a meeting is willfully interrupted by a group or groups of persons that renders the orderly conduct of the meeting unfeasible and order cannot be restored by the removal of the disrupting individuals, the members of the legislative body conducting the meeting may order the meeting room cleared and continue the session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, are allowed to remain at the meeting. The legislative body may establish a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.⁸⁶ Attached as Appendix E is a sample guideline for dealing with disorderly conduct at a public meeting.

McMahon v. Albany Unified School District⁸⁷

A citizen who was upset over trash left in his neighborhood by local school children dumped bags of garbage on the floor of the school room during a school board meeting. A school board member made a citizen's arrest of the citizen for willfully disturbing a public meeting. The court held that the citizen's First Amendment rights were not violated because his conduct was not a legitimate element of the meeting but rather a significant impairment of it.

Acosta v. City of Costa Mesa⁸⁸

A city ordinance was deemed unconstitutional because it prohibited members of the public from making "personal, impertinent, profane, insolent or slanderous"

remarks at city council meetings. The court held that such expressive activity could, and often likely would, fall well below the level of behavior that actually disturbs or impedes a city council proceeding.

Section 8

EXCEPTIONS TO THE OPEN MEETING REQUIREMENT

Under the Brown Act, closed session meetings are generally prohibited. However, the Act provides several exceptions. Closed sessions may be authorized in the following situations, which are separately discussed in greater detail in this section:

- Pending litigation;
- Personnel matters;
- Labor relations;
- Renewal of license applications for individuals with criminal records;
- Real property transactions;
- Taking action on health plan trade secrets;
- Agencies formed for insurance pooling liability;
- Multi-jurisdictional drug law enforcement agency; or
- Matters posing a security threat for public safety reasons.

A. PENDING LITIGATION

Closed sessions are permitted to allow the legislative body to confer with, or receive advice from its legal counsel regarding pending litigation when discussion in open session of a matter would prejudice the position of the local agency in the litigation.⁸⁹ Prior to holding a pending litigation closed session, the legislative body must state on its agenda the title of or otherwise specifically identify the litigation to be discussed, unless to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or jeopardize its ability to conclude existing settlement negotiations to its advantage.⁹⁰

“Litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer or arbitrator.⁹¹ Litigation is considered pending when any of the following circumstances exist:

- Litigation to which the local agency is a party has been initiated formally;
- A point has been reached where, in the legislative body's opinion on the advice of its legal counsel, based on “existing facts and circumstances,” there is a significant exposure to litigation;

- Based on “existing facts and circumstances,” the legislative body is meeting only to decide whether a closed session is authorized; or
- Based on “existing facts and circumstances,” the legislative body has decided to initiate or is deciding whether to initiate litigation.⁹²

“Existing facts and circumstances” consists of any one of the following:

- Facts and circumstances that might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed;
- Facts and circumstances, including, but not limited to, an accident, disaster, incident or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs. These facts or circumstances must be publicly stated on the agenda or announced;
- 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 must be available for public inspection;
- A statement made by a person in an open and public meeting threatening litigation made on a specific matter within the responsibility of the legislative body; or
- A statement threatening litigation made by a person outside an open and 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 or other record of the statement prior to the meeting, which record must be available for public inspection. The records so created need not identify the alleged victim of unlawful or tortuous sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortuous conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.⁹³

A local agency is considered a “party” or has “significant exposure to litigation” if an officer or employee is a party or has 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 an activity is outside the course and scope of the office or employment.⁹⁴

The pending litigation exemption is subject to the following limitations:

- A legislative body may not meet in closed session with legal counsel for another local agency where the other agency is not a party to the lawsuit.⁹⁵

- Although the issue of whether to settle a lawsuit may be properly discussed in closed session pursuant to the pending litigation exemption, the legislative body may not decide upon or adopt in closed session a settlement that accomplishes or provides for action for which a public hearing is required by law.⁹⁶

Trancas Property Owners Association v. City of Malibu⁹⁷

The city is involved in a land dispute with a local owner-developer. After the city denied approval of the developer’s final subdivision maps the developer sued and litigation commenced. The city and the developer engaged in several attempts to settle the matter. Citing the pending litigation exception, the city council met in closed session and the city subsequently entered into a written agreement for the city to rescind the disapproval of the subdivision maps and approve one of the maps to exempt a development from certain present and future zoning restrictions. The adoption of the agreement in closed session was improper because the agreement involved provisions for future actions that would ordinarily be subject to the Brown Act’s open meeting requirements and are required by law to be made after public hearing (*e.g.*, whether to grant a zoning variance).

B. PERSONNEL MATTERS

Closed sessions are generally permitted 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.⁹⁸ As discussed below, however, there are specific limitations that apply depending on the type of personnel matter at issue.

1. COMPLAINTS OR CHARGES AGAINST EMPLOYEES

Prior to holding a closed session to hear *specific complaints* or *charges* brought against an employee by another person or an employee, the affected employee must be given at least 24 hours written notice of his/her right to have the charges heard in open session. If the employee responds and requests an open session, the complaints or charges may not be heard in closed session.

The 24 hour notice may be delivered personally or by mail, but it must be *received* 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.***⁹⁹

Bell v. Vista Unified School District¹⁰⁰

Coach Craig Bell was both a teacher and football coach. The California Interscholastic Federation (CIF) determined that Coach Bell violated a Federation rule regarding the transfer of a student and recommended to the District that it consider disciplinary action against Coach Bell. The District Board of Trustees seeks to hold a closed session meeting to consider action in

response to the CIF determination. The Board was required to give Coach Bell at least 24 hours' notice of the meeting because the meeting involves a complaint *by another person* (i.e. the CIF) brought against a District employee.

The term "employee" includes an officer or an independent contractor who functions as an officer or an employee but does not include any elected official, member of a legislative body or other independent contractors.¹⁰¹ Thus, department heads and other high-ranking local officers are included in the definition of "employee." However, complaints against elected officers or persons appointed to fill a vacancy in an elected office may not be discussed in closed session.¹⁰²

There is a distinction between hearing complaints/charges and deliberating on complaints/charges. If the employee demands that the charges be heard in open session, the legislative body may still adjourn to closed session to deliberate on the charges. Similarly, if the legislative body is deliberating on whether to adopt a hearing officer's findings on discipline charges, the body may conduct its deliberations in closed session, and the affected employee is not entitled to 24 hours' notice of the closed session.¹⁰³ But if the body hears or considers the complaints or charges by conducting its own fact finding (e.g. body rejects hearing officer's findings and makes its own findings of fact), the 24 hours' notice rule applies and the affected employee has the right to request that the meeting be public.¹⁰⁴ "Furthermore, if the legislative body convenes in closed session for the purpose of initiating the dismissal process (i.e. notifying the employee of its intent to dismiss), the 24 hours' notice rule does not apply."¹⁰⁵

Kolter v. Com. of Professional Competence of the Los Angeles Unified School District¹⁰⁶

The governing board of the Los Angeles Unified School District met in closed session and initiated the process to dismiss Kolter, a permanent certificated elementary school teacher. Kolter did not receive any pre-meeting notice of the session or the charges against her. After the closed session, the District notified Kolter of its intent to dismiss her from her employment. The board was not required to give Kolter 24 hour notice of the meeting because it did not conduct an evidentiary hearing on the charges against her. Rather, it considered whether those charges justified the initiation of dismissal proceedings which would later result in an evidentiary hearing.

The *Kolter* court found that the Legislature used the verb "hear" in connection with "complaints or charges," but the verb "consider" in connection with "dismissal of a public employee."¹⁰⁷ The courts have concluded the word choice is significant. To "consider" is to deliberate upon, while to "hear" is to listen to in an official capacity. A "hearing" is a formal, official proceeding, usually open to the public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented.¹⁰⁸

LCW Practice Advisor

The *Kolter* case holds that 24 hours’ notice is not required before the legislative body decides to initiate discipline against an employee. A cautious and conservative approach is to continue to provide 24 hours’ notice until the exact boundaries of the *Kolter* decision are litigated in the coming years.

LCW Practice Advisor

The *Kolter* decision turned on the fact that the board's action in closed session was not the final agency decision. If your board’s consideration of discipline is the agency’s final decision, 24 hours’ notice is still required.

LCW Practice Advisor

The legislative body should properly place disciplinary action on the agenda for closed session.

Appendix D is a sample guideline to follow when an employee demands the charges be heard in open session.

SAMPLE 24 HOURS’ NOTICE TO AFFECTED EMPLOYEE THAT ADDRESSES COMPLAINTS OR CHARGES

Notice of Right to Have Charge(s) Heard in Open Session Pursuant to Gov. Code section 54957

Dear Mr. Parsons:

A regularly scheduled board meeting will be taking place on Tuesday, November 15, 2015 beginning at 6:00 p.m. at the Administration Building, Room 100, 777 Happy Lane, Sunshine, CA 00001. The meeting includes a closed session item that involves issues relating to your employment with the Sunshine School District. Specifically, the Board will hear charges and allegations that were made against you by District employees, including, but not limited to misconduct and sexual harassment. In accordance with Government Code section 54957(b)(2) you are hereby provided with notice that the foregoing charges will be discussed by the Board of Trustees in closed session, and that you have the right to have the charges heard in open session, rather than in closed session. Please be advised that at the meeting the Board may recommend that you be subject to discipline up to and including termination.

If you desire to have the charges considered by the Board of Trustees in an open session, please sign this form below indicating your desire to have the charges considered in open session, and return the signed form to me by facsimile at (310) 555-0001 or by email at r.johnson@sunshineusd.edu.

If you would like the charges to be considered in an open session, please complete and return the form to me prior to the commencement of the scheduled meeting.

Very Truly Yours,

Rochelle Johnson
President
Board of Trustees

I request that the charges against me be considered by the Board of Trustees in an open session at its meeting of Tuesday, November 15, 2016, beginning at 6:00 p.m.

Date and Time

Rodney Parsons

2. PERFORMANCE EVALUATIONS

A legislative body's consideration of an employee's performance evaluation does not constitute a hearing of complaints or charges against an employee even if negative aspects of performance are considered. In addition, a legislative body's evaluation of performance in a closed session is not limited to the formal, periodic review of the employee's job performance. Rather, evaluation of performance in closed session may include an examination of particular instances of job performance, consideration of the criteria for such evaluation, the process for conducting the evaluation, and other preliminary matters which constitute an exercise of the body's discretion in evaluating a particular employee.¹⁰⁹ There is case law which supports the ability of a legislative body to take action to not extend a probationary employee's employment in closed session following review of an adverse performance evaluation even if the posted agenda does not list "public employee discipline/dismissal/release."¹¹⁰

There may be instances when the legislative body considers specific complaints, charges or accusations along with adverse aspects of a performance evaluation. Because complaints, charges or accusations against the employee are being discussed, the employee is entitled to 24 hours advance notice of hearing and the right to hear the complaints/charges in open session.¹¹¹

LCW Practice Advisor

It is very likely that complaints, charges or accusations will be raised during the discussion of an adverse performance evaluation. For example, if the issue of absenteeism arises from a performance evaluation, there may also be a corresponding accusation raised against the employee by staff during the closed meeting. In such cases, the conservative approach is for the legislative body to broadly agendaize the item to include a reference to the complaints or charges that correspond to the adverse items in the performance evaluation and provide the affected employee with 24 hours written notice.

*Moreno v. City of King*¹¹²

The City Council held a special meeting to discuss a single item in closed session. The single item was listed on the agenda as "Per Government Code Section 54957: Public Employee (employment contract)." During the meeting,

the council discussed the employment of the Finance Director and heard accusations of his misconduct. The Finance Director was not provided with any notice that his employment would be discussed at the meeting. One week after the meeting, the Finance Director was terminated by the City Manager. The Finance Director commenced a lawsuit against the City alleging wrongful termination and that the City Council violated the Brown Act. He also timely demanded that the Council cure or correct its failure to indicate in its earlier agenda that it would consider action to terminate his employment. Although the City Council violated the Brown Act by failing to properly list the item on the agenda (should have listed on the agenda as “Public Employee Dismissal”) and by failing to provide advanced notice to the Finance Director that charges and complaints would be discussed (*i.e.* 24 hours written notice), the demand to cure does not apply. This is because when there is a failure to give an employee advance notice of a hearing on specific complaints or charges, the disciplinary action taken in closed session is already automatically null and void. Thus, there is no reason to cure.

SAMPLE 24 HOURS’ NOTICE TO EMPLOYEE THAT ADDRESSES PERFORMANCE EVALUATION AND COMPLAINTS OR CHARGES

Notice of Right to Have Charge(s) Heard in Open Session Pursuant to Gov. Code section 54957

Dear Mr. Chang:

A regularly scheduled Sunshine Valley Community College District Board of Trustees meeting will be taking place on Tuesday, November 12, 2013 at 1:00 p.m. at the Administration Building, Room 100, 777 Happy Lane, Sunshine, CA 00001. The meeting includes a closed session item that involves discussion of your employment with the District. Specifically, the Board will discuss performance issues which may include complaints, including, but not limited to your excessive absenteeism and possible sick leave abuse. In accordance with Government Code section 54957(b)(2) you are hereby provided with notice that these performance issues which may include complaints will be discussed by the Board in closed session, and that you have the right to have such matters discussed in open session, rather than in closed session.

If you desire to have the performance issues which may include complaints considered by the Board in an open session, please sign this form below indicating your desire to have such matters considered in open session, and return the signed form to me, as President of the Board, prior to the time of the scheduled meeting. You may return the signed form to me by facsimile at (310) 555-0001 or by email at s.galvez@sunshineccd.edu. Please be advised that if you do not request that the performance issues which may include complaints be considered in an open session prior to the commencement of the scheduled meeting, such matters will be considered by the Board in closed session.

Very Truly Yours,

Sherry Galvez
President of the Board of Trustees

I request that the performance issues which may include complaints regarding my employment with the City be considered by the Board of Trustees in an open session at its meeting on Tuesday, November 15, 2016, at 1:00 p.m.

Date and Time

David Chang

3. COMPENSATION AND SALARY SETTING

The legislative body may not discuss or act on proposed compensation in closed session except for a reduction of compensation that results from imposition of discipline.¹¹³ However, compensation of represented employees and individual, unrepresented employees, including senior management may be addressed in closed session with the local agency's designated representative.¹¹⁴

Legislative bodies are prohibited from holding a special meeting regarding the salary, salary schedule, or other form of compensation for any local agency executive.¹¹⁵

4. PROBATIONARY EMPLOYEES

The legislative body's review of a probationary employee to determine whether the employee will pass probation does not involve "complaints or charges" and the employee has no right to 24 hours' notice or to be present in a closed session.¹¹⁶

*Fischer v. Los Angeles Unified School District*¹¹⁷

Members of school district Board may meet and discuss whether to employ a teacher at the conclusion of his/her probationary period. The Board may meet in closed session and the employee may not require that the discussion be held in public.

5. SPECIFIC EMPLOYEES

Personnel matters discussed must relate to specific individuals.¹¹⁸ Discussions that relate to a broad classification of employees must be held in open session (unless instructions are being given to a labor negotiator).¹¹⁹

EXAMPLE

The Sunshine School District's maintenance workers (a classification of employees) are currently faced with a workload dilemma because of

understaffing. The District's Board of Trustees is planning to meet and discuss the workload problem to determine what the available options are. The Board should discuss this issue in open session because the personnel exception of the open meeting requirement does not apply. Regarding the issue of personnel workload, exercising the personnel exception would only be proper if the Board discusses the workload of a particular employee.

6. EMPLOYMENT STATUS

The personnel exception also authorizes closed sessions to consider the employment of a public employee including matters relating to an employee's return from leave of absence such as the extent of the employee's right to return, the duties or position he may assume, and the potential displacement and proper reassignment of other employees.¹²⁰

C. LABOR NEGOTIATIONS

A legislative body may hold a closed session meeting with the local agency's designated representatives regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of its represented and unrepresented employees for the purpose of reviewing the legislative body's position and instructing the local agency's designated representatives. For represented employees, any matter within the statutorily provided scope of representation may be discussed.

The following guidelines and limitations apply:

- Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. A legislative body may also meet with a state conciliator who has intervened in the proceedings.
- The legislative body may hold a closed session with the local agency's designated representative and discuss an agency's available funds and funding priorities, but only insofar as the discussions relate to providing instructions to the local agency's designated representative.
- The legislative body may not act on the proposed compensation of one or more unrepresented employees in closed session.¹²¹

D. REAL PROPERTY TRANSACTIONS

The legislative body may hold a closed session with its negotiator prior to the purchase, sale, exchange or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease. However, the following limitations apply:

- Prior to the closed session, the legislative body of the local agency must hold an open and public session in which it identifies its negotiators, the

real property or properties which the negotiations may concern, and the person or persons with whom its negotiator may negotiate.¹²²

- As previously discussed, the legislative body may not decide or agree upon matters in closed session that are subject to the open meetings requirements of the Brown Act. For example, the legislative body cannot agree to rescind disapproval of a proposed final subdivision map or agree to grant zoning concessions in exchange for an agreement to donate property.¹²³

The real-estate-negotiations exception permits closed-session discussion of the following:

- the amount of consideration the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred in the particular transaction;
- the form, manner, and timing of how that consideration will be paid; and
- items essential to arriving at the authorized price and payment terms, such that their public disclosure would be tantamount to revealing the information that the exception permits to be kept confidential.¹²⁴

The agenda item must specify the property, identification of agency negotiator, names of negotiating parties, and whether the negotiation concerns, price, terms of payment, or both. The Attorney General has rendered an opinion that the word “terms” is modified by “of payment” which rules out the possibility that all terms of the transaction as a whole may be discussed under the exception.¹²⁵

The Attorney General concluded that “a closed-session discussion regarding price or terms of payment must allow a public agency to consider the range of possibilities for payment that the agency might be willing to accept, including how low or how high to start the negotiations with the other party, the sequencing and strategy of offers or counteroffers, as well as various payment alternatives. Information designed to assist the agency in determining the value of the property in question, such as the sales or rental figures for comparable properties, should also be permitted, because that information is often essential to the process of arriving at a negotiating price.”¹²⁶

E. SECURITY THREATS AND PUBLIC SAFETY

A legislative body may hold a closed session with the attorney general, district attorney, sheriff, chief of police or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public’s right of access to public services or public facilities.¹²⁷

F. REVIEWING LICENSE APPLICATIONS OF AN INDIVIDUAL WITH A CRIMINAL RECORD

The legislative body may hold a closed session to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the

license. The closed session may include the applicant and the applicant's attorney, if any. If, as a result of the closed session, the legislative body determines that the issuance or renewal of the license should be denied, the applicant must be offered the opportunity to withdraw the application. If withdrawn, no record may be kept of the discussions or decisions made at the closed session, and all matters relating to the closed session must be kept confidential. If the applicant does not withdraw the application, the legislative body must take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license. However, all matters related to the closed session are confidential and may not be disclosed without the applicant's consent, except in an action by an applicant who has been denied a license, challenging the denial of the license.¹²⁸

G. HEALTH PLANS AND TRADE SECRETS

The governing board of a health plan that is licensed pursuant to the Knox-Keene Health Services Care Act and that is governed by a county board of supervisors may conduct a closed session meeting for the purpose of discussion or taking action on health plan trade secrets. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present may be limited to a brief general description without the information constituting the trade secret.¹²⁹

H. CHARGES OR COMPLAINTS FROM MEMBERS OF THE LOCAL AGENCY HEALTH PLAN

The legislative body of a local agency which provides services pursuant to Welfare and Institutions Code § 14087.3 (Medi-Cal managed health care plan) may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his/her name, medical status or other information that is protected by federal law, publicly disclosed. Prior to holding a closed session, the legislative body must inform the member, in writing, of his or her right to have the charge or complaint heard in open session rather than closed session.¹³⁰

I. JOINT POWERS AGENCY OR LOCAL AGENCY SELF-INSURANCE AUTHORITY FORMED FOR INSURANCE POOLING LIABILITY

A joint powers agency formed for purposes of insurance pooling or a local agency member of a joint powers agency, and a local agency self-insurance authority or a local agency member of the authority may hold a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency.¹³¹

J. MULTI-JURISDICTIONAL DRUG LAW ENFORCEMENT AGENCY

The legislative body of a multi-jurisdictional drug law enforcement agency, or an advisory body of such agency may hold closed sessions to discuss the case records of any ongoing criminal investigation of the agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.¹³²

A. AGENDA DESCRIPTIONS FOR CLOSED SESSION ITEMS

The agenda must include items to be discussed in closed session. The formats for describing closed session items vary and depend on the item. Section 54954.5 provides descriptions for the various closed session items. The legislative body of a local agency is not in violation of the agenda requirements under the Brown Act so long as the closed session items are described in “substantial compliance” with the descriptions provided by Section 54954.5. Substantial compliance is satisfied by including the information provided below, irrespective of format.

With respect to a closed session held pursuant to § 54956.7 (License or Permit Determination):

License/Permit Determination:

Applicant(s): _____
(Specify number of applicants)

With respect to every item of business to be discussed in closed session pursuant to § 54956.8 (Conference with Real Property Negotiators):

Conference with Real Property - Negotiator

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 to 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 all open sessions held prior to the closed session.)*

Negotiating Parties: _____
(Specify name of party (not agent).)

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

With respect to every item of business to be discussed in closed session pursuant to § 54956.9(a) (Conference with Legal Counsel- Existing Litigation/Anticipated Litigation):

Conference with Legal Counsel – Existing Litigation

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 Section 54956.9(d)(2): _____
(Specify number of potential cases)

Initiation of litigation pursuant to Section 54956.9(d)(4): _____
(Specify number of potential cases)

LCW Practice Advisor

For conferences with legal counsel regarding anticipated litigation, in addition to information noted above, the agency should consider including specific references to Section 54956.9(d)(1-4) where applicable. These subsections relate to specific instances where the local agency is significantly exposed to litigation (e.g. section 54956.9(d)(2) – in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is significant exposure to litigation against the local agency). Under Section 54956.9(e)(2), where the facts and circumstances that might result in litigation against the agency *are known* to the potential plaintiff(s), the facts and circumstances shall be publically stated on the agenda or announced. For example, the above sample regarding conference with legal counsel – anticipated litigation may read, “One potential action involving significant exposure to litigation pursuant to Section 54956.9(d)(2); facts and circumstances are known under Section 54956.9(e)(2) –breach of contract claim by Acme Construction.”

With respect to every item of business to be discussed in closed session pursuant to § 54956.95 (Liability Claims):

Liability Claims

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

Agency claimed against: _____
(Specify name)

With respect to every item of business to be discussed in closed session pursuant to § 54957 (Threat to Public Services or Facilities; Public Employee Appointment; Public Employment; Public Employee Performance Evaluation; Public Employee Discipline/Dismissal/Release):

Threat to Public Services or Facilities

Consultation with: _____
(Specify name of law enforcement agency and title of officer or name of applicable agency representative and title)

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. Discipline includes potential reduction of compensation.)

With respect to every item of business to be discussed in closed session pursuant to § 54957.6 (Conference with Labor Negotiator):

<p><u>Conference with Labor Negotiator</u></p> <p>Agency designated representatives: _____ <i>(Specify names of designated representatives attending the closed session)</i></p> <p>Employee Organization: _____ <i>(Specify name of organization representing employee or employees in question)</i></p> <p>OR</p> <p>Unrepresented employee(s): _____ <i>(Specify position or title of unrepresented employee who is the subject of the negotiations)</i></p>
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With respect to every item of business to be discussed in closed session pursuant to § 54956.86:

<p><u>Charge or Complaint Involving Information Protected by Federal Law</u></p> <p>(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86)</p>
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B. ANNOUNCEMENT BEFORE CLOSED SESSIONS

Before conducting a closed session, the legislative body must announce in open session the items to be discussed in closed session and state the general reasons for the closed session. This disclosure may be made by referring to the agenda (may take the form of a reference to the items as they are listed by number or letter on the agenda) *or* it may be made orally.¹³³

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For certain items, the legislative body may want to consider providing disclosure of items to be discussed in closed session by oral announcement as opposed to providing specific facts or circumstances on the posted agenda. The disadvantages are that this practice may make announcements time consuming and there is a risk of inadvertent omissions.

When applicable, the body should cite the statutory authority or other legal authority under which the closed session is being held. This announcement may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements. In the closed session, the legislative body may consider only those matters covered in its statement.¹³⁴

Sample Call for a Closed Session in Accordance with Government Code §§ 54956.8 and 54956.9(a) and (d)[(1), (2), (3) and/or (4), as appropriate]

I move to adjourn or recess to closed session in accordance with Government Code §§ 54956.8, 54956.9(a) and (d) [(1), (2), (3) and/or (4), as appropriate] on the ground that the Board will meet in closed session to receive advice from its attorney regarding the following pending litigation:

- 1) *Lopez v. Sunshine Valley Community College District* - Case No. 633451, Pending Litigation;
- 2) Significant exposure to litigation against the District – breach of contract claim by Acme Construction; and/or
- 3) Decision by the District whether to initiate litigation.

The Board will also meet in closed session to grant authority to its designated negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease of the following property:

Lot 10-234 located at 463 Farmsland Lane, Sunshine, CA 00001

[Note: This announcement must be made in conjunction with the closed session descriptions which are required to be included in the agenda, or publicly announced.]

C. MINUTE BOOK RECORD

A legislative body may designate a clerk or other officer or employee to attend each closed session and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book is *not* a public record pursuant to the California Public Records Act and is confidential. It is only available to members of the legislative body or to a court (if a violation of the Brown Act is alleged to have occurred). The minute book may, but need not, consist of a recording of the closed session.¹³⁵ The minutes of an improper closed session are not confidential.¹³⁶

D. ATTENDEES

Closed meetings should usually involve only the members of the legislative body of the local agency. A legislative body may not conduct a “semi-closed” session by permitting some members of the public to attend the meeting while excluding others. It may, however, allow any additional support staff required or witnesses who have an official or essential role to play in the closed session meeting. Individuals not necessary to the meeting should be excluded.

EXAMPLE

A community college district board may permit an applicant for disability retirement and his/her representative to attend a closed session at which the applicant’s medical records are discussed and evaluated.¹³⁷

E. PUBLIC REPORT OF ACTION TAKEN

After the closed session, the legislative body must reconvene into open session prior to adjournment and report the actions taken in the closed session. Reports may be made orally or in writing.

1. REPORTS OF ACTION

The nature of the report depends on the type of action taken.

Real Property Negotiations – The legislative body must report in open session the approval and substance of an agreement that concludes real estate negotiations of the purchase, sale, lease, or exchange of real property. If final approval rests with the other party to the negotiations, the local agency must disclose the fact of that approval and the substance of the agreement upon public inquiry.¹³⁸

Seeking Appellate Review; Amicus Curie – The legislative body must report in open session the approval given to legal counsel to defend, seek or refrain from seeking appellate review, or to enter as an amicus curie in any form of litigation. The report must identify the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action or the defendants. The report must specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon public inquiry. The body must report out unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.¹³⁹

Settlement of Litigation – The legislative body must report in open session the approval given to its legal counsel of a settlement of pending litigation after the settlement is final. If the legislative body accepts a settlement offer signed by the opposing party, the body must report its acceptance and identify the substance of the agreement. If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final and upon public inquiry, the local agency must disclose the fact of that approval and identify the substance of the agreement.¹⁴⁰

Disposition of Claims – The legislative body must report in open session approval given to dispose of claims regarding tort liability claims, public liability losses or workers' compensation liability. In addition, the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant must be identified.¹⁴¹

Personnel Decisions – The legislative body must report in open session action taken to appoint, employ, dismiss, accept the resignation of, or otherwise

affect the employment status of a public employee. The title of the position of the affected employee must be identified. The report of a dismissal or of the non-renewal of an employment contract must be deferred until the first public meeting following the exhaustion of administrative remedies, if any.¹⁴²

Labor Negotiations – The legislative body must report in open session the approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party. The report must identify the item(s) approved and the other party or parties to the negotiation.¹⁴³

Pension Fund Transaction – The legislative body must report in open session any pension fund investment transaction decisions after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.¹⁴⁴

An employee or former employee implicated in the public report may not commence an action for injury to a reputational, liberty or other personal interest for disclosures made pursuant to the Brown Act by the legislative body in the report.¹⁴⁵

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If a local agency lets its opponent in a lawsuit approve the settlement last, then the agency will not have to report out and will only have to report out the fact of the settlement and the substance of the agreement upon request by a member of the public.

LCW Practice Advisor

If a local agency settles an appeal of discipline by an employee, the agency must report the fact of the agreement and any action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session.

Hypothetical: An employee is accused of misconduct. The employee is entitled to an appeal hearing pursuant to the terms of the negotiated agreement with the exclusive representative. The employee agrees to resign in return for \$15,000 and continuation of her health benefits for six months.

The agency must report out substantially as follows: In closed session the Board took action to accept the resignation of [title of position] pursuant to an agreement whereby the employee will receive a payment of \$15,000 and will retain health benefits to which she was entitled during her employment for six months after her resignation.

LCW Practice Advisor

A local agency must defer the reporting out of a dismissal or of the nonrenewal of an employment contract until the first public meeting following the exhaustion of administrative remedies, if any. Thus if the employee has some form of due process challenge to the decision, the agency may only report out the decision when the challenge is complete.

2. PUBLIC REQUESTS FOR REPORTS

If a person requesting the report is present at the time the closed session ends and has submitted a written request within 24 hours of the posting of the agenda, or has a standing request for documentation as part of a request for notice of meetings, the legislative body must provide that person with copies of any contracts, settlement agreements or other documents that 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. But, the presiding officer of the legislative body must orally summarize the substance of the amendments for the benefit of the document requester.¹⁴⁶

The documentation must be available to the requester on the next business day following the meeting in which the action is taken or, in the case of substantial amendments, when any necessary retyping is complete.¹⁴⁷

F. NO DISCLOSURE OF PERSONAL RECOLLECTIONS

Closed session meetings that are subject to the Brown Act are confidential, and disclosure of the personal recollections of participating members cannot be compelled in discovery.¹⁴⁸ Furthermore, individual members of a legislative body are not permitted to disclose confidential information from a closed session unless authorized by law to do so.¹⁴⁹

G. DISCLOSURE OF CONFIDENTIAL INFORMATION

A person may not disclose confidential information that was acquired by being present in a closed session to any person not entitled to receive it.¹⁵⁰ “Confidential information” means a communication made in a closed session that is specifically related to the basis for the meeting of the legislative body.¹⁵¹ Any person who improperly discloses confidential information may be subject to the following sanctions:

- Injunctive relief to prevent disclosure of confidential information;
- Disciplinary action against an employee who has willfully disclosed confidential information; or
- Referral of a member of a legislative body who has willfully disclosed confidential information to the grand jury.¹⁵²

Before an employee is disciplined, as above, the employee must have received training as to the disclosure requirements or otherwise have been given notice of the requirements.¹⁵³

An individual may disclose confidential information acquired in a closed session under the following circumstances:

- The individual makes a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of the Act, including the disclosure of facts that are necessary to establish the illegality of an action taken;
- The individual is expressing an opinion concerning the propriety or legality of actions taken by a legislative body including disclosure of the nature and extent of the illegal or potentially illegal action; or
- The individual discloses information acquired by being present in a closed session that is not confidential information.¹⁵⁴

In addition, the Act does not prohibit disclosures under the whistleblower statutes contained in Labor Code Section 1102.5 or Government Code Section 53296, *et seq.*¹⁵⁵

Section 10 **REMEDIES FOR VIOLATION OF THE BROWN ACT**

A member of a legislative body who intends to deprive the public of information which the member knows or has reason to know the public is entitled to commits a misdemeanor if the legislative body takes action in violation of the Brown Act.¹⁵⁶

A. PREVENTING VIOLATIONS OF THE ACT

The district attorney or any interested person may bring an action (*e.g.* by writ of mandamus, injunction or declaratory relief) to:

- Prevent violations or threatened violations of the Act by a legislative body;
- Determine the applicability of the Act to actions or future actions;
- Determine whether an action by the body to penalize or discourage expression by one of its members is valid or invalid; or
- Compel the body to tape record its closed session.¹⁵⁷

Sacramento Newspaper Guild v. Sacramento County Bd. of Sup'rs¹⁵⁸

Five of seven county board supervisors, the county counsel, the county executive officer and members of the AFL-CIO met at a luncheon to discuss an anticipated strike by a union against the county and the county's strategy to prevent the strike. Local newspaper reporters sought but were denied access to

the luncheon. Soon after the luncheon, the local newspaper brought an action for a determination by the court if future similar meetings are considered closed session meetings under the Brown Act and an injunction to prevent future violations of the Act through such meetings.

B. CORRECTING AND CURING AN UNLAWFUL ACTION

The district attorney or any interested person may bring an action (*e.g.* by writ of mandamus or injunction) to obtain a determination that an action taken by a legislative body that violates the Act is null and void. In order to bring such an action, the following guidelines and limitations apply:

- Prior to bringing the action to nullify the action, the district attorney or interested person must make a written demand to the legislative body to cure or correct the alleged violation.
- If the violation occurred during open session, the written demand must be made within 30 days. For all other violations, the written demand must be made within 90 days.
- Within 30 days of receipt of the written demand, the legislative body must cure or correct the challenged action or inform the demanding party in writing of its decision to not cure.
- The demanding party must commence an action to obtain a determination within 15 days of receipt of the written notice of the body's decision to not cure or within 15 days of the expiration of the 30 day period for the body to cure, whichever date is earlier.
- If the court determines that the body properly cured or corrected the challenged action by subsequent action, the court will dismiss with prejudice the lawsuit by the demanding party.
- The fact that a legislative body takes a subsequent action to cure or correct an action taken shall not be construed or admissible as evidence of a violation of the Act.¹⁵⁹

LCW Practice Advisor

To cure or correct a challenged action, the legislative body may simply ratify the challenged action in a subsequent open session meeting with the questioned action properly on the agenda.

C. PREJUDICE IS NECESSARY TO VOID UNLAWFUL ACTION

Even where a plaintiff, who brings an action to void or nullify an action taken by a legislative body that violated the Act, has satisfied the threshold procedural requirements to void or nullify the action, in order to void or nullify the action, the plaintiff must also show that he/she was prejudiced by the violation of the Act.¹⁶⁰

*Galbiso v. Orosi Public Utility District*¹⁶¹

In advance of the decision by the District Board to proceed with a tax sale of two parcels of real property with unpaid improvement assessments, attorneys for the District made a public announcement in the newspaper indicating that the District would be pursuing a tax sale or a foreclosure remedy. After the Board decided to pursue the tax sale remedy, the owner of the property filed a civil action against the District requesting that the court prevent the tax sale. The owner alleged that the District *already* decided to proceed with the tax sale in advance of the public meeting on the issue and that the Board violated the Brown Act. The court rejected the owner's claim and dismissed the action holding that the owner failed to allege any facts to suggest that he was prejudiced in any way by the alleged Brown Act violation. Moreover, the court noted that both sides were well aware of the other side's position and arguments regarding the sale of the properties.

D. DISCOVERY OF CLOSED SESSION TAPES

After a judgment that a legislative body violated the Brown Act, the court may order the body to tape record its closed sessions and preserve the tape recordings for a period and under the terms of security and confidentiality the court deems appropriate. Such tapes may be subject to discovery in a subsequent action for violation of the Act. The party seeking discovery of the tape recording of the closed session must file a written notice of motion with the court and provide notice of the motion to the local agency which has custody of the tape.¹⁶²

E. COSTS AND ATTORNEY FEES FOR VIOLATING THE ACT

If the Court finds there was a violation of the Brown Act, it may award court costs and reasonable attorney fees to the prevailing plaintiff. The costs and fees must be paid by the local agency and is not a personal liability of any public officer or agency employee. A court may award court costs and attorney fees to a defendant in an action regarding a Brown Act violation where the defendant prevails and the court finds that the action was clearly frivolous and totally lacking in merit.¹⁶³

Section 11 **THE MADDY ACT**

The Maddy Act, contained in Government Code § 54970, *et seq.*, provides the procedural requirements that must be met to fill a vacancy for an appointed position. The purpose of this Act is to give notice to the general public of an appointment vacancy so that all members of the public have an opportunity to apply for the position. The following guidelines apply:

- Local Appointment List – On or before December 31 of each year, each legislative body must prepare a “Local Appointment List.” The list contains the list of appointments for all regular and ongoing boards, commissions, and committees of the local agency of the legislative

body. It must include: (1) a list of all appointment terms which will expire during the next calendar year; (2) the name of the incumbent appointee, date of appointment, date the term expires, and necessary qualifications for the position; and (3) a list of all boards, commissions, and committees who serve at the pleasure of the legislative body and the necessary qualifications for each position.¹⁶⁴

- The Local Appointment List must be made available to the public for a fee. The fee must be reasonable and not exceed actual cost. The legislative body must also designate the public library that serves the largest population in the jurisdiction of the body to receive a copy of the Local Appointment List.¹⁶⁵
- In the event of an unscheduled vacancy, a special vacancy notice must be posted in the office of the clerk of the local agency, the library designated by the legislative body and in other places designated by the legislative body “not earlier than 20 days before or not later than 20 days after the vacancy occurs.” And, the legislative body must wait “at least 10 working days after the posting of the notice in the clerk’s office” before the final appointment to the board, commission or committee can be made.
- The legislature may fill an unscheduled vacancy immediately “if it finds that an emergency exists.” However, the person appointed pursuant to the emergency exception fills the position on an acting basis only until the final appointment is made pursuant to the non-emergency appointment process.¹⁶⁶

The Public Records Act

Section 1 **INTRODUCTION**

The California Public Records Act (“CPRA” or the “Act”) is contained in Government Code section 6250, *et. seq.* It provides the public with the right to access public records in the possession of public agencies.¹⁶⁷ The general policy of the Act favors disclosure and a refusal to disclose information must be justified by a specific exemption of the Act.¹⁶⁸

Disclosure of public records is not an absolute right and the Act recognizes two fundamental yet competing interests. On the one hand, the Act seeks to prevent secrecy in government. On the other hand, the Act also seeks to protect the privacy interests that are implicated for certain records.¹⁶⁹ Therefore, as discussed in greater detail below, the Act provides several exemptions to the general policy of disclosure.

The disclosure requirements of the Act serve as minimum standards for a local agency. A local agency may adopt requirements that allow for faster, more efficient or greater access to records than the requirements prescribed by the Act.¹⁷⁰

Section 2 **PUBLIC RECORDS**

A. WHAT CONSTITUTES A PUBLIC RECORD?

The Act defines public records as “any writing[s] containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”¹⁷¹ California courts have broadly construed the definition of “public records” to include any kind of record that deals with the government process or government business.¹⁷²

B. TYPES OF PUBLIC RECORDS

The following records are typical examples of “public records” in a local agency’s possession and may be subject to inspection. As discussed in greater detail below, exceptions may apply that preclude disclosure of the record.

- Financial Data;¹⁷³
- Personnel Records;¹⁷⁴
- Employment Contracts Between Local Agency and Public Official or Employee (employment contract does not include performance goals or personal references of an employee);¹⁷⁵
- Expenditures and Reimbursements;¹⁷⁶
- Minutes of Regular or Special Meeting of Legislative Body;¹⁷⁷ and
- Email, Faxes, Photographs, and Photocopies.¹⁷⁸

The following are examples of records that are not public records:

- Computer software developed by a state or local agency. However, public records stored in a computer are subject to disclosure under the Act.¹⁷⁹
- Registration and circulation records of any library supported by public funds. However, such records are subject to disclosure (1) by a person acting within the scope of his or her duties within the administration of the library, by a person authorized, in writing, (2) by the individual to whom the records pertain, to inspect the records, or (3) by order of the appropriate superior court.¹⁸⁰

Section 3 **INSPECTION OF PUBLIC RECORDS**

Public records are open for public inspection at all times during the business hours of the state or local agency.¹⁸¹

The agency may adopt regulations stating the procedures to be followed when making public records available. The Act requires that certain listed state and local agencies establish written guidelines for accessibility of public records, post such guidelines in a conspicuous public place at the office of the agency, and provide a copy of the guidelines upon request at no charge.¹⁸²

The Act requires that local agencies (except local educational entities) create a catalogue of its “enterprise systems” which are its data systems (e.g. software application or computer system) that collect, store, exchange and analyze information; and are either a multiple departmental system or a system that contains information collected about the public.¹⁸³ The agency must also post this catalogue on its agency website. Enterprise systems do not include its cybersecurity systems, infrastructure and mechanical control systems, or physical access systems.¹⁸⁴

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Effective January 1, 2016, the Act requires agencies to create a catalogue of enterprise systems and post the catalogue. Agencies must comply with these requirements by July 1, 2016. LCW recommends that agencies coordinate with their IT management and legal counsel to ensure compliance with the new law.

A. RIGHT TO EXACT COPY OF RECORD

A member of the public has a right to receive exact photocopies of public records under the following conditions:

- The request for the public record reasonably describes an identifiable record (*i.e.* not overbroad) (but see below on public's right to assistance).¹⁸⁵
- The person requesting the record provides payment of fees covering direct costs of duplication of the record.¹⁸⁶ (Counties may, through resolution, recover from the requester additional fees in the amount reasonably necessary to recover the cost of producing copies.)¹⁸⁷
- Providing an exact copy is not impracticable (*i.e.* cost of compiling and producing the record is not substantial or unreasonable).¹⁸⁸
- Computer data may be provided in a form determined by the agency and the agency is not obligated to reconstruct unavailable computer data.¹⁸⁹

Rosenthal v. Hansen¹⁹⁰

A member of the public submitted a request to the California Department of Human Resources Development that he be furnished with a copy of the Department's Benefit Determination Guide. This Guide is a multi-volume loose-leaf publication, and includes seven volumes in over 80,000 pages. Compiling and photocopying the Guide would interfere with the orderly function of the Department and create chaos at the Department.

B. RIGHT TO ASSISTANCE FROM AGENCY

To the extent reasonable, an agency must provide a records requester with assistance in order for the requester to make a focused and effective request that reasonably describes an identifiable record. An agency must:

- Assist the records requester to identify records and information that are responsive to the request or to the purpose of the request;
- Describe the information technology and physical location in which the records exist; and
- Provide suggestions for overcoming any practical basis for denying access to the records or information sought.¹⁹¹

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An agency should make sure to ask records requesters for any clarifying information that could help identify the records sought.

C. AGENCY RESPONSE TO REQUEST FOR RECORDS

The local agency must determine whether the request seeks disclosable public records in the possession of the agency and notify the person making the request of such determination and the reasons within 10 days after receipt of such request. If the agency provides a notification of denial of the request for records, it must provide the names and titles or positions of each person responsible for the denial.¹⁹²

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LCW strongly recommends that agencies provide all responses to records requests *in writing*.

D. EXTENSION FOR RESPONSE

Where unusual circumstances exist, the agency may extend the 10 day period by written notice from the head of the agency, or his or her designees, to the requesting person. This written notice must set forth the reasons for the extension and the date on which a determination is expected to be forwarded. This extension, however, may not be for more than 14 days.

“Unusual circumstances” for an extension of the response include the following:

- There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office that is processing the request.
- There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- There is a need for consultation, which must be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request among two or more components of the agency having substantial subject matter interest therein.
- There is a need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.¹⁹³

E. DENIAL OF REQUEST

If the agency denies a request for records under the Public Records Act, in whole or in part, the denial must be in writing.¹⁹⁴ The denial must set out the names and titles or positions of each person responsible for the denial.¹⁹⁵ In addition, as mentioned above, the agency must provide suggestions for overcoming any practical basis for denying access to the records or information sought.¹⁹⁶

The Act provides numerous exemptions to the disclosure requirement. However, the exemptions must be narrowly construed and the local agency should be prepared to bear the burden to prove that a specific exemption applies.¹⁹⁷

A. CATEGORIES OF EXEMPT RECORDS

The Act, specifically Government Code section 6254, provides numerous categories of public records that are exempt from the disclosure requirements of the Act. The following are categories of exempt records:

- Preliminary drafts, notes, or interagency or intra-agency memoranda that are *not* retained by the agency in the ordinary course of business. To be exempt, the public interest in withholding those records must clearly outweigh the public interest in disclosure.¹⁹⁸
- Records pertaining to pending litigation to which the agency is a party or to claims made pursuant to the Tort Claims Act. The records are exempt until the pending litigation or claim has been finally adjudicated or otherwise settled.¹⁹⁹
- Personnel, medical, or similar files are exempt if disclosure of the file would constitute an unwarranted invasion of personal privacy.²⁰⁰
- Applications, preliminary drafts, notes, interagency or intra-agency communications, and information confidentially received regarding the regulation or supervision of the issuance of securities or of financial institutions.²⁰¹
- Geological or geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.²⁰²
- Records of complaints to, investigations conducted by, or records of intelligence information or security procedures of the Attorney General and the Department of Justice, and any state or local police agency. Also exempt from disclosure under the Act are investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.²⁰³
- Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the Education Code.²⁰⁴
- The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained.²⁰⁵

- Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.²⁰⁶
- Library circulation records kept for the purpose of identifying the borrower of items available in libraries and library and museum materials made or acquired and presented solely for reference or exhibition purposes. This exemption does not prohibit the disclosure of fines imposed on the borrowers.²⁰⁷
- Records which are exempted or prohibited pursuant to provisions of federal or state law, including but not limited to, Evidence Code provisions relating to privilege.²⁰⁸
- Correspondence of and to the Governor or the employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary. This exemption is subject to the provision that the public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provision of this chapter.²⁰⁹
- Records in the custody of or maintained by the Legislative Counsel.²¹⁰
- Statements of personal worth or personal financial data required by a licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.²¹¹
- Financial data contained in applications for financing under the Health and Safety Code, where it has been determined by an authorized officer of the California Pollution Control Financing Authority that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration.²¹²

B. PERSONNEL FILES

The Act exempts from disclosure personnel, medical or similar files (*e.g.* personnel evaluations, home address, social security number, medical history) when disclosure of such files would constitute an unwarranted invasion of personal privacy.²¹³ In determining whether this exemption applies, courts weigh the public's interest in disclosure against protection of personal privacy interests.²¹⁴

The following are examples of personnel records that do not constitute an unwarranted invasion of personal privacy and *must be disclosed*.

- Names, job titles, and salaries of employees;²¹⁵
- Salary ranges of unidentified employees;²¹⁶
- Names and pension amounts of pensioners;²¹⁷

- Employment agreements;²¹⁸
- Severance agreements;²¹⁹
- Names of employees granted a criminal conviction exemption to work at a licensed day care facility;²²⁰
- Address of record for state-employed physicians;²²¹
- Names of police officers who fired shots at a citizen;²²²
- Letters which appointed and then rescinded the appointment of an individual to a city position;²²³
- Certain investigation or disciplinary records that reflect allegations of a substantial nature (e.g. alleged sexual or violent conduct).²²⁴

Marken v. Santa Monica-Malibu Unified School District²²⁵

A parent of a high school student made a CPRA request seeking personnel records of a teacher who was the subject of an investigation involving allegations of sexual harassment of a student. The court held that the teacher occupies a position of trust and responsibility. Hence, the public has a legitimate interest in knowing whether and how a school district enforces its sexual harassment policy. In light of the investigator’s findings that a number of the alleged acts “more likely than not” occurred and the District’s conclusion that the teacher violated its sexual harassment policy, the public’s right to know outweighed the teacher’s privacy interest in shielding the information from disclosure.

BRV v. Superior Court²²⁶

A school district entered into a severance agreement with its superintendent after an investigation was conducted involving allegations of verbal abuse of students and sexual harassment of female students. The investigator found that the allegations were not sufficiently reliable. As part of the agreement, the district agreed to seal the investigation report and related documents. From the public’s viewpoint, the district appeared to have entered into a “sweet heart” deal to buy out the superintendent without having to respond to allegations of misconduct. A newspaper made a CPRA request seeking the investigation report. The court held that the superintendent had a significantly reduced expectation of privacy as a public official, and that the public’s interest in disclosure outweighed his privacy interests given his position of authority and the public nature of the allegations. In addition, the court noted that even though the allegations were deemed not sufficiently reliable, a lesser standard of reliability applied than would otherwise apply for a nonpublic official. The public had a right to know why the superintendent was exonerated and how the district dealt with the charges against him.

C. PENDING LITIGATION

The Act exempts from disclosure records pertaining to pending litigation to which the agency is a party and claims made pursuant to the Tort Claims Act.²²⁷ Records are exempt from disclosure under this exemption under the following conditions:

- The document is specifically prepared for use in litigation²²⁸ (includes work product of both the public entity and its attorney).²²⁹
- The document is litigation-related (e.g., correspondence, communications, etc. prepared by, or sent to opposing counsel) and the parties intend that the document will not be shared outside of the litigation.²³⁰
- The pending litigation exemption does not exempt records from disclosure once litigation has concluded (*i.e.* final adjudication or settlement).²³¹
- Although the pending litigation exemption does not exempt billing and payment records reflecting attorney's fees of an agency to defend itself in litigation, such records may be exempt from disclosure pursuant to the attorney-client privilege.²³²

The actual claim that is filed under the Tort Claims Act is not, however, exempt from disclosure.²³³

D. PEACE OFFICER RECORDS

Peace officer personnel records and records of complaints against officers by citizens are confidential²³⁴ and may not be disclosed except by a discovery procedure known as a *Pitchess* discovery motion (filed by a criminal defendant).²³⁵ Such records are exempt from disclosure under the Act as privileged information that is prohibited from disclosure pursuant to federal or state law, specifically the Evidence Code relating to privilege.²³⁶

*Pasadena Police Officers Assoc. v. Superior Court*²³⁷

A CPRA request sought disclosure of a report prepared by an independent consultant retained by a police department to review departmental policies after an officer involved shooting. The court held that portions of the report culled from personnel information or officers' statements made in the course of the department's administrative investigation of the shooting are protected by the *Pitchess* statutes that render personnel records of peace officers confidential. However, other portions of the report, including analyses of the department's administrative investigation and departmental policies, and recommendations by the consultant, which do not constitute or relate to employee appraisal, are not. Accordingly, the court held that certain portions of the report are exempt from disclosure under the CPRA and ordered those portions redacted.

E. RECORDS AND INFORMATION MAINTAINED BY A POLICE DEPARTMENT

1. RECORDS

The following types of law enforcement records may generally not be released in whole, though certain information in these records may be disclosed as described in subsection b. below.

- Records of complaints to the department;
- Records of investigations conducted by the department;
- Records of intelligence information or security procedures;
- Investigatory or security files compiled by the department;²³⁸
- Records of child abuse, child molestation, elder abuse, and crimes involving juveniles as a suspect and/or victim;²³⁹ and
- Criminal history report of any individual obtained from CLETS and/or the DOJ.²⁴⁰

However, these law enforcement records may generally be released in whole:

- Traffic accident reports to persons with a “proper interest therein,” including, but not limited to drivers, injured persons, insurance representatives, and owners of vehicles or damaged property;²⁴¹ and
- Initial property crime reports involving destruction or loss of property may be released including a list or description of the property.
 - The name, address, and other identifying information of arrestees or suspects may be redacted if releasing the information would jeopardize the investigation.²⁴²

2. INFORMATION

Notwithstanding that certain records are exempt from disclosure, the general public, victims, and the press may be provided certain information in those records. Except in the circumstances set forth in subsection e. below, all of the following information may be disclosed to the person(s) described:

a. Information Requested by a Victim

A person identified as the victim in an incident report; an authorized representative of a victim; an insurance carrier against which a claim has been or might be made; or a person suffering bodily injury or property damage/loss as a result of an incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, an act of terrorism, or other misdemeanor or felony may obtain all of the following information:

- Names and addresses of persons involved and witnesses to the incident (other than confidential informants);
- The description of any property involved;
- Date, time, and location of the incident;
- All diagrams; and
- All statements of parties and witnesses (other than confidential informants) involved in the incident.²⁴³

b. Arrest Information

Any member of the public may be provided the following arrest information:

- Name and occupation of every individual arrested by the department;
- The arrestee’s physical description including date of birth, color of eyes and hair, sex, height and weight;
- The time and date of arrest;
- Time and date of booking;
- Location of arrest;
- Factual circumstances surrounding the arrest;
- Amount of bail set;
- Time and manner of release or the location where the arrestee is currently being held; and
- All charges upon which the arrestee is being held.²⁴⁴

c. Complaint Information

In addition, any member of the public may obtain the following complaint information:

- Time, substance, and location of all complaints or requests for assistance received by the department;
- Time and nature of the response to a complaint or request for information;
- If in response to a complaint or request for assistance a record is made of a possible crime or incident investigated, the requester may also obtain:
 - Time, date, and location of occurrence;
 - Time and date of the report;
 - Factual circumstances surrounding the crime or incident;
 - General description of injuries, property or weapons involved; and
 - Name and age of victim.²⁴⁵

- The name of a victim who is a minor should be withheld. The name of an adult victim may be withheld if requested by the victim and the crime involved is a potential violation of any of the following:
 - Penal Code sections: 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a-c, 266e-f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6

d. Press Requests

In addition to the arrest and complaint information available to any member of the public described above, members of the press may also obtain certain information if the person declares under penalty of perjury that:

- The request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator; and
- The information will not be used to sell or furnish to others a product or service.

A member of the press may obtain the additional following information:

- Current address of every individual arrested by the agency; and
- Current address of the victim of a crime.
 - The address of a victim who is a minor should be withheld. The address of an adult victim shall remain confidential if the crime involved was any of the following:
 - Penal Code sections: 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a-c, 266e-f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6²⁴⁶

e. When Information Should Not Be Released

Regardless of whether information may be disclosed above, in no event should information be disclosed which:

- Would endanger the successful completion of the investigation or a related investigation;
- Would endanger the safety of a witness or other person involved in the investigation;
- Reflects the analysis or conclusions of the investigating officer;
- Discloses the name, address, telephone number, and date of birth of any minor;

- Discloses the name, address, telephone number, and other identifying information of a confidential informant;²⁴⁷
- Discloses a report of child abuse, child molestation, elder abuse, and crimes involving juveniles as a suspect and/or victim;²⁴⁸
- Discloses to a criminal defendant or members of their family, the address, and telephone number of a victim or witness to a crime (generally, criminal defendants should be directed to make requests for information to the District Attorney’s office, rather than directly to the law enforcement unit);²⁴⁹ or
- Where the public interest served by not making the information or record public clearly outweighs the public interest served by disclosure of the information or record.²⁵⁰

Federated University Police Officers Ass’n v. Superior Court of Alameda (Los Angeles Times Communications LLC)²⁵¹

A newspaper made a CPRA request to gain unredacted versions of two reports by an independent task force set up by a public university to investigate a campus incident involving the use of pepper spray by campus police against protesting students. The court held that the names of the officers named in the reports must be disclosed pursuant to the CPRA request because the reports are not confidential personnel records, records of a citizen complaint, or records revealing information about the discipline of an officer. Rather, the reports relate to identities and conduct of the police *in general* during a high-profile incident that was under review for the purpose of undertaking a system-wide review of police procedures.

New York Times v. Superior Court²⁵²

A concerned local citizen submitted a CPRA request to the City for the names of the City police officers who fired their weapons during an officer related shooting, whereby a private citizen was shot and killed. Given the seriousness of the incident involved, in the absence of strong evidence that a specific officer’s safety is jeopardized by disclosure of his/her name, the officers’ names are likely to be ordered to be disclosed if the issue was presented to a court. The court concluded that the public interest for disclosure outweighed the right of sheriff’s deputies to have their names withheld.

F. CATCH-ALL EXEMPTION

The Act provides a “catch-all” exemption that a local agency may exercise to withhold any record. The agency must demonstrate that based on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.²⁵³

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When making the determination on whether or not the public interest is served by disclosure, the agency should attempt to determine whether disclosure of the information will assist the public in determining if the agency is properly performing its functions related to the purpose of the inquiry.²⁵⁴

Courts interpret this exemption on a case-by-case basis by applying a balancing test that weighs the public interest in disclosure against the public interest in nondisclosure.²⁵⁵ The agency carries the burden of proof of demonstrating a clear overbalance on the side of not disclosing the records.²⁵⁶

*Caldecott v. Superior Court*²⁵⁷

A former executive director of human resources of a school district was terminated without cause after filing a complaint against the superintendent that included allegations of hostile work environment, improperly approving and recommending compensation increases, and incorrectly reporting income used to calculate retirement income. A CPRA request was made for copies of the district's response to the complaint against the superintendent. The court held that the catch-all exemption did not apply to prevent disclosure of the response because there was no evidence that the response contained the substance of or excerpts of actual discussions or debate, or information showing how policy was formed. Moreover, the District failed to demonstrate that production of the requested document would interfere with discussions or debate. The court also held that the public's interest in disclosure outweighed protection of privacy interests of the superintendent, finding that there is a strong public interest in assessing how the school board treated serious misconduct allegations against its highest ranking administrator.

*City of San Jose v. Superior Court*²⁵⁸

A local newspaper made a request under the CPRA for disclosure of names, addresses, and telephone numbers of complainants to the city regarding municipal airport noise. The city may refuse to disclose on the grounds that: (1) the public interest in disclosure of the names, addresses, and telephone numbers of persons who have made airport noise complaints is clearly outweighed by the public interest in protecting the complainants' privacy and in preventing a chilling effect on complaints, and (2) it is not necessary to disclose the names, addresses, and telephone numbers of the complainants for the public to have access to vital information about city's performance of its state-mandated duty to record and report airport noise complaints.

The following are examples of records that are exempt under the catch-all exemption:

- Applications of candidates for employment;²⁵⁹
- Staff evaluations and recommendations discussing an applicant's fitness for appointment;²⁶⁰ and

- Telephone records of council members.²⁶¹

The CPRA was recently amended to prohibit a person, business or association from displaying or posting on the internet the home address or telephone number of any elected or appointed official if the official has made a written demand to not disclose the information. Upon receiving such a demand, a person, business or association is also prohibited from transferring the information to any other person, business or association.²⁶²

G. WAIVER OF EXEMPTION BY LOCAL AGENCY

Generally, if the local agency discloses a public record that is exempt from the disclosure under the Act, the disclosure constitutes a waiver of the exemption. However, the general rule does *not* apply to inadvertent disclosures of exempt records²⁶³ and the following disclosures:

- Disclosures made pursuant to the Information Practices Act (Cal. Civil Code § 1798, *et seq.*);
- Disclosures made through other legal proceedings or as otherwise required by law;
- Disclosures within the scope of disclosure or a statute which limits disclosure of specified writings to certain purposes;
- Disclosures not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings; or
- Disclosures made to any governmental agency, which agrees to treat the disclosed material as confidential.²⁶⁴

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The “Inadvertent” disclosure must be truly inadvertent, e.g. human error resulting in the inadvertent disclosure of exempt records, as opposed to selective disclosure.²⁶⁵ LCW recommends that agencies consult with legal counsel if it believes that it made an inadvertent disclosure of exempt records.

Section 6

LEGAL ACTION TO COMPEL DISCLOSURE OF PUBLIC RECORDS

A. DETERMINATION PROCESS

If the local agency denies disclosure of public records, a records requester may institute a legal action in civil court to compel the local agency to disclose the records.²⁶⁶ In such a proceeding, the court will determine whether the public records are being improperly withheld from the

records requester. The local agency must show cause why the records should not be disclosed.²⁶⁷ The steps of the court's determination process are as follows:

- To make the determination, the court must examine the records privately in the judge's chambers and consider arguments and evidence presented by the parties.
- If the court determines the records are being improperly withheld, the court will order the officer or person charged with withholding the records to disclose the public record. But if the court determines that the refusal to disclose was justified, then the court must return the records to the public official without disclosing the documents' content with an order supporting the refusal to disclose.²⁶⁸
- The exclusive means to challenge a decision of an order granting or denying disclosure under the CPRA is via a petition to the appellate court for the issuance of an extraordinary writ of review.²⁶⁹
- Any person who fails to obey such a court order may be cited for contempt of court.²⁷⁰

B. ATTORNEY FEES AND COSTS

In an action filed pursuant to the act, the prevailing plaintiff (*i.e.* records requester) is entitled to recover costs and reasonable attorney fees from the local agency. The public official who denied disclosure is not personally liable. The local agency may be entitled to attorney fees and costs, however, if the court finds the plaintiff's case to be clearly frivolous.²⁷¹

Crews v. Willows Unified School District²⁷²

A CPRA action filed by a requester was not frivolous because uncertainty remained as to whether documents produced pursuant to an agreement between the parties were timely received and in the permissible format. In addition, there was the potential that the trial court's *in camera* review of documents claimed to be privileged would reveal the requester was entitled to at least some withheld documents.

Section 7

DISTRICT ATTORNEY AS THE REQUESTING PARTY

When a CPRA request is made by a district attorney, special guidelines apply for disclosure of public records by a local agency. The guidelines are as follows:

- The disclosure exemption for records of complaints to, or investigations conducted by, any state or local agency for correctional, law enforcement or licensing purposes does *not* apply when the requesting party is a district attorney.²⁷³

- A local agency must allow a district attorney to inspect or copy all nonexempt public records upon a CPRA request.²⁷⁴
- If an agency fails or refuses to allow inspection or copying within 10 working days of a CPRA request by a district attorney, the district attorney may petition a court of competent jurisdiction to compel the agency to allow inspection or to receive a copy of any public record or class of public records not exempted from disclosure by the Act, *unless* the public interest or good cause shown in withholding such records clearly outweighs the public interest in disclosure.²⁷⁵
- The status of records (under any other provisions of law) shall not be affected by the disclosure of records to a district attorney.²⁷⁶

APPENDIX A

THE BROWN ACT

CALIFORNIA GOVERNMENT CODE SECTIONS 54950-54963

54950.

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State 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.

54950.5.

This chapter shall be known as the Ralph M. Brown Act.

54951.

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

54952.

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that 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 charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

54952.1.

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 this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

54952.2.

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) 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 by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, 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 legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

54952.3.

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative

body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

54952.6.

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

54952.7.

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

54953.

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda

shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2018.

54953.1.

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

54953.2.

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

54953.3.

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

54953.5.

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

54953.6.

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and 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.

54953.7.

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

54954.

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their 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 and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office 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 or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

54954.1.

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

54954.2.

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

54954.3.

(a) 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, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special

meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

54954.4.

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

54954.5.

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 or 54956 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.)

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

(Paragraph (1) of subdivision (d) 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 paragraph (2) or (3) of subdivision (d) 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 paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) 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 54956.95:

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, or name of applicable agency representative and title)

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 54956.86:

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.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

54954.6.

(a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to

subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage

prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII□C or XIII□D of the California Constitution is not subject to the notice and hearing requirements of this section.

54955.

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

54955.1.

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

54956.

(a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

54956.5.

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

54956.6.

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

54956.7.

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

54956.75.

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

54956.8.

Notwithstanding any other provision of this chapter, 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 agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

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 negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

54956.81.

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

54956.86.

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

54956.87.

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any

documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Managed Health Care in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

54956.9.

(a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

(e) For purposes of paragraphs (2) and (3) of subdivision (d), "existing facts and circumstances" shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(4) A statement made by a person in an open and 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 and public meeting 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 or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records 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 a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) 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 (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has 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 an activity is outside the course and scope of the office or employment.

54956.95.

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

54956.96.

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal

counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

54957.

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting 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.

(2) 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 shall 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.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, 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 a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

54957.1.

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the 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.

(B) 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.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section 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 pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that 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 designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) 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 retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, 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.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

54957.2.

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of

this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

54957.5.

(a) Notwithstanding Section 6255 or any other law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

54957.6.

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

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 of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, 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 a legislative body, or other independent contractors.

54957.7.

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

54957.8.

(a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

54957.9.

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

54957.10.

Notwithstanding any other provision of law, a legislative body of a local agency 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 arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

54958.

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

54959.

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

54960.

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

54960.1.

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) 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 written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let 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.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 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 the 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 is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

54960.2.

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To _____:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

[Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

54960.5.

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally,

when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

54961.

(a) 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 ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

54962.

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

54963.

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

APPENDIX B

BROWN ACT CHECKLIST FOR LOCAL AGENCIES

1. Is your agency a “local agency” subject to the Act?

Counties, cities, city and county, towns, school districts, community college districts, municipal corporations, districts, political subdivisions, boards, commissions, and agencies within a local agency are typical local agencies. If your agency is not local in nature or part of a multi-member state body it is not likely covered by the Act.

2. Is a “legislative body” of your local agency meeting?

(Yes, if ALL of the following are present)

- Is it a quorum of all the members of the body meeting?
- Was the committee created by the legislative body action regardless of whether a quorum is present?
- Is the body a standing committee?

Note: *An advisory committee of the legislative body that constitutes less than a quorum is not governed by the Act.*

3. Is the meeting subject to the Act?

(Yes, if ALL of the following are present)

- Are a majority of the legislative body present?
- Are a majority of the legislative body included in the communication (e.g., telephone, email, voicemail)?
- Are the members of the body hearing, discussing, or deliberating on any item within the subject matter jurisdiction of the district?
- Is the communication intended to develop a collective concurrence as to action to be taken by the legislative body?

4. Is the meeting properly “agendized”?

(Yes, if ALL have been done)

- Does the agenda reflect that all meetings commence in public session?
- Does the agenda include public comment before the legislative body considers any item?
- Was the agenda posted 72 hours before a regular meeting? (Note weekends count as part of the 72 hours as long as the agenda is accessible to the public over the weekend.)

- Was the agenda posted in a place accessible to the public regardless of time of day?
- If the meeting was a special meeting, was the agenda posted 24 hours before the meeting?

5. Is the legislative body properly meeting in closed session?

(Yes, for each of the following)

Note: *Whether a legislative body is properly meeting in closed session is one of the more common challenges under the Brown Act. The consequences of improper closed session meetings and actions range from nullifying the action to a criminal misdemeanor against individual members for knowingly violating the Act. Accordingly, legislative bodies should ensure that their agendas are in compliance and that the topics under discussion are authorized.*

- Does the closed session involve a discussion with the agency's real property negotiators? *If yes, prior to holding the closed session, the local agency must identify its negotiators, the address of the real property or properties which are under negotiation, the parties to the negotiation, and whether the instruction to its negotiators will concern price, terms of payment or both.*
- Does the closed session involve a discussion with the agency's legal counsel over anticipated or actual litigation? *If yes, the claim or case must be identified unless disclosure would jeopardize service of process or existing settlement negotiations. If the litigation is anticipated, the agenda must specify the number of potential cases. Additional information may also need to be provided based on the specific circumstances.*
- Does the closed session involve a discussion of a threat to agency services or facilities? *If yes, section 54957 subdivision (a) permits closed session discussion with a security consultant or security operations manager in addition to the list of authorized personnel. It also permits discussion of a threat to essential public services, including water, drinking water, wastewater treatment, natural gas service, and electrical service as expressly authorized in closed session.*
- Does the closed session involve the appointment, employment, or evaluation of a public employee? *If yes, does the agenda reflect: Public Employee Appointment/Employment: Title of position to be appointed/employed? -and/or- Public Employee Evaluation: Title of position of employee under review?*

- Does the closed session involve the discipline, dismissal or release of a public employee? *If yes, does the agenda reflect: Public Employee Discipline/Release/Dismissal? No additional information is required or appropriate.*

Compensation may be discussed only if it entails a proposed or actual reduction of compensation that results from the imposition of discipline.

Note: *It is not proper to discuss the discipline of an elected official in closed session.*

- Does the closed session involve discussion of labor negotiations with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily-provided scope of representation?

If yes, prior to the closed session, the legislative body must identify its designated representative in public session. Closed session may include a discussion of the local agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative. Employees do not include elected officials, members of a legislative body, or an independent contractor unless the latter is functioning as an officer or employee of the local agency.

The following types of closed session discussions are permitted:

- To discuss the local agency's position and provide direction to its designated representative on matters within the scope of bargaining.
- To discuss and negotiate with the union or representatives of unrepresented employees.
- To meet with a mediator.
- To participate in a hearing, meeting or investigation of a fact finder or arbitrator.
- Closed sessions are not permitted to take final action on the proposed compensation of one or more unrepresented employees.

- Does the closed session involve complaints or charges against a public employee? *If yes, before holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee must be given at least 24 hours prior written notice of his or her right to have the complaints or charges heard in open session rather than closed session, which notice must be delivered personally or by mail. Failure to provide such notice voids any disciplinary or other action taken by the legislative body against the employee.*

Complaints or charges against elected officials must take place in public session.

- Does it involve a charge or complaint from a member enrolled in the local agency's health plan?

If yes, section 54957.86 provides that a member of a local agency health plan may request that his or her complaint against the plan be heard in closed session to protect his or her medical status or other information protected by federal law. The legislative body must inform the member in writing of his or her right to have the charge or complaint heard in open rather than closed session. The agenda should reflect: Charge or Complaint involving information protected by federal law.

- Does the closed session involve records that relate to a health plan governed by the county board of supervisors?

If yes, closed session discussion of provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records to the board of supervisors does not constitute a waiver of their exemption from disclosure.

- Does the closed session involve early withdrawal of funds in a deferred compensation plan?

If yes, section 54957.10 provides that a legislative body may hold a closed session 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 arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

6. Has the legislative body properly reported out any action taken in closed session (i.e. reconvene in open session and report)?

- Did the body give final approval of an agreement concluding real estate negotiations?
- Did the body give its legal counsel authority to defend, seek or refrain from seeking appellate review or relief, or enter as amicus curiae, unless such reporting out would jeopardize the district's ability to serve the action on unserved parties or jeopardize settlement discussions?
- Did the body give final approval of settlement of pending litigation?
- Did the body take action to appoint, employ, accept the resignation or otherwise affect the status of an employee?

If yes to any of the above, the legislative body must report out the action. If no action is taken, a public report that no action was taken suffices.

Note: *If the legislative body initiates dismissal proceedings against an employee that has an administrative remedy (e.g. ability to appeal the dismissal), then no action is reported out until after the employee either waives the hearing or is dismissed after administrative remedies have been exhausted.*

7. Has the confidentiality of closed session matters been maintained?

Closed session information may not be disclosed unless the legislative body authorizes disclosure of the confidential information. Remedies against an individual for violating the confidentiality of closed session include injunctive relief, disciplinary action against an employee, and referral of a member of a legislative body to the grand jury for criminal prosecution.

8. Does the public have access to the documents distributed at the public meeting?

Agendas and public documents must be available upon request in appropriate alternative forums to persons with a disability, and that agendas must include information on the availability of disability-related aids or services to enable the person to participate in a public meeting consistent with the Americans with Disabilities Act. The agenda must also include information on how, to whom, and when a request for accommodations may be made in order to participate in a public meeting.

APPENDIX C

BROWN ACT CASES REGARDING CLOSED SESSION MEETING ISSUES (SECTION 54957)

1. **Kolter v. Commission on Professional Competence of the Los Angeles Unified School District (2009) 170 Cal.App.4th 1346** (*24 hour notice of the meeting to the employee was not required because the governing body did not make a final agency decision on the discipline but rather “considered” whether the charges were justified to initiate discipline proceedings.*)
2. **Trancas Property Owners Association v. City of Malibu (2005) 138 Cal.App.4th 172** (*Settlement agreement that contains provisions ordinarily subject to the Brown Act’s requirement of an open meeting (e.g., rescission of land use decision or granting of a zoning variance) cannot be adopted in closed session under the litigation exemption.*)
3. **Moreno v. City of King (2005) 127 Cal.App.4th 179** (*Notice required before City Council could review memo from City Manager detailing problems with at-will Finance Director; memo constituted “accusations of misconduct.”*)
4. **Morrison v. Housing Authority of the City of Los Angeles Bd. of Comrs. (2003) 107 Cal.App.4th 860** (*Notice required prior to the governing board reviewing and reweighing the findings and conclusions of an arbitrator in a disciplinary hearing in order to make its own determination regarding whether to impose discipline.*)
5. **Duval v. Board of Trustees (2001) 93 Cal.App.4th 902** (*Board can meet in closed session to discuss evaluation instrument to be used in evaluating CEO under the authority to discuss evaluation of a public employee.*)
6. **Bell v. Vista Unified School Dist. (2000) 82 Cal.App.4th 672** (*Notice required before school board could determine to remove coaching assignment and stipend based on CIF report of recruiting irregularities, even though employee not dismissed.*)
7. **Bollinger v. San Diego Civil Service Com. (1999) 71 Cal.App.4th 568** (*No notice required when civil service commission met to review recommended findings and conclusions of an arbitrator, where sole action was to deliberate regarding the demotion recommended by the arbitrator’s decision.*)
8. **Fischer v. Los Angeles Unified School Dist. (1999) 70 Cal.App.4th 87** (*No notice required when school board met to consider recommendation not to reelect probationary teachers, when recommendation based on notices of unsatisfactory service the teachers had previously had an opportunity to review and discuss.*)

9. **Furtado v. Sierra Community College** (1998) 68 Cal.App.4th 876 (*No notice required when board met to review non-tenured librarian's evaluation, even though it then determined not to renew her contract.*)
10. **Titus v. Civil Service Com.** (1982) 130 Cal.App.3d 357 (*No right to be present in closed session when civil service commission deliberates regarding whether to impose discipline.*)
11. **Lindros v. Governing Bd. of Torrance Unified School Dist.** (1972) 26 Cal.App.3d 38 (*No right to be present in closed session while school board was deliberating whether to adopt hearing officer's decision upholding dismissal.*)
12. **Lucas v. Board of Trustees** (1971) 18 Cal.App.3d 988 (*Statute permitting school board to consider personnel matters in executive session rather than at a public meeting included authority to vote and act to terminate superintendent's employment in executive session.*)

APPENDIX D

GUIDELINES FOR DISCUSSION OF COMPLAINTS OR CHARGES IN OPEN SESSION

I.

OPEN-SESSION SCRIPT

- A. INTRODUCTORY STATEMENT BY BOARD PRESIDENT (To be made at beginning of *pre-closed* session public comment period.)

Board President:

- Good evening. The Board properly placed a “discipline, dismissal, release” matter on its closed session agenda, pursuant to Government Code section 54957(b)(1), which is the “personnel exception” under California’s opening meeting law, known as the “Brown Act.”
- Also pursuant to the Brown Act, Government Code section 54957(b)(2), the employee in question was given:
 1. notice that this matter had been placed on the closed session agenda of a regular meeting scheduled for today November 15, 2016; and
 2. an opportunity to request that the matter instead be heard in open session during the time period on the Agenda dedicated to open meeting, public comment on closed session items.
- I have been informed that the employee is requesting that the matter be heard in open session. Therefore, the matter will be heard at this time.
- Before we begin, I will take a few moments to explain the process that we will use to conduct this open session item. Under the Brown Act, an employee may request that complaints and charges be heard in open session. This open meeting requirement means that, when such a request is made, we are required to hear in *open* session, the complaints and/or charges that we would otherwise have heard in *closed* session. Therefore, we will hear from the Board’s employment counsel, Superintendent or her designee on the factual basis for the District’s recommendation in open session. The employee will then be given an opportunity to speak. That will end the public consideration of the charges.

Any members of the public who wish to speak on this matter may then speak, subject to the Board’s procedures for hearing public comment.

After public comment, the Board will move to closed session for deliberations. The Board will consider the recommendation of the Superintendent in closed session. The Board's action, if any, will be reported out at the first public meeting after the employee has exhausted all administrative remedies.

-- With this in mind, we will proceed as follows:

First, the Board will hear from the Superintendent or her designee.

Second, the employee may make any remarks she wishes. {Note: If Ms. Chin asks that someone else speak on her behalf, we suggest that she be permitted to do so.}

Third, the Board will ask for any other public comment on a closed session item. Any member of the public wishing to be heard on this matter may speak at this time, subject to the rules and time constraints for public comment.

The Board will then adjourn to closed session to deliberate.

B. OPEN-SESSION PROCEEDING

*NOTES AND GUIDANCE TO THE BOARD ARE NOT PART OF THE SCRIPT. THEY ARE INDICATED BY BEING *[bold and bracketed]* AND ARE NOT TO BE READ ALOUD.*

Board President:

-- Ms. Perez (or designee), please proceed and limit your remarks to ten minutes.

[Presentation by Ms. Perez and/or designee.]

-- Is Ms. Chin present?

-- Ms. Chin, would you like to address the Board?

-- Before you begin, I want remind you that we are in an open session. Even if there are not many people in this room, the minutes of this meeting will be a public document. Therefore I am reminding you not to refer to any client by name or other identifying information.

-- Please begin, and contain your remarks to ten minutes.

-- Thank you Ms. Chin. The Board may now ask any clarifying questions. We will start with *[select a Board member and proceed in some logical order; Board President should question last]*.

[Clarifying questions from the Board, IF ANY. Note: There is no obligation to ask questions. Please refer to “Questioning Guidelines” attached.]

-- We will now hear public comment, if any, on this matter before adjourning to closed session.

-- Is there any public comment on this matter?

[If Ms. Chin has brought witnesses, they may speak at this time.]

-- Not seeing any public comment [or, having heard all public comment on closed session matters] this hearing is concluded. The Board will deliberate on this matter in closed session.

II.

OPEN-SESSION CONSIDERATION OF EMPLOYEE DISCIPLINE: QUESTIONING GUIDELINES

****For Board guidance only. Not to be read aloud.****

In asking Ms. Chin questions, these guidelines may be helpful:

1. There is nothing wrong with NOT having any questions. If you don't need clarification of a fact, just pass.
2. Avoid argumentative questions (i.e. questions that sound too much like cross examination.)
3. Avoid making any statements that suggest you have already formulated an opinion.

APPENDIX E

SAMPLE GUIDELINE FOR DEALING WITH DISRUPTIONS TO PUBLIC MEETINGS

The agency should use extreme discretion and caution before directing someone to leave the board meeting. It must be clear that the person has been warned adequately (almost always more than once) before ultimately directing them to leave the meeting or clearing the room.

The presiding officer has an obligation to maintain order and prevent disruption of the meeting. If a member of the public becomes disruptive, warn the person as follows:

Your behavior in [shouting, interrupting, making undue noise, etc.] is having the effect of disrupting this meeting. You must stop this behavior, so that we may continue the business before us.

If the behavior continues warn the person again as follows:

Your behavior is having the effect of disrupting the meeting. You have been asked to stop [shouting, interrupting, making undue noise, etc.] If you do not stop this behavior you will be asked to leave the meeting so that we may continue the business before us.

If the behavior still continues, make the following statement:

Your behavior in [shouting, interrupting, making undue noise, etc.] is having the effect of disrupting the meeting. You have been asked to stop this behavior twice. I would like a motion to find that this member of the public is violating District Policy, and that his/her activity is intentional and has substantially impaired the conduct of the meeting and that he/she be required to leave the meeting, pursuant to Government Code section 54957.9. The meeting will continue only after you have left the meeting room.

Then wait for a motion and second. Take the vote. If the motion succeeds, the members of the legislative body should leave the meeting room. If the person does not leave the room voluntarily, staff members should escort the disruptive person out of the room ONLY if they can do so without any risk of harm to themselves or others. If not, call the police. They are the professionals.

If the disruption comes from a group of people, the warning process is the same. Warn them twice. Then the presiding officer says:

I would like a motion to determine that this meeting is willfully interrupted by persons so as to render the orderly conduct of the meeting unfeasible and that order cannot be restored by the removal of individuals who are willfully interrupting the meeting and that the meeting room be cleared and the Board will continue in session, pursuant to Government Code, § 54957.9. Representatives of the press or other news media will be allowed to attend this reconvened session. Members of the media shall contact me during the recess.

Then wait for a motion and second. Take the vote. If the motion succeeds, the members of the legislative body should leave the meeting room. Everyone else should leave the meeting room as well. As above, staff members should assist in clearing the room ONLY if they can do so without any risk of harm to themselves or others. If not, call the police. They are the professionals.

The legislative body may establish a procedure for re admitting members of the public who did not participate in the disruption. If the legislative body wished to establish such a procedure, the following is one suggestion:

In 15 minutes, members of the public who did not participate in the disruption may be readmitted to the meeting room.

APPENDIX F

GUIDELINE FOR RELEASE OF RECORDS AND INFORMATION MAINTAINED BY LAW ENFORCEMENT AGENCIES

Information	Anyone	Victim⁺	Press
Victim Name	Maybe ¹	Yes	Maybe ¹
Victim Address	No	Yes	Maybe ²
Victim Age	Maybe ¹	Yes	Maybe ¹
Parties/Witnesses Names [*]	No	Yes	No
Parties/Witnesses Addresses [*]	No	Yes	No
Time, substance, and location of complaint	Yes	Yes	Yes
Time and nature of response to complaint	Yes	Yes	Yes
Time, date, substance, and location of incident/crime	Maybe ³	Yes	Maybe ³
Time and date of report	Maybe ³	Yes	Maybe ³
Factual circumstances surrounding incident/crime	Maybe ³	Yes	Maybe ³
Description of injuries, property or weapons involved	Maybe ³	Yes	Maybe ³
Name and occupation of an arrestee	Yes	Yes	Yes
Address of arrestee	No	No	Yes
Arrestee physical description	Yes	Yes	Yes
Time and date of arrest	Yes	Yes	Yes
Facts surrounding arrest	Yes	Yes	Yes
Time and date of booking	Yes	Yes	Yes
Location of arrest	Yes	Yes	Yes
Amount of bail set	Yes	Yes	Yes
Time and manner of release or location where arrestee is held	Yes	Yes	Yes
Charges on which arrestee held	Yes	Yes	Yes
Diagrams	No	Yes	No
Statements of parties and witnesses [*]	No	Yes	No

⁺ Victim means a person identified as a victim in an incident report, an authorized representative of the victim, an insurance carrier against which a claim has been or might be made, or any person who has suffered bodily injury or property damage as a result of a misdemeanor, felony, fire, explosion, vandalism or act of terrorism.

^{*} Except confidential informants.

¹ If it arises out of the Department's response to a complaint or request for assistance and a record is then made of a possible victim. In addition, A victim's name shall be withheld if requested by the victim and it involves a crime under Penal Code section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a-c, 266e-f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6.

² The address of a victim is withheld automatically if it involves a crime under Penal Code section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a-c, 266e-f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6. The address and telephone number of a victim must not be given to a criminal defendant or members of the defendant's family. Requests for information by a criminal defendant should be directed to the District Attorney's office or federal prosecutor.

³ If it arises out of a response by the Department to a complaint or request for assistance.

Notwithstanding Any of the Above, Information Should Not Be Released if:

1. It would endanger the successful completion of the investigation or a related investigation.
2. It would endanger the safety of a witness or other person involved in the investigation.
3. It reflects the analysis or conclusions of the investigating officer.
4. It discloses the name, address, telephone number, and date of birth of a minor.
5. It involves a report or incident of child abuse, child molestation, elder abuse, or crimes involving a juvenile as a suspect and/or victim.
6. The public interest served by not making the information public clearly outweighs the public interest served by disclosure of the information.

This matrix does not apply to traffic accident reports under Vehicle Code section 20012. Traffic accident reports may be released to persons with a “proper interest therein” (i.e. drivers, owners of damaged vehicles/property, injured persons, insurance carrier representatives, etc.)

ENDNOTES

- 1 The Brown Act is contained in Gov. Code, § 54950 et seq.
- 2 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904 [117 Cal.Rptr.2d 631].
- 3 Gov. Code, § 54953.
- 4 *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876 [80 Cal.Rptr.2d 589].
- 5 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545 [152 Cal.Rptr. 506].
- 6 Ed. Code, § 1011.
- 7 32 Ops.Cal.Atty.Gen. 240 (1958).
- 8 However, the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.) would likely apply to such agencies.
- 9 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545 [152 Cal.Rptr. 506].
- 10 39 Ops.Cal.Atty.Gen. 94 (1962).
- 11 59 Ops.Cal.Atty.Gen. 162 (1976).
- 12 Gov. Code, § 54952, subd. (a).
- 13 Gov. Code, § 54952, subd. (b).
- 14 See *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123 [24 Cal.Rptr.3d 493], review den.
- 15 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287 [81 Cal.Rptr.2d 456], as modified on denial of reh., review den.
- 16 Gov. Code, § 54952, subd. (c)(2).
- 17 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287 [81 Cal.Rptr.2d 456], as modified on denial of reh., review den.
- 18 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287 [81 Cal.Rptr.2d 456], as modified on denial of reh., review den.
- 19 Gov. Code, § 54952.1.
- 20 *Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231 [175 Cal.Rptr. 292].
- 21 42 Ops.Cal.Atty.Gen. 61 (1963).
- 22 *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal.App.2d 41 [69 Cal.Rptr. 480].
- 23 63 Ops.Cal.Atty.Gen. 820 (1980).
- 24 Gov. Code, § 54952.2, subd. (b); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 [50 Cal.Rptr.3d 524], as mod. on denial of reh.
- 25 Gov. Code, § 54952.2, subd. (b); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 [50 Cal.Rptr.3d 524], as mod. on denial of reh.
- 26 Gov. Code, § 54952.2, subd. (c)(2).
- 27 Gov. Code, § 54952.2, subd. (c)(3).
- 28 Gov. Code, § 54952.2, subd. (c)(4).
- 29 Gov. Code, § 54952.2, subd. (c)(5).
- 30 Gov. Code, § 54952.2, subd. (c)(6).

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- 31 Gov. Code, § 54953.1.
- 32 Gov. Code, § 54954, subd. (a).
- 33 Gov. Code, § 54956.
- 34 Gov. Code, § 54956.5, subd. (a).
- 35 Gov. Code, § 54954.2, subd. (a).
- 36 Gov. Code, § 54954.2, subd. (a)(1).
- 37 78 Ops.Cal.Atty.Gen. 327 (1995).
- 38 88 Ops.Cal.Atty.Gen. 218 (2005).
- 39 Gov. Code, § 54954.1.
- 40 Gov. Code, § 54954.1.
- 41 Gov. Code, § 54954.2, subd. (a).
- 42 Gov. Code, § 54954.3, subd. (a).
- 43 Gov. Code, § 54954.3, subd. (a).
- 44 Gov. Code, § 54954, subd. (a).
- 45 Gov. Code, § 54954.2, subd. (a).
- 46 Gov. Code, § 54956.5.
- 47 Gov. Code, § 54954.2, subd. (b)(2).
- 48 Gov. Code, § 54954.2, subd. (b)(3).
- 49 Gov. Code, § 54954.3, subd. (a).
- 50 Gov. Code, § 54954.3, subd. (a).
- 51 73 Ops.Cal.Atty.Gen. 1 (1990).
- 52 Gov. Code, § 54954.3, subd. (b).
- 53 *Baca v. Moreno Valley School District* (C.D. Cal. 1996) 936 F.Supp. 719.
- 54 Gov. Code, § 54954.3, subd. (c).
- 55 78 Ops.Cal.Atty.Gen. 224 (1995).
- 56 Gov. Code, § 54954.2, subd. (b)(2).
- 57 *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Board of Supervisors* (2005) 129 Cal.App.4th 205 [28 Cal.Rptr.3d 198], review den.
- 58 *White v. City of Norwalk* (9th Cir. 1990) 900 F.2d 1421.
- 59 Gov. Code, § 54956, subd. (a).
- 60 Gov. Code, § 54956.
- 61 Gov. Code, § 54956.5, subd. (b)(1).
- 62 Gov. Code, § 54956.5, subd. (b)(2).
- 63 Gov. Code, § 54956.5, subd. (e).
- 64 Gov. Code, § 54956.5, subd. (c).
- 65 Gov. Code, § 54954.6, subd. (a) & (b).
- 66 Gov. Code, §§ 54954.6, subd. (b), 6063.

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- 67 Gov. Code, § 54954.6, subd. (b).
68 Gov. Code, § 54954, subd. (a).
69 Gov. Code, § 54954, subd. (b).
70 Gov. Code, § 54954, subd. (e).
71 Gov. Code, § 54961.
72 Gov. Code, § 54955.
73 Gov. Code, § 54955.1.
74 Gov. Code, § 54953.7.
75 Gov. Code, § 54953.3.
76 Gov. Code, § 54953, subd. (b).
77 Gov. Code, § 54953, subd. (d).
78 Gov. Code, § 54953, subd. (b).
79 Gov. Code, § 54953.5, subd. (a).
80 Gov. Code, § 54953.6.
81 Gov. Code, § 54957.5, subd. (d).
82 Gov. Code, § 54957.5, subd. (a).
83 Gov. Code, § 54957.5, subd. (b)(2).
84 Gov. Code, § 54957.5, subd. (c).
85 Gov. Code, § 54953.5, subd. (b).
86 Gov. Code, § 54957.9.
87 *McMahon v. Albany Unified School District* (2002) 104 Cal.App.4th 1275 [129 Cal.Rptr.2d 184], cert. den.
(2003) 540 U.S. 924 [124 S.Ct. 155].
88 *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800.
89 Gov. Code, § 54956.9.
90 Gov. Code, § 54956.9, subd. (g).
91 Gov. Code, § 54956.9.
92 Gov. Code, § 54956.9.
93 Gov. Code, § 54956.9, subd. (e)(5).
94 Gov. Code, § 54956.9, subd. (h).
95 *Shapiro v. Board of Directors of Centre City Development Corp.* (2005) 134 Cal.App.4th 170 [35 Cal.Rptr.3d
826].
96 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172 [41 Cal.Rptr.3d 200],
review den.
97 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172 [41 Cal.Rptr.3d 200],
review den.
98 Gov. Code, § 54957, subd. (b)(1).
99 Gov. Code, § 54957, subd. (b)(2).
100 *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672 [98 Cal.Rptr.2d 263], reh'g. & review den.

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- 101 *Hofman Ranch v. Yuba County Local Agency Formation Commission* (2009) 172 Cal.App.4th 805 [91 Cal.App.3d 458].
- 102 61 Ops.Cal.Atty.Gen. 10 (1978).
- 103 *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 [84 Cal.Rptr.2d 27].
- 104 *Morrison v. Housing Authority of the City of Los Angeles Bd. of Cmrs.* (2003) 107 Cal.App.4th 860 [132 Cal.Rptr.2d 453].
- 105 *Bollinger v. San Diego Civil Service Com.* (1999) 71 Cal.App.4th 568, 574 [84 Cal.Rptr.2d 27].
- 106 *Bollinger v. San Diego Civil Service Com.* (1999) 71 Cal.App.4th 568, 574 [84 Cal.Rptr.2d 27]; see also *Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 96-97 [82 Cal.Rptr.2d 452, 457-458], reh'g. & review den.
- 107 *Kolter v. Commission on Professional Competence of the Los Angeles Unified School District* (2009) 170 Cal.App.4th 1346 [88 Cal.Rptr.3d 620], review den.
- 108 *Kolter v. Commission on Professional Competence of the Los Angeles Unified School District* (2009) 170 Cal.App.4th 1346 [88 Cal.Rptr.3d 620], review den.
- 109 *Duval v. Board of Trustees of the Coalinga-Huron Joint Unified School District* (2001) 93 Cal.App.4th 902 [113 Cal.Rptr.2d 517], reh'g. & review den.
- 110 *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876 [80 Cal.Rptr.2d 589].
- 111 *Moreno v. City of King* (2005) 127 Cal.App.4th 17 [25 Cal.Rptr.2d 29].
- 112 *Moreno v. City of King* (2005) 127 Cal.App.4th 17 [25 Cal.Rptr.3d 29], Gov. Code, § 54957, subd. (b)(2).
- 113 Gov. Code, § 54957, subd. (b)(4).
- 114 Gov. Code, § 54957.6, subd. (a).
- 115 Gov. Code, § 54956, subd. (b).
- 116 *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87 [82 Cal.Rptr.2d 452], reh'g. & review den.; 78 Ops.Cal.Atty.Gen. 218 (1995).
- 117 78 Ops.Cal.Atty.Gen. 218 (1995).
- 118 63 Ops.Cal.Atty.Gen. 153 (1980).
- 119 Gov. Code, § 54957.6.
- 120 *Travis v. Board of Trustees of California State University* (2008) 161 Cal.App.4th 335 [73 Cal.Rptr.3d 834].
- 121 Gov. Code, § 54957.6.
- 122 Gov. Code, § 54956.8.
- 123 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172, 185-186, fn. 44 [41 Cal.Rptr.3d 200, 209-210], review den.
- 124 94 Ops.Cal.Atty.Gen. 82 (2010).
- 125 94 Ops.Cal.Atty.Gen. 82 (2010).
- 126 94 Ops.Cal.Atty.Gen. 82 (2010).
- 127 Gov. Code, § 54957, subd. (a).
- 128 Gov. Code, § 54956.7.
- 129 Gov. Code, § 54956.87, subd. (b).
- 130 Gov. Code, § 54956.86.
- 131 Gov. Code, § 54956.95, subd. (a).

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- 132 Gov. Code, § 54957.8, subd. (b).
133 Gov. Code, § 54957.7.
134 Gov. Code, § 54957.7.
135 Gov. Code, § 54957.2, subd. (a).
136 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 907 [205 Cal.Rptr. 92].
137 88 Ops.Cal.Atty.Gen. 16, (2005).
138 Gov. Code, § 54957.1, subd. (a)(1).
139 Gov. Code, § 54957.1, subd. (a)(2).
140 Gov. Code, § 54957.1, subd. (a)(3).
141 Gov. Code, § 54957.1, subd. (a)(4).
142 Gov. Code, § 54957.1, subd. (a)(5).
143 Gov. Code, § 54957.1, subd. (a)(6).
144 Gov. Code, § 54957.1, subd. (a)(7).
145 Gov. Code, § 54957.1, subd. (e).
146 Gov. Code, § 54957.1, subd. (b).
147 Gov. Code, § 54957.1, subd. (c).
148 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324 [87 Cal.Rptr.2d 813], as mod., review den.
149 80 Ops.Cal.Atty.Gen. 231 (1997); Gov. Code, § 54963, subd. (a).
150 Gov. Code, § 54963, subd. (a).
151 Gov. Code, § 54963, subd. (b).
152 Gov. Code, § 54963, subd. (c).
153 Gov. Code, § 54963, subd. (d).
154 Gov. Code, § 54963, subd. (e).
155 Gov. Code, § 54963, subd. (f).
156 Gov. Code, § 54959.
157 Gov. Code, § 54960, subd. (a).
158 *Sacramento Newspaper Guild v. Sacramento County Bd. of Sup'rs* (1968) 263 Cal.App.2d 41 [69 Cal.Rptr. 480].
159 Gov. Code, § 54960.1.
160 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547 [35 Cal.Rptr.2d 782], review den.; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356 [44 Cal.Rptr.3d 128].
161 *Galbiso v. Orosi Public Utility District* (2010) 182 Cal.App.4th 652 [107 Cal.Rptr.3d 36], review den.
162 Gov. Code, § 54960, subds. (b) & (c)(2)(A).
163 Gov. Code, § 54960.5.
164 Gov. Code, § 54972.
165 Gov. Code, § 54973.

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- 166 Gov. Code, § 54974, subd. (b).
- 167 *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169 [128 Cal.Rptr.2d 234].
- 168 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901 [205 Cal.Rptr. 92, 96].
- 169 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1017 [88 Cal.Rptr.2d 552, 559], review den.
- 170 Gov. Code, § 6253, subd. (e).
- 171 Gov. Code, § 6252, subd. (e).
- 172 *San Gabriel Tribune v. Superior Court of State of California* (1983) 143 Cal.App.3d 762 [192 Cal.Rptr. 415]; *Coronado Police Officers Ass'n v. Carroll* (2003) 106 Cal.App.4th 1001 [131 Cal.Rptr.2d 553], review den.
- 173 Gov. Code, § 6254, subd. (n); *San Gabriel Tribune v. Superior Court of State of California* (1983) 143 Cal.App.3d 762 [192 Cal.Rptr. 415].
- 174 Gov. Code, § 625, subd. (c).
- 175 Gov. Code, § 6254.8; *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805 [26 Cal.Rptr.3d 92], reh'g. & review den.
- 176 Gov. Code, § 6261.
- 177 32 Ops.Cal.Atty.Gen. 240 (1958).
- 178 Gov. Code, § 6252, subd. (g).
- 179 Gov. Code, § 6254.9.
- 180 Gov. Code, § 6267.
- 181 Gov. Code, § 6253, subd. (a).
- 182 Gov. Code, § 6253.4.
- 183 Gov. Code, § 6270.5.
- 184 Gov. Code, § 6270.5, subd. (a).
- 185 Gov. Code, §§ 6253, subd. (b), 6253.1.
- 186 Gov. Code, § 6253, subd. (b).
- 187 Gov. Code, § 54985.
- 188 Gov. Code, § 6253, subd. (b); *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754 [110 Cal.Rptr. 257].
- 189 Gov. Code, § 6253.9.
- 190 *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754 [110 Cal.Rptr. 257].
- 191 Gov. Code, § 6253.1, subd. (a).
- 192 Gov. Code, § 6253, subds. (c) & (d).
- 193 Gov. Code, § 6253, subd. (c).
- 194 Gov. Code, § 6255(b)
- 195 Gov. Code, § 6253, subd. (d).
- 196 Gov. Code, § 6253.1, subd. (a).
- 197 Gov. Code, § 6254; *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819 [98 Cal.Rptr.2d 564], review den.
- 198 Gov. Code, § 6254, subd. (a).
- 199 Gov. Code, § 6254, subd. (b).

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- 200 Gov. Code, § 6254, subd. (c).
- 201 Gov. Code, § 6254, subd. (d).
- 202 Gov. Code, § 6254, subd. (e).
- 203 Gov. Code, § 6254, subd. (f).
- 204 Gov. Code, § 6254, subd. (g).
- 205 Gov. Code, § 6254, subd. (h).
- 206 Gov. Code, § 6254, subd. (i).
- 207 Gov. Code, § 6254, subd. (j).
- 208 Gov. Code, § 6254, subd. (k).
- 209 Gov. Code, § 6254, subd. (l).
- 210 Gov. Code, § 6254, subd. (m).
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- 244 Gov. Code, § 6254, subd. (f)(1).
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